

# ***Oregon – Supreme Court rules that minimum tax may be reduced by certain credits***

June 7, 2013

## ***In brief***

On May 31, 2013, the Oregon Supreme Court held that certain credits may reduce a taxpayer's minimum tax. For Oregon taxpayers that have observed the Oregon Department of Revenue's long-held position that credits do not reduce a taxpayer's minimum tax, refunds may be available consistent with the court's holding. [*Con-Way, Inc. v. Department of Revenue*, Oregon Supreme Court No. TC 5003, SC So60141 (5/31/13)].

## ***In detail***

### ***Oregon's minimum tax and business energy tax credit***

For tax years beginning on or after January 1, 2009, Oregon imposes a minimum tax under O.R.S. § 317.090 measured by a taxpayer's Oregon sales as follows:

<b>For Oregon sales of:</b>	<b>But less than:</b>	<b>The minimum tax is:</b>
\$0	\$50 million	Between \$150 and \$30,000
\$50 million	\$75 million	\$50,000
\$75 million	\$100 million	\$75,000
\$100 million or greater		\$100,000

The business energy tax credit (BETC) arises under O.R.C. § 315.354, which provides a tax credit "against the taxes otherwise due under . . . ***O.R.S. chapter 317.***" (emphasis added).

### ***Facts and procedural history***

For its 2009 tax year, Con-Way was subject to a \$75,000 minimum tax and was eligible for a BETC equal to approximately \$50,000. Applying its BETC as well as a \$50,000 estimated tax payment to its minimum tax obligation, Con-Way sought a refund of \$25,000 for tax year 2009.

Following the Department's disallowance of the BETC, Con-Way appealed the decision to the tax court. The tax court held that the minimum tax imposed under O.R.S. § 317.090 was "obviously" a tax due under O.R.S. chapter 317 and, therefore, Con-way could apply its BETC against its minimum tax.

### ***Department's position***

On appeal before the Oregon Supreme Court (Court), the Department advanced two main arguments supporting the disallowance of the BETC against the minimum tax: (1) tax 'credits' can operate only to reduce, not fully satisfy, a tax liability and (2) a credit may not be used to 'pay' a tax because the term 'pay' requires cash payment.

### ***Oregon Supreme Court: BETC may be used to reduce minimum tax***

Applying statutory interpretation principles, the Court found that credits may operate to fully satisfy a tax liability. While the legislature utilized the alternative 'payment' term in other statutes, both credits and payments function in the same

manner to satisfy, in part or in full, the amount of tax owed.

The Court also found that the term 'minimum' did not signify an amount below which such tax could not be reduced. The Court pointed to two examples where the legislature explicitly stated its intention to not allow a tax credit against the minimum tax. First, Oregon's credit for contributions to certain technical property contains a caveat that such credit "shall not be allowed against the tax imposed under ORS 317.090 [the minimum tax]." Second, until removed in 1975, the minimum tax had a provision stating that the minimum tax "shall not be reduced by . . . any discount." Accordingly, the Court recognized that the legislature knew how to express an intent to limit

the application of a credit. Without such an explicit legislative restriction on the BETC's application to Oregon's minimum tax, the BETC may be applied to reduce or fully satisfy a taxpayer's minimum tax.

### ***The takeaway***

The Court effectively reverses the Department's [long-standing position](#) that credits may not reduce a taxpayer's minimum tax. Following the December 27, 2011, tax court decision, the Department issued protective refund procedure guidance to taxpayers. With the Court's final decision, Oregon taxpayers that have not utilized certain credits to reduce their minimum tax should consider filing refund claims consistent with the Court's holding.

### ***Let's talk***

If you have any questions regarding the *Con-Way* decision, please contact:

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