OREGON DEPARTMENT OF REVENUE

Legislative Testimony

Senate Finance & Revenue Committee **February 6, 2017**

SB 28 – Joyce to Finnigan

Summary

SB 28 proposes an amendment to ORS 317.715 relating to the apportionment of corporate income. Apportionment is the method by which a multi-state corporation divides its income up amongst the states in which the corporation conducts business.

For Oregon purposes, a single sales factor is used to apportion a multi-state corporation's income. The single sales factor is a ratio – the numerator reflecting the corporation's Oregon sales and the denominator reflecting the corporation's everywhere sales. *Joyce* and *Finnigan* are names of two California State Board of Equalization decisions, and represent different approaches states take to calculate 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. In order to assign a sale to the sales factor numerator, the taxpayer must be taxable in the state.

SB 28 proposes a switch from the *Joyce* method to the *Finnigan* method. Currently, ORS 317.715(3)(b) requires members of a unitary group to be looked at separately when determining if the taxpayer is taxable in Oregon. This is referred to as the *Joyce* rule.

The *Joyce* or *Finnigan* decision impacts unitary groups of multi-state corporations that file combined or consolidated state tax returns; it does not impact corporations that file a separate state return (a non-combined or non-consolidated return), and it does not impact corporations that conduct business only in Oregon.

The *Joyce* or *Finnigan* decision primarily applies to sellers of tangible personal property due to Public Law 86-272. PL 86-272 prohibits states from imposing a net income tax on an out-of-state corporation selling tangible personal property whose business activity in the state is limited to the solicitation of sales.

Comments

Oregon is a single sales factor state, and the intent of the sales factor is to reflect the taxpayer's market for the sale. That is not always the result under *Joyce*. For out-of-state corporations, sales of tangible personal property to Oregon customers will not be included in the Oregon sales factor numerator if the out-of-state corporation is not taxable in Oregon (protected by PL 86-272). Those sales will be subject to the throwback rule and assigned to the state from where the property was shipped. For Oregon corporations, sales of tangible personal property made to

out-of-state customers will be subject to the throwback rule and included in the Oregon numerator if the Oregon corporation is not taxable in the state of the customer (protected by PL 86-272).

The result of the throwback rule for sales of tangible personal property does not reflect the intent of the sales factor. Sales are assigned to the production state instead of the market state. The throwback rule applies only to sales of tangible personal property; there is no throwback for any other type of receipt or sale (such as receipts from services or intangibles). Under *Finnigan*, the throwback rule does not apply if any one member of the unitary group is taxable in the state of the customer. The *Finnigan* approach to calculating the sales factor numerator for apportionment purposes aligns with the unitary business principle. The unitary business principle looks at the unitary group as a whole (a single economic enterprise) and allows for the entire taxable income of the unitary group to be included in the tax base subject to apportionment by the states in which unitary members do business.

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