



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

March 31, 2017

Honorable Phil Barnhart, Chair
House Committee on Revenue
Oregon State Capitol Building
900 Court Street NE
Salem, OR 97301

Re: HB 2087

Dear Chair Barnhart and Committee Members:

I have discussed HB 2087 with Judge Henry C. Breithaupt of the Oregon Tax Court and we would like to point out an aspect of this bill that may benefit from some clarity in order to avoid confusion for parties and the court. Section 10 states:

The Oregon Tax Court shall allow reasonable professional fees to a taxpayer who successfully challenges a notice of deficiency in the Oregon Tax Court.

This provision raises the following questions:

- What is the interplay with ORS 305.490, which makes an award of attorney fees and expenses discretionary with the tax court judge?
 - What is the definition of “professional fees” (versus “reasonable attorney fees” and “reasonable expenses” under ORS 305.490)?
 - How does the court determine when an award of fees is mandatory (Section 10) and when it is discretionary (ORS 305.490)?
 - Is a tax magistrate required to award “professional fees” under Section 10 (in variance with ORS 305.490 where attorney fees and expenses are awarded only by the tax court judge)?
 - What is the purpose of having different standards?
- What is the interplay with ORS 20.074 regarding factors to be considered by a court in awarding attorney fees?
 - Should Section 10 say “Notwithstanding ORS 20.074(1)...” (which addresses factors when making a discretionary award)?

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Thank you for taking the time to consider our thoughts on Section 10.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce C. Miller". The signature is fluid and cursive, with the first name "Bruce" being the most prominent part.

Bruce C. Miller
Senior Staff Counsel to the State Court Administrator
Oregon Judicial Department

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