This Week in State Tax (TWIST)

May 12, 2025

Oregon: Tax Court Revises Opinion; Outcome Unaltered

The Oregon Tax Court revised its opinion in *Microsoft Corp. v. Department of Revenue*. (See prior TWIST from September 2024.) The revised opinion does not alter the court's decision but clarifies its rationale following the taxpayer's motion for reconsideration. Recall, the Tax Court agreed that the taxpayer was entitled to factor representation for the amount of its one-time deemed repatriation that was included in the tax base (reasoning that the income was ultimately derived from activities in the taxpayer's primary business), but denied the taxpayer's argument for alternative apportionment because it had not shown that denying factor representation for either the portion of the deemed repatriation that was deductible from the Oregon tax base or the gross sales of the relevant foreign subsidiaries resulted in distortion. The taxpayer subsequently moved for reconsideration, arguing primarily that the court had applied the wrong baseline amount when making this determination.

As part of its initial ruling, the court compared the taxpayer's actual Oregon taxable income in the years during which the deemed repatriation amount was generated (between $734 million and $785 million) to the amount that would have been generated had the taxpayer been subject to worldwide reporting in those years ($872 million). The court determined that application of the statutory apportionment formula was not distortive of the taxpayer's Oregon taxable income because the actual amount was less than the hypothetical amount. In its motion for reconsideration, the taxpayer argued that this method improperly applies its Oregon sales in prior years when determining its apportionment percentage in the repatriation year, and that a better method would apportion repatriation-year income (including the deemed repatriation) based on the repatriation-year Oregon sales over repatriation-year water's edge sales plus foreign subsidiary sales in all the years generating the repatriation amount.

In determining which of these approaches served as the better comparator, the court considered the purpose Congress in adopting the deemed repatriation. While it acknowledged that the mechanics of the statute resulted in an increased tax base in a single year, it interpreted the U.S. Supreme Court ruling in *Moore v. United States* to stand for the proposition that "Congress's goal was to create a one-time increase in the tax base that was entirely consistent with" its original multi-year approach, and that "the requirement to add that amount to only a single year's income may simply have been a practical modification to reduce the administrative burden for taxpayers and the government alike." When the deemed repatriation is considered as an additional tax for all the years in which the relevant income was generated, the court's approach of using the taxpayer's Oregon sales over all those years (rather than just in the repatriation year) was appropriate. Please contact Nisha Mathew for questions about *Microsoft Corp. v. Oregon Department of Revenue*.