

Oregon Property Tax Updates: DISH Network Corp. v. Dept. of Revenue, 364 Or 254 (2019)

Legal Alert
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American Property Tax Counsel

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The Oregon Supreme Court held that, for purposes of Article XI, section 11, of the Oregon Constitution (Measure 50), the Department of Revenue had properly treated property used by DISH Network Corporation in its communication business as "new property or new improvements" when, for the first time, it added that property as a unit to the central assessment roll. In so holding, the Court reversed the Oregon Tax Court.

Prior to 2009, the property that DISH owned in Oregon was assessed by various local assessors in the counties in which the property was located. In 2009, however, the department concluded that DISH was a "communication" business and that, under ORS 308.515(1)(h), its property must be centrally assessed under the procedures set out in ORS 308.505 to ORS 308.565. The department notified DISH of its intention to add all property DISH used in its business to the 2009-2010 central assessment roll as a new unit of property. In Oregon, intangible property is not taxable under local assessment but is allowed under central assessment which substantially increased DISH's taxable property.

Using the unitary valuation method, as is permitted under Oregon's central assessment regime, the department allocated the unit value of DISH's real market value of its Oregon property as \$34.9 million dollars. The Department then turned to Article XI, section 11, of the Oregon Constitution (Measure 50), which generally limits yearly increases in the assessed value of property to three percent, and its implementing statutes, which set out specific formulas for determining assessed value and maximum assessed for ordinary property and property that falls

Contact

Cynthia M. Fraser

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within specified exceptions. After concluding that DISH's property fell within an exception for "new property or new improvements" because it had been newly added as a unit to the central assessment roll, the Department applied the "new property" formula set out at ORS 308.153 for determining the assessed value of DISH's property, and concluded that the property's assessed value for the 2009-2010 tax year was \$34.9 million. That amount exceeded the total assessed value of DISH's Oregon property by nearly one hundred percent.

DISH argued that the "new property" exception that the department had employed did not apply to its property, that, instead, its property was subject to Article XI, section 11's general limitation on increases in assessed value (to three percent), and that the two-fold increase in assessed value that the department had calculated violated Article XI, section 11. The Tax Court ultimately agreed with DISH and issued a limited judgment in its favor. The department appealed, arguing that the unit of property that it had added to the central assessment roll fell within the "new property" exception recognized in Article XI, section 11, and its implementing statutes.

The Court concluded that, for purposes of Article XI, section 11's implementing statutes, "new property" includes all property that is lawfully added by the assessor to a taxpayer's account on an assessment roll -- although the Court acknowledged that property that previously has been assessed under a different account must be valued as though the change in accounts had not occurred.

Although acknowledging that DISH's tangible property had previously been subjected to local assessment, the Court concluded that the unit of property that the department had added to the central assessment roll, which looked at DISH's business as a going concern, was categorically different from that tangible property. Accordingly, the Court concluded, the entire unit of property that the department had added to the central assessment roll was "new property or new improvements" within the meaning of Article XI, section 11, and therefore was subject to a special formula set out at ORS 308.153 for determining assessed value, rather than the general formula limiting yearly increases in assessed value to three percent.