This Week in State Tax (TWIST)

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Oregon: Tax Court Holds Affiliates Create Nexus for Parent; Apportionment Also Addressed

The Oregon Tax Court recently held that a national broadcaster had economic nexus in Oregon through its affiliate stations in the state. The contracts between the taxpayer and its affiliates required the taxpayer to provide programming and "branding support" (i.e., use of the taxpayer's name and logo) to the affiliates in exchange for weekly airtime on each station and forgiveness of monetary obligations under other contracts. The taxpayer earned revenue from its national advertisers when advertisements were aired by Oregon affiliates. Although the taxpayer lacked physical presence in Oregon, and the contracts between the taxpayer and the affiliates were all executed outside the state, the Department of Revenue (Department) determined that the taxpayer had economic nexus with Oregon. Oregon law states that economic nexus exists when a taxpayer "maintains continuous and systemic contact with Oregon's economy or market," "receives significant gross receipts attributable to customers in Oregon," or "receives significant gross receipts attributable to the use of taxpayer's intangible property in Oregon."

In its review, the Tax Court determined that economic nexus existed under Oregon law because (1) the taxpayer's partnerships with its affiliates created a continuous presence of the taxpayer's programming in Oregon; (2) a portion of the taxpayer's revenue from its sale of advertising were attributable to Oregon viewers; and (3) the affiliates made use of the taxpayer's intangible property (i.e., branding and programming) in Oregon. In response to the taxpayer's constitutional objections, the Tax Court ruled, despite the taxpayer's lack of physical presence, the revenue from advertisements targeted at Oregon viewers, the use of intangible property in Oregon as a core part of the taxpayer's business model, and the intentional use of affiliate contracts to enter the Oregon market satisfied the "minimum connection" requirement of the Due Process Clause and the "substantial nexus" requirement of the Commerce Clause. Having found that the taxpayer had nexus with Oregon, the Tax Court briefly addressed the taxpayer's argument against the Oregon "interstate broadcaster" apportionment formula (which apportions taxable income based on the location of the broadcaster's audience), holding that the taxpayer had not demonstrated that application of the statute was unfair. Contact Nisha Mathew with questions about NBCUniversal Enterprise, Inc. v. Department of Revenue.