



This Week in State Tax (TWIST)

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Oregon: State high court finds inclusion of intangible property is constitutional in central assessment

The Oregon Supreme Court recently held that inclusion of intangible property in the property tax base as part of the central assessment process was constitutional as applied to an air transportation company and utility company. For most Oregon taxpayers, property tax is imposed on a county-by-county basis based on the value of the real and tangible personal property located in each county. However, like many other states, Oregon provides for “central assessment” of certain taxpayers that are not easily amenable to local taxation. When an Oregon taxpayer is subject to central assessment, tax is assessed on all property owned by the taxpayer, explicitly including intangible property.

Two taxpayers—an airline and an energy company—were subject to central assessment and challenged application of the tax to their intangible property in separate suits. Each suit focused on alleged violations of state and federal constitutional provisions that require uniformity and equal treatment by irrationally subjecting similar taxpayers to disparate treatment. Although the Tax Court did not formally combine the two cases, it issued a joint decision finding the tax unconstitutional as it applied to the airline (because it impermissibly distinguished between national airlines and local bus and trucking companies) but upholding it as it applied to the energy company (because there were no comparable companies that were treated differently). Both the energy company and the state appealed the adverse portions of the decision.

The Oregon Supreme Court upheld the Tax Court’s approval of the system as it applied to the energy company, but it reversed the finding that it was unconstitutional as applied to the airline. The court read all the cited constitutional provisions—both those requiring uniformity and those requiring equal treatment—as subjecting the tax system to a rational basis review. The court proffered several potential rational justifications for using the central assessment approach including: the possibility that local officials may not have the expertise to effectively value intangible assets; the need to focus limited resources on the taxpayers with the highest potential revenue; the differing role intangible assets play in various industries; and the varying impact of related administrative costs on businesses in different industries. Given that central assessment was developed to effectively tax the value of businesses like airlines and utilities that often span multiple jurisdictions, the court held that the legislature could rationally choose to tax intangible property of a centrally assessed business but not a locally assessed business. Contact [Nisha Mathew](#) with questions about [Delta Air Lines, Inc. v. Department of Revenue](#).

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