

**TESTIMONY ON SB 718
PROOF OF FILING WITH THE TAX COURT
BEFORE THE SENATE COMMITTEE ON FINANCE AND REVENUE
FEBRUARY 7, 2019**

PRESENTED BY: ROBERT T. MANICKE, OREGON TAX COURT JUDGE

Mr. Chair, members of the committee, my name is Robert Manicke, and I am the Judge and administrative head of the Oregon Tax Court.

Introduction to the Oregon Tax Court.

As the committee knows, the Oregon Tax Court has jurisdiction over all cases involving the tax laws of Oregon. We have two divisions. The Magistrate Division is where almost all tax cases start. Most cases involve individual taxpayers or small businesses. They file appeals from notices they have received from the Oregon Department of Revenue regarding their income taxes, or from a property tax decision by their local county board of property tax appeals. They usually are acting on very tight appeal deadlines, ranging from 30 days to 90 days.

The Magistrate Division typically receives 400 to 500 appeals each year, mostly by mail, from taxpayers all over the state. The division is designed as an impartial and informal way to resolve tax disputes. Most taxpayers are not represented by lawyers, and the statutes specifically allow CPAs and others to represent taxpayers in the Magistrate Division. The Department of Revenue and county assessors also often are represented by their audit staff or appraisers, and not by lawyers.

The Magistrate Division resolves about 90% of its cases without any further appeal. When a party does appeal a magistrate's decision, that appeal comes to me in the Regular Division, where I serve as the only judge.

This bill would primarily benefit parties in the Magistrate Division. The court is requesting the bill to update the law because so many of our appeals are filed by mail from all over the state on very tight deadlines.

What does SB 718 do?

SB 718 would amend an existing statute from 1975, which allows a person filing an appeal in the Tax Court to treat the date of mailing as the date the complaint was filed. The existing law is very helpful because it gives the parties and the court an easy way to decide with certainty whether the appeal was filed on time. An appealing party (normally, the taxpayer) knows that he or she just needs to get the appeal mailed by the deadline. The appealing party need not worry about how long delivery might take. Still, the statutory scheme could be improved to recognize modern practices.

The amendments respond to two changes relating to the US Postal Service:

- **Couriers.** Since the 1980s people have been using couriers such as FedEx and UPS as an alternative to the US Postal Service. Couriers can offer user-friendly options such as extended business hours and home pick-up, which can be particularly important for persons with disabilities or rigid work schedules. SB 718 would put people using couriers on equal footing with US Postal Service mailers when filing in the Tax Court.
- **Lack of postmarks.** Staff at the Tax Court have observed that the US Postal Service no longer consistently puts a “postmark” or “cancellation mark” on each envelope. SB 718 would allow filers to present alternative kinds of documents from the US Postal Service or the courier service as proof of dispatch.

What do other courts do?

The Court of Appeals and the Supreme Court also have rules that allow parties to use couriers and proof of dispatch other than a postmark. SB 718 is an amendment to a specific Tax Court statute (ORS 305.418), but it would function similarly to appellate court statutes and rules, such as ORS 19.260.

How will parties know what kind of documentation to provide, other than a postmark?

If the Legislative Assembly passes SB 718, the Tax Court plans to adopt rules on documentation, in consultation with stakeholders. The Tax Court has a handbook for litigants, and we will add a section to that handbook. We also are working on instructional videos, which the State Bar has generously offered to produce for us.

Does SB 718 make any other changes?

- The bill also would eliminate a requirement to include a “declaration of mailing” to prove that an appeal document was dispatched on a given date. The declaration is rarely used in practice, and the court believes it is better to rely on documentation from the US Postal Service or courier.
- SB 718 also would remove language that suggests that the court should proactively determine whether an appeal was filed timely. The court intends to continue its practice of providing the defendant (typically, the Department of Revenue or county) with copies of the postmark or other evidence of the date of filing so that the defendant can challenge the timeliness of the filing if warranted.

Thank you for the opportunity to testify in support of SB 718. I welcome any questions you may have.