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Oregon provides guidance on MTC apportionment election

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In brief

The Oregon Department of Revenue's long-standing position is that the Multistate Tax Compact apportionment election is not available in Oregon. However, taxpayers may file a protective claim to secure the right to a refund. [[Oregon Department of Revenue Notice](#)]

In detail

Multistate Tax Compact apportionment election

The Oregon Department of Revenue asserts that the income apportionment election provided in Article III of the Multistate Tax Compact (Compact) is not available on an Oregon tax return pursuant to Oregon Rev. Stat. Sec. 314.606. However, similar to the *Gillette Company v. California Franchise Tax Board* appeal in California, the Compact apportionment election is currently being challenged in Oregon tax court.

All corporation tax returns will be processed based on the Department's long-standing position that the Compact apportionment election is not available, but taxpayers may file a protective claim to secure the right to a refund. The Department will defer action on all protective claims for refund until the outcome of the Oregon litigation is known.

Protective claims for refund generally must be filed with the Department by the later of three years from the due date of the original return, or the date the original return was filed. Otherwise, the statute of limitations for refund may expire.



Filing original tax returns

The Department will adjust all original tax returns filed using the Compact apportionment election. To preserve a right to refund, taxpayers should file a protective claim after the original return is filed.

Protective claim filing instructions

Amended tax returns that use the Compact apportionment election will be denied unless identified and filed as a protective claim for refund as instructed below:

- Use the same form (i.e. Form 20) as originally filed, check the "Amended" box, and show the computation of refund claim, or
- Send a letter with authorized signature that includes:
 - Taxpayer name, FEIN, and BIN as shown on original return,
 - Tax years involved,
 - The amount of the refund claim for each year,
 - The detail of the apportionment formula used, and
 - Name of person to contact, phone number, and fax number.
- Write the words "**Protective Claim for Refund—Compact Apportionment Election**" at the top in ink. Do not use red ink.
- Mail to: REFUND, PO Box 14777, Salem, Oregon 97309-0960.
- Retain a copy of the protective claim for your files.

Actions to think about

Making the Compact apportionment election should only come after a detailed analysis considering all aspects of taking the election - not just the equally-weighted apportionment factor. For Oregon purposes, taxpayers who want to make the Compact election should attach a "protective" election to their original return (to preserve an "original return election") with the tax calculated under Oregon's method, and then file a protective claim for refund pursuant to the above guidance.

Let's talk

If you have any questions about the MTC apportionment election in Oregon, please contact one of the following individuals:

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