

House Bill 2533

Sponsored by Representative HOLVEY (Pre-session filed.)

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 **as introduced**.

Authorizes awards of attorney fees and expenses by tax court magistrate. Establishes, for purposes of making award, that objective reasonableness of nonprevailing party's position is determined at time position is asserted. Allows tax court judge to consider whether nonprevailing party received reasoned opinion on merits from magistrate when determining objective reasonableness of nonprevailing party's position. Allows tax court to consider degree of difference between value pleaded by county or Department of Revenue and as determined by court when making award to taxpayer in property tax proceeding.

Requires county to pay attorney fees and expenses allowed in property tax proceeding involving locally assessed property.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to awards of costs in tax-related proceedings; creating new provisions; amending ORS
3 20.105, 305.490 and 305.790; and prescribing an effective date.

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

5 **SECTION 1.** ORS 305.490, as amended by section 12, chapter 48, Oregon Laws 2012, is amended
6 to read:

7 305.490. (1)(a) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay
8 the filing fee established under ORS 21.135 at the time of filing for each complaint or petition.

9 (b) In addition to the fee imposed under paragraph (a) of this subsection, plaintiffs or petitioners
10 filing a complaint under ORS 305.501 (5) shall pay the filing fee established under ORS 21.135 at the
11 time of filing the complaint.

12 (2) Neither the State of Oregon, nor any county, school district, municipal corporation or other
13 public corporation therein, nor any officer of any such public political division or corporation, ap-
14 pearing in the representative capacity of the officer of any public political division or corporation,
15 shall be required to pay the fee prescribed under this section. The party entitled to costs and dis-
16 bursements on such appeal shall recover from the opponent of the party the amount so paid upon
17 order of the court, as in equity suits in the circuit court.

18 *[(3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net*
19 *income in which an individual taxpayer is a party, or involving inheritance or estate taxes, the court*
20 *grants a refund claimed by the executor or taxpayer or denies in part or wholly an additional assess-*
21 *ment of taxes claimed by the Department of Revenue to be due from the estate or taxpayer, the court*
22 *may allow the taxpayer, in addition to costs and disbursements, the following:]*

23 *[(A) Reasonable attorney fees for the proceeding under this subsection and for the prior proceeding*
24 *in the matter, if any, before the magistrate; and]*

25 *[(B) Reasonable expenses as determined by the court. Expenses include accountant fees and fees*
26 *of other experts incurred by the executor or individual taxpayer in preparing for and conducting the*
27 *proceeding before the tax court judge and the prior proceeding in the matter, if any, before the*

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 *magistrate.]*

2 *[(b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the*
 3 *Department of Revenue in the manner provided by ORS 305.790.]*

4 *[(4)(a) If, in any proceeding before the tax court judge involving ad valorem property taxation, ex-*
 5 *emptions, special assessments or omitted property, the court finds in favor of the taxpayer, the court*
 6 *may allow the taxpayer, in addition to costs and disbursements, the following:]*

7 *[(A) Reasonable attorney fees for the proceeding under this subsection and for the prior proceeding*
 8 *in the matter, if any, before the magistrate; and]*

9 *[(B) Reasonable expenses as determined by the court. Expenses include fees of experts incurred by*
 10 *the individual taxpayer in preparing for and conducting the proceeding before the tax court judge and*
 11 *the prior proceeding in the matter, if any, before the magistrate.]*

12 *[(b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the*
 13 *Department of Revenue in the manner provided by ORS 305.790.]*

14 **[(5)] (3) All fees and other moneys received or collected by the clerk by virtue of the office of**
 15 **the clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General**
 16 **Fund as miscellaneous receipts.**

17 **SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS chapter 305.**

18 **SECTION 3. (1) If, in any proceeding before the tax court involving taxes upon or meas-**
 19 **ured by net income in which an individual taxpayer is a party, or involving inheritance or**
 20 **estate taxes, the court grants a refund claimed by the executor or taxpayer or denies in part**
 21 **or wholly an additional assessment of taxes claimed by the Department of Revenue to be due**
 22 **from the estate or taxpayer, the court may allow the taxpayer, in addition to costs and dis-**
 23 **bursements, the following:**

24 **(a) Reasonable attorney fees for the proceeding under this subsection; and**

25 **(b) Reasonable expenses as determined by the court, including accountant fees and fees**
 26 **of other experts incurred by the executor or individual taxpayer in preparing for and con-**
 27 **ducting the proceeding before the tax court.**

28 **(2) If, in any proceeding before the tax court involving ad valorem property taxation,**
 29 **exemptions, special assessments or omitted property, the court finds in favor of the tax-**
 30 **payer, the court may allow the taxpayer, in addition to costs and disbursements, the follow-**
 31 **ing:**

32 **(a) Reasonable attorney fees for the proceeding under this subsection; and**

