

A-Engrossed
Senate Bill 609

Ordered by the Senate April 8
Including Senate Amendments dated April 8

Sponsored by COMMITTEE ON FINANCE AND REVENUE (at the request of Association of Oregon Industries)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Creates rebuttable presumption of harm to party that discloses confidential business records, tax returns or documents containing trade secrets in tax court.] Modifies procedure for obtaining protective order before tax court magistrate or judge.

Applies to *[appeals of tax court determinations]* **cases** filed on or after effective date of Act.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to protective orders in tax court proceedings; creating new provisions; amending ORS
3 305.430; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 305.430 is amended to read:

6 305.430. (1) Except as provided in subsections (2) and (3) of this section, hearings before the
7 judge or a magistrate of the tax court shall be open to the public. All proceedings in the regular
8 division of the tax court shall be reported unless waived by the parties with the consent of the
9 court. The expense of reporting shall be paid by the state from the appropriation for the court.
10 Proceedings before the magistrate division shall not be reported.

11 (2) If information is confidential under ORS 308.411 (4) or by court order under ORS 305.420 (4),
12 and is introduced into evidence in any hearing before the tax court, the court first shall make such
13 order or orders as are necessary to protect the confidentiality of the information.

14 (3) In any proceeding before a magistrate or before the tax court judge *[in which]* **involving**
15 confidential business records, tax returns or documents containing trade secrets *[are to be introduced*
16 *into evidence]*, upon motion of a party to the proceeding, the magistrate or judge may make such
17 protective orders as may be necessary to protect the confidentiality of such records or the infor-
18 mation contained therein. In determining whether such protective orders should be issued, the court
19 shall weigh the harm suffered by the disclosing party against any benefit received by the public as
20 a result of the disclosure. Complaints, pleadings and other filings containing confidential business
21 record information, tax return information or trade secret information shall be subject to the pro-
22 visions of this subsection.

23 (4) In a matter involving a request for a protective order under subsections (2) and (3) of this
24 section, the decision of *[the judge or]* a magistrate of the tax court **may be appealed to the regular**
25 **division of the tax court and the magistrate may stay the case on the merits until the re-**
26 **quest for a protective order is resolved by the tax court judge or the Supreme Court. A de-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **cision of the tax court judge on a request for a protective order** shall be a final order for
2 purposes of appeal to the Supreme Court. The parties may appeal the issue of the protective order
3 to the Supreme Court at any time after the protective order was granted or denied **by the tax court**
4 **judge**. Upon appeal to the Supreme Court, the [*judge or a magistrate of the tax court may*] **Supreme**
5 **Court shall** stay the case on the merits until a resolution of the protective order issue is determined
6 by the Supreme Court. **Appeals to the regular division of the tax court described in this sub-**
7 **section shall be expedited and determined within 90 days, unless the tax court determines in**
8 **its discretion that it requires additional time.**

9 **SECTION 2.** The amendments to ORS 305.430 by section 1 of this 2009 Act apply to cases
10 **filed on or after the effective date of this 2009 Act.**

11 **SECTION 3.** This 2009 Act takes effect on the 91st day after the date on which the reg-
12 **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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