SB 28—Joyce to Finnigan

Senate Committee on Finance and Revenue

February 6, 2017

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What is it?

- Joyce and Finnigan are references to two different ways of calculating a unitary group's sales factor numerator in a combined or consolidated return.
- Under Joyce, each corporation of the unitary group is looked at separately when determining whether it is taxable in the state.
- Under Finnigan, the unitary group is looked at as a whole. If one member of the group is taxable in the state, the entire unitary group is taxable in the state for apportionment purposes.

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Who does it impact?

- The Joyce or Finnigan decision impacts unitary groups of multi-state corporations that file combined or consolidated state tax returns.
- The Joyce or Finnigan decision does NOT impact corporations that file a separate state return (a non-combined or non-consolidated return).
- The Joyce or Finnigan decision primarily impacts multi-state sellers of tangible personal property due to PL 86–272.

What is PL 86–272?

- Federal Public Law 86–272, enacted in 1959, limits a state's right to tax an out-of-state corporation selling tangible personal property.
- PL 86–272 prohibits Oregon from imposing a net income tax on an out-of-state corporation selling tangible personal property whose business activity in Oregon is limited to the solicitation of sales.

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Unitary business principle

- The U.S. Supreme Court has noted "the linchpin of apportionability in the field of state income taxation is the unitary business principle."
- Groups of corporations that are a unitary business are treated as a single economic enterprise.
- The principle establishes, if income arises from transactions or operations of a single economic enterprise, parts of which are carried out in this state, Oregon may apply formulary apportionment to determine the share of that enterprise's income attributable to this state.

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What is a unitary business?

- A unitary group is composed of two or more corporations that act together as a single economic enterprise.
- ORS 317.705 defines unitary business as a business enterprise in which there exists directly or indirectly between the members a sharing (or exchange of value) as demonstrated by:
  - centralized management or a common executive force;
  - centralized administrative services or functions resulting in economies of scale; or
  - flow of goods, capital resources or services demonstrating functional integration.

What is a unitary business?

"Unitary business" may include, but is not limited to, a business enterprise with activities:

- in the same general line of business (such as manufacturing, wholesaling or retailing); or
- activities that constitute steps in a vertically integrated process (such as the steps involved in the production of natural resources, which might include exploration, mining, refining and marketing).

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Single sales factor

- Oregon adopted a single sales factor apportionment method in 2005.
- The purpose of the single sales factor is to apportion net income to Oregon according to how many sales the corporation makes to Oregon customers.
- A corporation doing business in this state with no Oregon sales will pay only the lowest tier, $150 minimum tax.
- The single sales factor provides incentive for companies to locate operations and employees in Oregon since the property factor and payroll factor are ignored.

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When is a corporation taxable by a state?

- Whether a corporation is taxable by a state determines if sales are included in the taxpayer's sales factor numerator.
- The Joyce approach determines whether a corporate taxpayer is taxable on a corporation by corporation basis without regard to the remainder of the taxpayer's unitary group.
- The Finnigan approach determines whether a corporate taxpayer is taxable by looking at the unitary group as a whole. If any one member of the group is taxable in the state, the entire unitary group is taxable in the state for apportionment purposes.

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Important points on taxability

- Any corporation selling tangible personal property becomes taxable by Oregon when the corporation conducts business activity in Oregon that is not protected by PL 86–272.
- PL 86–272 provides that a corporation may solicit sales of tangible personal property in this state without establishing taxability in Oregon.
- A corporation is not taxable by Oregon if the only activity of the corporation in this state is soliciting sales of tangible personal property.

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When Joyce versus Finnigan matters

The decision of Joyce or Finnigan primarily affects two types of corporations:

- Out-of-state corporations with sales of tangible personal property to Oregon customers, but not taxable by Oregon due to PL 86–272. (Situation #1)
- Oregon corporations with sales of tangible personal property to customers in states where corporation is not taxable due to PL 86–272. (Situation #2)

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Situation #1

- Corporations A, B, and C are part of the same unitary group and each sells tangible personal property. All of their sales are to Oregon customers ($100 each).
- Corporation A has a manufacturing facility in this state. Corporation A is taxable in Oregon.
- Corporation B's and C's manufacturing facilities are located outside the state and their activities in Oregon are protected by PL 86–272. Therefore B and C are not taxable in Oregon.

