

**Testimony before House Judiciary Committee
In support of HB 2334
On behalf of the Oregon State Bar Taxation Section
February 16, 2015**

Representative Barker, members of the Committee:

Good Afternoon. My name is Eric Kodesch and I am a partner at Stoel Rives LLP specializing in tax. I am here as a representative of the Taxation section of the Oregon State Bar in support of HB 2334.

Oregon State Bar - The Oregon State Bar (OSB) is a public corporation and an instrumentality of the court with over 14,000 active members. The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. Among its core values are fairness and diversity. The Oregon State Bar licenses and disciplines lawyers and performs other functions to benefit the public: including lawyer referral services, modest means and veterans programs, and legal education for attorneys and members of the public.

Taxation Section - The Taxation Section of the Oregon State Bar was originally formed in 1978, and today is made of up of close to 500 attorneys who practice tax law in Oregon. We have members from representing a wide variety of clients, each with their own unique problems and concerns, who represent clients from eastern Oregon to Hood River, to the Portland metro area and down the Willamette Valley. The Executive Committee of the Taxation Law Section supports HB 2334. We have shared the draft legislation with the Oregon Department of Revenue and the Oregon Judicial Department. The Oregon Department of Revenue has confirmed that it has no objection to HB 2334 or the proposed amendment, HB 2334-2. Further, Judge Henry Breithaupt, the Judge of the Oregon Tax Court, assisted the tax section in drafting the proposed language. Passing HB 2334 will increase access to justice for Oregon taxpayers of modest means, while ensuring that the Oregon Tax Court continues its efficient delivery of services and the Department of Revenue collects the taxes, penalties, and interest it should.

The Oregon Tax Court - The Oregon legislature established the Oregon Tax Court to rule on state tax matters. The Oregon Tax Court has two divisions: the Magistrate Division and the Regular Division. Tax Court cases generally are first heard in the Magistrate Division, with an appeal of the decision by the Magistrate Division heard by the Regular Division. However, cases can skip the Magistrate Division and be heard first by the Regular Division.

The Problem - When a dispute involves a net income tax, the taxpayer does not have to pay the tax, penalty and interest assessed by the Oregon Department of Revenue to contest the matter in the Magistrate Division. However, payment generally is required if the taxpayer wants to appeal to the Regular Division or skip the Magistrate Division and go straight to the Regular Division. There is an exception to this payment obligation if payment would be an undue hardship to the taxpayer. The 2013 decision by the Regular Division in *Scott v. Dep't of Revenue*, 21 OTR 313 (2013) highlighted an

unintended timing problem with how a taxpayer asserts that payment would be an undue hardship. HB 2334, which modifies ORS 305.419, fixes this problem, allowing litigants to lower a procedural bar and get to the meat of their claim.

What the bill does - Currently, under ORS 305.419, a taxpayer filing a complaint in the Regular Division for whom payment of the assessed tax, penalty and interest would be an undue hardship must file an affidavit of undue hardship along with the complaint. Failure to do so, even if by accident, results in the case being dismissed. HB 2334 expands the deadline for filing requirement the undue hardship affidavit by giving taxpayers 30 days from being notified of the failure to file an affidavit of undue hardship to correct the matter. If the taxpayer does not meet the 30 day deadline, the judge will dismiss the case. This modification to ORS 305.419 will provide modest means litigants with some procedural flexibility while still ensuring that the Department of Revenue maintains its ability to collect the appropriate tax, penalty, and interest.

Amendment – The tax section and the Oregon Department of Revenue has requested an amendment. The -2 amendment will do two things. First, it will clarify the required date of payment when there is a dispute as to whether the matter involves the type of tax for which payment is required. Second, it shifts the obligation to notify the taxpayer about the failure to file an affidavit alleging undue hardship from the Oregon Department of Revenue to the Oregon Tax Court.

On behalf of the Taxation Section of the Oregon State Bar, I thank the committee for its consideration and urge the passage of HB 2334.