



# POLK COUNTY

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ASSESSOR'S OFFICE  
**DOUGLAS SCHMIDT**  
Assessor

April 18, 2017  
Senate Committee on Judiciary  
SB 1019

Chair Prozanski, members of the committee, my name is Douglas Schmidt and I am the Polk County Assessor testifying on behalf of the Oregon State Association of County Assessors (OSACA). At this time, OSACA is **Opposed** to SB 1019.

SB 1019 will allow the taxpayer at the Magistrate Division of the Oregon Tax Court to collect reasonable Attorney's Fees and expenses if they prevail. Currently, if the taxpayer prevails they can only request payment of costs and disbursements which are defined in TCR-MD 16 A as "reasonable and necessary expenses incurred...and include the filing fee, statutory fees for witnesses, necessary expense of copying any public record, book or document uses as evidence, and any other expense specifically allowed by agreement, by these rules, by TCR 68 A(2), or by other rule or statute."

According to Oregon Tax Court Rules, Regular Division, TCR 68 A(1) "Attorney fees" are the reasonable value of legal services related to the prosecution or defense of an action.

Expenses are defined in ORS 305.490 (4)(a)(B) as "Reasonable expenses as determined by the court. Expense include fees of experts incurred by the individual taxpayer..." In looking at the Regular Division Rules, besides expert expenses, there are deposition expenses, motion expenses, court assistance expenses and many more.

I had 16 counties provide me information on appeals to Magistrate Division over the last 3 years. Here is what they reported:

Appeal initiated by the taxpayer	317	
Appeal initiated by the county	1	
Taxpayer prevailed at court	14	4.4%
County prevailed at court	30	9.4%
Appeal dismissed	188	59.1%
Appeal withdrawn	21	6.6%
Appeal Stipulated	39	12.3%
Appeal unresolved	26	8.2%

14 counties responded on the use of attorneys	
Only if the taxpayer has an attorney	10
All the time	2
Varies based on Complexity	2

For the following reasons OSACA Opposes SB 1019:

- Magistrate Division of Tax Court was created to be an administrative informal review of taxpayers and counties issues dealing with ad valorem value, exemptions, etc.
  - o This administrative review was originally handled by the Oregon Department of Revenue until the early 1990's when it was transferred to the Oregon Tax Court.
  - o The Magistrate Division is not a court of record. There is no record of the hearing that could be used as a review for appropriate attorney fees and expenses.
  - o Complex and high value cases can be "special designated" to the Regular Division of Tax Court.
- The bill and current law says the "if the court finds in favor of the taxpayer," the court may allow costs, disbursements, attorney fees and expenses.
  - o Is a stipulation or agreement to resolve the appeal a finding in favor of the taxpayer because the value may have been reduced or the exemption granted.
  - o Is the failure of the taxpayer to provide available information or site inspections at the local appeals board and then provide them at the Magistrate Division causing a reduction in value a finding in favor of the taxpayer.
- This bill only allows costs, disbursements, attorney fees and expenses for the taxpayer if they prevail.
  - o There is a cost to counties in defending an appeal.
  - o Taxpayers of the county pay for the cost in lost time by assessor's staff to research, prepare and defend against the appeal.
  - o Counties may not have a staff attorney and may need to hire one to defend the county in the appeal.
  - o Counties may need to hire an independent fee appraiser to provide an appraisal on the property and then testify at the hearing.
- Counties have expressed concern about the ability to pay attorney fees and expenses at Magistrate Division. This could have a chilling effect on the county aggressively prosecuting an appeal or agreeing to reduce the value early in the appeal to reduce fees, costs and expenses.

Thank you. If you have questions I will try and answer them.