

Senate Bill 757

Sponsored by Senator ROBLAN (at the request of Association of Oregon Counties)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows inclusion of counterclaims in responsive pleadings in appeals filed in tax court.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to appeals in tax suits; creating new provisions; amending ORS 305.287, 305.403, 305.425,
3 305.490, 305.501 and 305.560; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 305.**

6 **SECTION 2. For purposes of ORS 305.275, 305.280, 305.287, 305.403 and 305.404 to 305.575,**
7 **any party named as a defendant in an appeal before the tax court may include one or more**
8 **counterclaims in responsive pleadings.**

9 **SECTION 3. ORS 305.287 is amended to read:**

10 305.287. Whenever a party appeals the real market value of one or more components of a prop-
11 erty tax account, or accounts that constitute a unit of property within the meaning of ORS 310.160
12 (1), any other party to the appeal may seek, **by counterclaim or any other means authorized for**
13 **the body or tribunal to which the appeal is taken**, a determination from the body or tribunal of
14 the total real market value of the unit of property, the real market value of any or all of the other
15 components of the tax account or the unit of property, or both.

16 **SECTION 4. ORS 305.403 is amended to read:**

17 305.403. (1) An appeal by a taxpayer dissatisfied with the assessed value or specially assessed
18 value of land or improvements of a state-appraised industrial property must be brought in the tax
19 court.

20 (2) An appeal under this section is taken by filing a complaint with the tax court in the manner
21 prescribed under ORS 305.560 during the period following the date the tax statements are mailed for
22 the current tax year and ending December 31.

23 (3)(a) The complaint shall be entitled in the name of the person filing the complaint as plaintiff,
24 and the Department of Revenue and the county assessor as defendants.

25 (b) In answering and defending against the allegations of the complaint:

26 (A) The department shall respond only to those allegations that relate to the appraisal or as-
27 sessment performed by the department; and

28 (B) The county assessor shall respond only to those allegations that relate to the appraisal or
29 assessment performed by the county assessor.

30 (c) The department and the county assessor shall both remain parties to a proceeding described
31 in this subsection unless either party is dismissed by order of the court.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 (4) Service of the complaint upon the department and the county assessor shall be accomplished
 2 by the clerk of the tax court mailing a copy of the complaint to the Director of the Department of
 3 Revenue and to the county assessor.

4 **(5) In an appeal brought by a taxpayer under this section, the county assessor and the**
 5 **department may include one or more counterclaims in responsive pleadings.**

6 [(5)] (6) As used in this section, "state-appraised industrial property" has the meaning given that
 7 term in ORS 306.126 and includes those properties appraised by the department for ad valorem
 8 property tax purposes.

9 **SECTION 5.** ORS 305.425 is amended to read:

10 305.425. (1) All proceedings before the judge of the tax court shall be original, independent
 11 proceedings and shall be tried without a jury and de novo.

12 (2) If a statute provides for an appeal to or a review by the court of an order, act, omission or
 13 determination of the Department of Revenue, a board of property tax appeals or of any other ad-
 14 ministrative agency, the proceeding shall be an original proceeding in the nature of a suit in equity
 15 to set aside such order or determination or correct the act or omission. The time within which the
 16 statute provides that the proceeding shall be brought is a period of limitations and is not jurisdic-
 17 tional.

18 (3) All hearings and proceedings before the tax court judge shall be in accordance with the rules
 19 of practice and procedure promulgated by the court, which shall conform, as far as practical, to the
 20 [*rules of equity practice and procedure in this state*] **Oregon Rules of Civil Procedure.**

21 **SECTION 6.** ORS 305.490 is amended to read:

22 305.490. (1)(a) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay
 23 the filing fee established under ORS 21.135 at the time of filing for each complaint or petition.

24 (b) In addition to the fee imposed under paragraph (a) of this subsection, plaintiffs or petitioners
 25 filing a complaint under ORS 305.501 [(5)] (6) shall pay the filing fee established under ORS 21.135
 26 at the time of filing the complaint.

27 (2) Neither the State of Oregon, nor any county, school district, municipal corporation or other
 28 public corporation therein, nor any officer of any such public political division or corporation, ap-
 29 pearing in the representative capacity of the officer of any public political division or corporation,
 30 shall be required to pay the fee prescribed under this section. The party entitled to costs and dis-
 31 bursements on such appeal shall recover from the opponent of the party the amount so paid upon
 32 order of the court, as in equity suits in the circuit court.

33 (3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net
 34 income in which an individual taxpayer is a party, or involving inheritance or estate taxes, the court
 35 grants a refund claimed by the executor or taxpayer or denies in part or wholly an additional as-
 36 sessment of taxes claimed by the Department of Revenue to be due from the estate or taxpayer, the
 37 court may allow the taxpayer, in addition to costs and disbursements, the following:

38 (A) Reasonable attorney fees for the proceeding under this subsection and for the prior pro-
 39 ceeding in the matter, if any, before the magistrate; and

40 (B) Reasonable expenses as determined by the court. Expenses include accountant fees and fees
 41 of other experts incurred by the executor or individual taxpayer in preparing for and conducting the
 42 proceeding before the tax court judge and the prior proceeding in the matter, if any, before the
 43 magistrate.

44 (b) Payment of attorney fees or reasonable (b) expenses under this subsection shall be made by the
 45 Department of Revenue in the manner provided by ORS 305.790.