Situation #1 under Joyce

Corp A

$100 Oregon sales / $100 everywhere sales

Corp B

$0 Oregon sales / $100 everywhere sales

Corp C

$0 Oregon sales / $100 everywhere sales

Unitary group

$100 Oregon sales / $300 everywhere sales

Situation #1 under Finnigan

Corp A

$100 Oregon sales / $100 everywhere sales

Corp B

$100 Oregon sales / $100 everywhere sales

Corp C

$100 Oregon sales / $100 everywhere sales

Unitary group

$300 Oregon sales / $300 everywhere sales

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Situation #2

- Corporations A, B, and C are part of a unitary group and sell tangible personal property.
- Corporations A and B have manufacturing facilities in this state and therefore are taxable in Oregon. All of A's and B's sales are to California customers ($100 each).
- A's and B's activities in California are protected by PL 86-272, and therefore A and B are not taxable in California.
- Corporation C has a manufacturing facility in California. All of C's sales ($100) are to Oregon customers. Corporation C's activities in Oregon are protected by PL 86–272, therefore C is not taxable in Oregon.

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Situation #2 Throwback Rule

- ORS 314.665(2)(b) provides a sale of tangible personal property shipped from Oregon is an Oregon sale if the seller is not taxable in the state of the purchaser.
- ORS 314.665(2)(b) is known as Oregon's "throwback rule." The throwback rule applies only to sales of tangible personal property. There is no throwback for sales from services or intangible property.

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Situation #2 under Joyce

Corp A

$100 Oregon sales

$100 everywhere sales

Corp B

$100 Oregon sales

$100 everywhere sales

Corp C

$0 Oregon sales

$100 everywhere sales

Unitary group selling outside Oregon

$200 Oregon sales

$300 everywhere sales

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Situation #2 under Finnigan

Corp A

$\frac{\text{\$0 Oregon sales}}{\text{\$100 everywhere sales}}$

Corp B

$\frac{\text{\$0 Oregon sales}}{\text{\$100 everywhere sales}}$

Corp C

$\frac{\text{\$100 Oregon sales}}{\text{\$100 everywhere sales}}$

Unitary group selling outside Oregon

$\frac{\text{\$100 Oregon sales}}{\text{\$300 everywhere sales}}$

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Joyce considerations

- Sales of tangible personal property to Oregon customers will not always be counted in the Oregon sales numerator if the sale is made by a corporation that is not taxable by Oregon.
- Oregon producers of tangible personal property will always be subject to the throwback rule when they are not taxable in the state of the purchaser.
- Joyce provides opportunity for unitary group to avoid tax by shifting sales of tangible personal property to a member that is not taxable in most states.

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Finnigan considerations

- Finnigan aligns closer to the unitary business principle than Joyce.
- Finnigan determines taxability for apportionment purposes at the unitary business level that acts as a single economic enterprise.
- Finnigan primarily impacts throwback sales. If the unitary group is taxable in the state of the customer, sales are not thrown back. The result is more reflective of the market for the sale.

Other states

Finnigan states

Alaska, Arizona, California, Connecticut, Indiana, Kansas, Massachusetts, Maine, Michigan, Minnesota, New York, Rhode Island, Utah, Wisconsin

Joyce states

Arkansas, Colorado, District of Columbia, Hawaii, Idaho, Illinois, Missouri, Montana, North Dakota, Nebraska, New Hampshire, New Mexico, Texas, Virginia, Vermont, West Virginia

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Questions?

If you have additional questions after today please contact:

Jeff Henderson

jeffrey.s.henderson@oregon.gov

503-947-2124

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