

HENRY C. BREITHAAPT
JUDGE



Telephone:(503)986-5645
Fax:(503)986-5507
<http://courts.oregon.gov/Tax>

OREGON TAX COURT
1163 STATE STREET
SALEM OREGON
97301-2563

April 11, 2017

Hon. Floyd Prozanski, Chair
Senate Committee on Judiciary
Oregon State Capitol Building
900 Court Street NE
Salem, OR 97301

Re: SB 1019

Dear Chair Prozanski and Committee Members:

The Oregon Tax Court is neutral on SB 1019, but I would like to take this opportunity to describe potential impacts from the policy change outlined in the bill, as well as some possible ambiguities in the bill as introduced.

Although it predates my time as Judge, when the Oregon Tax Court was created it included creation of the Magistrate Division. The Magistrate Division was designed to provide a less formal avenue for resolution of tax disputes, similar to the administrative program that had existed in the Department of Revenue prior to the creation of the Tax Court.

The main focus of the Magistrate Division is mediation and resolution of tax disputes, very often without the involvement of attorney representation for the taxpayer and the Department. Attorney fees could not be assessed at the administrative level and the same is true at the magistrate level. Parties may seek a more formal process, and trial, in the Regular Division of the Tax Court. The Tax Court Judge may award attorney fees and reasonable expenses (such as expert fees), including those that were incurred at the magistrate level.

I believe that SB 1019 will change how these cases are processed. In some cases at the magistrate level, the proceedings will become more formal and lengthier as legal representation is used more often by both sides because of the possibility of an award of attorney fees. These cases will take longer to get to resolution as claims for attorney fees will be added to the magistrate workload. There will need to be a magistrate hearing (after the main ruling) to determine whether an award is appropriate under ORS 20.075, how much was incurred, and what portion was reasonable. This may also add to Department of Revenue costs as they may feel compelled to use legal representation at the magistrate level more often than they do now.

The bill as introduced seems ambiguous in certain areas. Given the new structure of the amended statutes, the bill is not clear on whether reasonable expenses can be awarded at the magistrate level. It is also not clear whether the Tax Court Judge can overturn a magistrate's award of attorney fees to a taxpayer if the Judge later rules in favor of the Department. The parties may present the Judge with facts and arguments not heard at the magistrate level since the review is *de novo*.

Thank you for taking the time to consider my thoughts on SB 1019.

Very Truly Yours,



Henry C. Breithaupt
Judge

Cc: Kingsley W. Click
Phil Lemman
Bruce C. Miller