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External Multistate Tax Alert
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Oregon Supreme Court Upholds Broad Interpretation of "Receipts from Broadcasting"

Overview

On August 16, 2018, the Oregon Supreme Court issued its decision in *Comcast Corporation and Subsidiaries v. Department of Revenue,* affirming the broad interpretation of the phrase "gross receipts from broadcasting" advocated by the Oregon Department of Revenue (DOR) for purposes of applying Oregon's special industry apportionment rules for interstate broadcasters.[1] Specifically, the Court ruled that Oregon's definition of "gross receipts from broadcasting" only excludes receipts derived from specific activities enumerated in the statutory definition itself (i.e., sales of tangible personal property and real property),[2] and as a result, potentially includes receipts from activities not typically associated with broadcasting.

In this tax alert, we summarize the *Comcast* decision and offer some taxpayer considerations.

Background

The Oregon Supreme Court's decision was an appeal from the decision of the Oregon Tax Court, which had granted the DOR partial summary judgment on its interpretation of Oregon's special industry apportionment regime for interstate broadcasters.[3] Accordingly, there were no questions of material fact at issue before the Court.[4] Comcast had not disputed that that it engaged in the business of "broadcasting" or that Oregon's special industry apportionment regime for interstate broadcasters applied to the broadcasting portion of its business.[5] Comcast argued that Oregon's statutory definition of "broadcasting" – defined as "the activity of transmitting any one-way electronic signal by radio waves, microwaves, wires, coaxial cables, wave guides, or other conduits of communications"[6] – limited Oregon's special industry apportionment regime to receipts derived from the activity of "broadcasting." The DOR argued, however, and the Tax Court had agreed, that the term "gross receipts of broadcasting" was sufficiently broad to include other categories of activities engaged in by the broadcaster (e.g., sales of non-broadcasting services) because the statutory exemptions from the definition of "gross receipts from broadcasting" only extended to the following:

- Sales not derived from transactions and activities in the regular course of the broadcaster's trade or business;
- Sales of tangible personal property; and
- Sales of real property.[7]

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[1] *Comcast Corporation and Subsidiaries v. Department of Revenue*, 363 Or. 537 (August 16, 2018), available here.
[2] *Id*., citing Or. Rev. Stat. § 314.680(2).
[3] *Comcast Corporation and Subsidiaries v. Department of Revenue*, TC 5265 (Or. Tax Ct., 2016). All citations to the *Comcast* decision herein are to the Supreme Court decision unless otherwise indicated.
[4] *Comcast, supra*, at 542.
[5] *Id.,* at 541.
[6] Or. Rev. Stat. § 314.680(1).
[7] Or. Rev. Stat. § 314.680(2).

The significance of this distinction arose from the fact that "gross receipts from broadcasting" are subject to Oregon's "audience-ratio" method for sourcing sales[8] while receipts that do not fall into that category are subject to Oregon's general method for sourcing sales of items other than tangible personal property for the years at issue, i.e., a greater-cost-of-performance methodology for tax years beginning prior to January 1, 2018.[9]

Court's Analysis of "Gross Receipts from Broadcasting"

Given that there were no genuine issues of material fact before the Court, the decision considered the statutory interpretation of Oregon's definition of "gross receipts from broadcasting" and, specifically, whether the taxpayer was correct in asserting that this definition only applied to "receipts from one-way electronic transmissions."[10] The statute at issue specifically provides:

> "Gross receipts from broadcasting" means all gross receipts of an interstate broadcaster from transactions and activities in the regular course of its trade or business except receipts from real or tangible personal property.[11]

The Court observed that the statute specifically defined the term "gross receipts from broadcasting" as including "all gross receipts of an interstate broadcaster," except for certain enumerated exceptions and does not limit the definition to receipts "from broadcasting." Comcast had countered that the term itself, "gross receipts from broadcasting" incorporates a defined term – "broadcasting" – that Oregon had defined.[12] The Court noted that the DOR's interpretation of the statute – that "gross receipts from broadcasting" may include receipts from activities other than broadcasting – "highlights what may be an incongruity" in the statute.[13] However, the Court noted that a "seeming incongruity" is not by definition sufficient to cause the Court to disregard the Legislature's clear expression of its intent.[14]

The Court then engaged in an extensive analysis of the statutory text and the evidence of the Legislature's intent (i.e., "contextual cues").[15] While a thorough review of the Court's analysis is beyond the scope of this alert, ultimately, the Court did not find sufficient guidance in the statutory language or the legislative history to support a more limited definition of "gross receipts from broadcasting."

Comcast also contended that the DOR's broad interpretation of the term "gross receipts from broadcasting" would lead to absurd results – "that when a taxpayer engages to any extent in 'broadcasting,' receipts from the taxpayer's business activity other than 'broadcasting' will be attributed to Oregon under a ratio that is based on Oregon's share of the taxpayer's broadcasting audience."[16] The Court rejected this argument, noting that Oregon law applies the "absurd results" doctrine to choose between two plausible interpretations of a statute. According to the Court, Oregon's statutory definition of "gross receipts from broadcasting" was sufficiently clear

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[8]*Comcast*, at 540, citing, Or. Rev. Stat. § 314.684 ("the taxpayer's 'gross receipts from broadcasting' are 'included in the numerator of the sales factor in the ratio that the interstate broadcaster's audience or subscribers located in this state bears to its total audience and subscribers located both within and without this state.'")

[9]Or. Rev. Stat. § 314.665(4) (as applicable for tax years beginning prior to January 1, 2018). For tax years beginning on or after January 1, 2018, Oregon applies market-based sourcing rules for the sourcing of sales of items other than tangible personal property . For additional information on Oregon's new market-based sourcing rules, please see our January 26, 2018 MTS Alert available here.

[10] *Comcast*, *supra*, at 542.

[11] Or. Rev. Stat. § 314.680(2).

[12] *Comcast, supra*, at 543-544. Comcast had argued that the statute's use of the term "gross receipts *from broadcasting*" carried over to the term "all gross receipts of an interstate broadcaster" so that the definition of gross receipts should be read as "all gross receipts *from broadcasting* of an interstate broadcaster." The DOR countered that Oregon's law imposed no limitation on the use of "all" other than the explicit statutory exceptions.

[13] *Id.*, at 544.

[14] *Id*.

[15] *Id.*, at 542 – 549.

[16] *Id.*, at 550.

that it would be inappropriate for the Court to apply the "absurd results" doctrine to impose a new interpretation of the statute.[17]

Accordingly, the Court upheld the DOR's interpretation of "gross receipts from broadcasting" to include receipts from transactions from activities other than "broadcasting" (except for the specific statutory exceptions) for purposes of determining which receipts are subject to Oregon's audience factor method of sourcing sales.[18]

Considerations

The *Comcast* decision raises considerations for Oregon corporate taxpayers that may be engaged in some "broadcasting" activity, even in a limited capacity, but also derive receipts from other activities besides the sale of real or tangible personal property. The application of this decision to such taxpayers should be carefully analyzed.

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[17] *Id*.
[18] *Id*., at 551.