

**To:** Senate Committee on Judiciary

**From:** Mark Gharst, Government Relations Manager, Oregon Department of Revenue

**Date:** February 20, 2019

The Department of Revenue supports SB 757 with the -2 amendment. The bill as introduced will restore the use of counterclaims in responsive pleadings at the Oregon Tax Court. The -2 amendment will maintain the court's flexibility in determining rules, but have counterclaims in Tax Court treated as they are across Oregon's court system.

Longstanding practice allowed counterclaims in the magistrate and regular divisions of the Oregon Tax Court. Recent decisions have eroded this arrangement and both taxpayers and the taxing authority must now file a separate complaint if they disagree with any portion of a decision, rather than file a counterclaim in a responsive answer.

When counterclaims were allowed, the Department would look at decisions as a whole; even those that included multiple issues, accounts, or years. While the Department may have won some issues and lost others, if the overall result of the decision was acceptable the Department would not appeal. If the taxpayer chose to appeal only the parts of the decision that they had lost, the Department could still bring up other issues or claims in its answer to ensure the overall correct tax.

The change to disallow counterclaims now requires the Department to consider preemptive appeals on split decisions or lose the opportunity to seek the correct tax related to all issues or claims. The risk if the Department does not file an appeal of a split decision, even a decision that the Department could otherwise accept, is that the taxpayer will bring a last minute appeal of only selective issues. Requiring preemptive appeals is not judicially efficient and does not make the best use of the Department's resources.

As was the case prior to this major change in the Tax Court procedures the Department plans to use counterclaims sparingly. This tool will assist the Department in helping the court to meet its charge to make sure Oregonians pay only their fair share of taxes, no less and no more.