



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: February 20, 2019

TO: Honorable Floyd Prozanski, Chair
Senate Committee on Judiciary

FROM: Melisse S. Cunningham, Attorney-in-Charge
Tax & Finance Section, General Counsel Division
Oregon Department of Justice

SUBJECT: SB 757 – Relating to appeals in tax suits

This testimony is submitted in support of SB 757 and the -2 amendment to the bill.

DISCUSSION

The Department of Justice supports SB 757 and the -2 amendment, which address procedural issues that have arisen based on recent court decisions. Until those decisions, any defendant in the Tax Court was clearly able to include a counterclaim in its answer to complaints filed in the court and, once a magistrate's decision was appealed to the Tax Court Judge, the judge considered all substantive issues in a new, original proceeding that did not incorporate the Tax Court magistrate's decision as part of the ultimate judgment issued by the court. SB 757 would make clear the continued applicability of these long-standing practices of the court.

For decades, just as in all other trial courts in Oregon and since the beginning of the Tax Court in the 1960s, defendants were allowed to plead counterclaims in the Tax Court, as allowed by the court's own rules. In 2015, the Tax Court Judge held in the *Village at Main* case that a separate complaint must be filed by a defendant that disagrees with any portion of a decision of a Tax Court Magistrate, even if the other party has already filed an appeal from the magistrate's decision in the Regular Division of the court, and despite the long-standing practice of including the defendant's "counter" claim in its answer. The Oregon Supreme Court declined to address this counterclaim issue on appeal. SB 757 with the -2 amendment would clarify that defendants may bring counterclaims in both divisions of the Oregon Tax Court, consistent with long-standing practice, and that the Oregon Rules of Civil Procedure apply with respect to those counterclaims.

In a related 2017 decision, the Tax Court held in the *Work* case that if a defendant did not file a separate complaint from any magistrate decision with which it disagreed, even in part, and the plaintiff had filed its own complaint contesting only part of the magistrate's decision, the court would issue a judgment incorporating any part of the magistrate's decision that was not challenged by the plaintiff, even if that decision was incorrect. This decision was subsequently

upheld by the Oregon Supreme Court, which declined again to address the counterclaim issue, but held that because DOR had not sought “affirmative relief” from the magistrate’s decision in the Regular Division, that portion of the decision was final and the Tax Court Judge could issue a judgment based on the decision of the magistrate in the informal, non-record proceeding below.

Prior to these decisions, it was understood pursuant to statute (ORS 305.425(1) and 305.501(7)) that an appeal to the Regular Division generally foreclosed the entry of a judgment based, even in part, on the magistrate’s decision, because the Regular Division proceeding was an original, independent, de novo, on the record proceeding to decide the correctness of the tax assessment at issue rather than a traditional “appeal” from the magistrate’s decision. SB 757 makes clear that if any part of a single written magistrate decision is appealed by any party to the Regular Division of the court, then all issues or claims in the case may be heard and tried again by the Tax Court Judge, unless the parties stipulate otherwise.

The Department of Justice urges passage of SB 757 and the -2 amendment.

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