

Oregon Minimum Tax May Be Offset by the Business Energy Tax Credit

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If you have questions about the minimum tax or would like to discuss the refunds available, please contact:

Rob O'Neill

Partner
(503) 478-2339
rob.oneill@mossadams.com

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In *Con-Way Inc. & Affiliates v. Department of Revenue*, the Oregon Tax Court held that the Oregon Business Energy Tax Credit (BETC) may be used to offset the state's minimum tax. This case overturns the department's previous standing policy, stating: "The longstanding interpretive positions of the department, reflected in the tax forms it has created, cannot displace the intent of the legislature....the intent of the legislature was to permit application of the BETC credit against a minimum tax obligation computed under ORS 317.090."

The department will have 30 days from when the final judgment is issued to file an appeal with the Oregon Supreme Court. The final judgment is expected by the end of January, and it's unclear whether an appeal will be filed.

Although the *Con-Way* case relates to the BETC, the Department of Revenue's policy group has confirmed that this case opens the door for other Oregon income tax credits to offset the minimum tax. Common credits may include those involving R&D, biomass energy, and pollution control. The "kicker" credit (Oregon Revised Statutes 291.349) and the credit for contributions of certain technical property (317.151), however, specifically state that they cannot be used to offset the minimum tax.

Background

Effective for tax years beginning on or after January 1, 2009, the Oregon State Legislature created a new minimum tax that applies to C corporations. The minimum tax is assessed for the privilege of doing business in the state

and can range between \$150 and \$100,000, depending on Oregon-sourced sales.

What to Do

Corporate taxpayers that have generated or purchased Oregon tax credits and paid the state's minimum tax from 2009 to 2011 may be eligible for a refund. Taxpayers will need to determine whether and in which years the minimum tax was paid and whether any Oregon tax credits were available during those years. They also need to consider how to report any overpayments and whether to file refund claims for 2009 and 2010 with the Department of Revenue.

Because of the pending appeal deadline, it's unclear whether or when the department will start to process amended returns. There's also a risk it will appeal to the legislature to take up this issue in the 2012 special legislative session—running the month of February—to create a statutory fix that restricts the use of credits to offset the minimum tax. For 2011 filings, it's recommended that no action be taken until after the appeal deadline closes.

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