33 **(b) Reasonable expenses as determined by the court, including fees of experts incurred**
 34 **by the individual taxpayer in preparing for and conducting the proceeding before the tax**
 35 **court.**

36 **(3)(a) In any proceeding before the tax court, the court shall award reasonable attorney**
 37 **fees to a prevailing party against whom a claim, defense or ground for appeal or review was**
 38 **asserted, upon a finding by the court that the nonprevailing party willfully disobeyed a court**
 39 **order or that there was no objectively reasonable basis for the nonprevailing party to assert**
 40 **the claim, defense or ground for appeal or review.**

41 **(b)(A) Reasonable attorney fees awarded under this subsection are to be paid by the**
 42 **nonprevailing party asserting the claim, defense or ground for appeal or review.**

43 **(B) All attorney fees paid to an agency of the state under this subsection shall be de-**
 44 **posited to the credit of the agency's appropriation or cash account from which the costs and**
 45 **expenses of the proceeding were paid or incurred. If the agency obtained an Emergency**

1 **Board allocation to pay costs and expenses of the proceeding, to the extent of the allocation**
 2 **the attorney fees shall be deposited in the General Fund and be available for general gov-**
 3 **ernmental expenses.**

4 (4)(a) **In determining whether to award attorney fees and expenses under subsection (1),**
 5 **(2) or (3) of this section, the tax court shall consider the factors listed in ORS 20.075.**

6 (b)(A) **The objective reasonableness of a claim, defense or ground for appeal or review**
 7 **asserted by a nonprevailing party is determined at the time the claim, defense or ground for**
 8 **appeal or review is asserted.**

9 (B) **In determining whether a claim, defense or ground for appeal or review is objectively**
 10 **reasonable at the time asserted, the tax court judge may consider whether the nonprevailing**
 11 **party had received a reasoned opinion on the merits from the magistrate and in appealing**
 12 **the magistrate's decision submitted essentially the same materials to the regular division,**
 13 **making no new legal argument or credible argument that the magistrate ignored or misap-**
 14 **plied the law.**

15 (c) **In determining whether the position of a county or the Department of Revenue is**
 16 **objectively reasonable for purposes of awarding attorney fees and expenses to a taxpayer**
 17 **under subsection (2) or (3) of this section, the tax court may consider the degree of differ-**
 18 **ence between the value of property that is the subject of the proceeding as pleaded by the**
 19 **county or the department and as determined by the court.**

20 (5)(a) **Payment of attorney fees or expenses under subsection (1) of this section shall be**
 21 **made by the Department of Revenue in the manner provided by ORS 305.790.**

22 (b)(A) **Except as provided in subparagraph (B) of this paragraph, payment of attorney**
 23 **fees or expenses under subsection (2) or (3) of this section shall be made by the county in**
 24 **which the property that is the subject of the proceeding is located from the unsegregated tax**
 25 **collections account described in ORS 311.385.**

26 (B) **In a proceeding involving property that is assessed pursuant to ORS 308.505 to 308.665**
 27 **or appraised pursuant to ORS 306.126, payment of attorney fees or expenses under subsection**
 28 **(2) or (3) of this section shall be made by the Department of Revenue in the manner provided**
 29 **by ORS 305.790.**

30 **SECTION 4.** ORS 20.105 is amended to read:

31 20.105. (1) In any civil action, suit or other proceeding in a circuit court [*or the Oregon Tax*
 32 *Court*], or in any civil appeal to or review by the Court of Appeals or Supreme Court, the court shall
 33 award reasonable attorney fees to a party against whom a claim, defense or ground for appeal or
 34 review is asserted, if that party is a prevailing party in the proceeding and to be paid by the party
 35 asserting the claim, defense or ground, upon a finding by the court that the party willfully disobeyed
 36 a court order or that there was no objectively reasonable basis for asserting the claim, defense or
 37 ground for appeal.

38 (2) All attorney fees paid to [*any*] **an** agency of the state under this section shall be deposited
 39 to the credit of the agency's appropriation or cash account from which the costs and expenses of
 40 the proceeding were paid or incurred. If the agency obtained an Emergency Board allocation to pay
 41 costs and expenses of the proceeding, to that extent the attorney fees shall be deposited in the
 42 General Fund available for general governmental expenses.

43 **SECTION 5.** ORS 305.790 is amended to read:

44 305.790. Payment of [*any*] attorney fees or reasonable expenses under ORS 305.447 or [*305.490*
 45 *shall*] **section 3 of this 2013 Act that is required to** be made by the Department of Revenue **shall**

1 **be made** in the manner provided by law for the payment of income tax refunds.

2 **SECTION 6. Section 3 of this 2013 Act and the amendments to ORS 20.105, 305.490 and**
3 **305.790 by sections 1, 4 and 5 of this 2013 Act apply to proceedings commenced on or after**
4 **the effective date of this 2013 Act.**

5 **SECTION 7. This 2013 Act takes effect on the 91st day after the date on which the 2013**
6 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

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