1 (4)(a) If, in any proceeding before the tax court judge involving ad valorem property taxation,
 2 exemptions, special assessments or omitted property, the court finds in favor of the taxpayer, the
 3 court may allow the taxpayer, in addition to costs and disbursements, the following:

4 (A) Reasonable attorney fees for the proceeding under this subsection and for the prior pro-
 5 ceeding in the matter, if any, before the magistrate; and

6 (B) Reasonable expenses as determined by the court. Expenses include fees of experts incurred
 7 by the individual taxpayer in preparing for and conducting the proceeding before the tax court judge
 8 and the prior proceeding in the matter, if any, before the magistrate.

9 (b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the
 10 Department of Revenue in the manner provided by ORS 305.790.

11 (5) All fees and other moneys received or collected by the clerk by virtue of the office of the
 12 clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General Fund
 13 as miscellaneous receipts.

14 **SECTION 7.** ORS 305.501 is amended to read:

15 305.501. (1) Except as provided in subsection [(2)] (3) of this section, an appeal to the tax court
 16 shall be heard by a tax court magistrate unless specially designated by the tax court judge for
 17 hearing in the regular division.

18 (2)(a) In any matter arising under the property tax laws and involving a county or county
 19 assessor that is **specially** designated for hearing in the regular division, the Department of Revenue
 20 shall be substituted for the county as a party.

21 (b) The plaintiff or petitioner in the appeal is not required to pay any additional filing fee if the
 22 proceeding is specially designated by the tax court judge for hearing in the regular division.

23 [(2)] (3) A party to the appeal may request mediation, or the tax court on its own motion may
 24 assign the matter to mediation. If the mediation does not result in an agreed settlement within 60
 25 days after the end of the mediation session, the appeal shall, absent a showing of good cause for a
 26 continuance, be assigned to a magistrate for hearing.

27 [(3)] (4) The tax court, with the assistance of the State Court Administrator, shall establish
 28 procedures for magistrate division hearings and mediation.

29 [(4)(a)] (5)(a) Subject to the rules of practice and procedure established by the tax court, a
 30 magistrate is not bound by common law or statutory rules of evidence or by technical or formal
 31 rules of procedure, and may conduct the hearing in any manner that will achieve substantial justice.
 32 A hearing may be conducted in person or by telephone. Magistrates may confer with each other in
 33 order to reach a decision on any matter.

34 (b) All written magistrate decisions shall be mailed to the parties to the appeal and to the De-
 35 partment of Revenue within five days after the date of entry of the written decision.

36 [(5)(a)] (6)(a) Any party dissatisfied with a written decision of a magistrate may appeal the de-
 37 cision to the judge of the tax court by filing a complaint in the regular division of the tax court
 38 within 60 days after the date of entry of the written decision.

39 (b) If a decision of a magistrate involves any matter arising under the property tax laws and a
 40 county was a party to the proceeding before the magistrate, the Department of Revenue may file a
 41 notice of appeal whether or not the department had intervened in the proceeding before the
 42 magistrate. In such cases, the department shall appear before the tax court judge in any proceeding
 43 on appeal.

44 (c) If a decision of a magistrate involves any matter arising under the property tax laws and a
 45 party other than a county appeals the decision to the tax court judge, the Department of Revenue

1 shall be the defendant.

2 **(d) Whenever a written magistrate decision is appealed, the responding party may re-**
 3 **quest affirmative relief, by counterclaim or any other means authorized for the regular di-**
 4 **vision of the tax court, without filing a separate appeal under this subsection.**

5 [(d)] (e) Appeal to the judge of the tax court is the sole and exclusive remedy for review of a
 6 written decision of a magistrate.

7 [(6)] (7) Appeal of a final decision of a magistrate before the judge of the tax court shall be as
 8 provided in ORS 305.425 (1) and 305.570.

9 [(7)] (8)(a) If no appeal is taken to the tax court judge within 60 days, the decision of the
 10 magistrate shall become final.

11 **(b) If an appeal of the decision of the magistrate, or of any part of the decision, is filed**
 12 **in the tax court within 60 days, the decision shall be subject to de novo review in its entirety**
 13 **by the tax court judge, unless otherwise stipulated by the parties.**

14 (c) The tax court shall enter a judgment enforcing all final decisions of the magistrate, which
 15 judgment shall be binding upon all parties.

16 (d) ORS 305.440 (2) applies to the final determination of any property tax matter.

17 **SECTION 8.** ORS 305.560 is amended to read:

18 305.560. (1)(a) Except for an order, or portion thereof, denying the discretionary waiver of pen-
 19 alty or interest by the Department of Revenue, an appeal under ORS 305.275 may be taken by filing
 20 a complaint with the clerk of the Oregon Tax Court at its principal office at Salem, Oregon, within
 21 the time required under ORS 305.280.

22 (b) The clerk of the tax court shall serve copies of all complaints and petitions on the Depart-
 23 ment of Revenue. Service upon the department shall be accomplished by the clerk of the tax court
 24 filing the copy of the complaint with the Director of the Department of Revenue. Except as other-
 25 wise provided by law, other service shall be accomplished as provided in the rules of practice and
 26 procedure promulgated by the tax court.

27 (c)(A) The complaint shall be entitled in the name of the person filing the same as plaintiff and
 28 the Department of Revenue, county, taxpayer or other person or entity as defendant. If the com-
 29 plaint relates to value of property for ad valorem property tax purposes and the county has made
 30 the appraisal, the complaint shall be entitled in the name of the person filing the same as plaintiff
 31 and the county assessor as defendant.

32 (B) If any, a copy of the order of the department or board of property tax appeals shall be at-
 33 tached to the complaint.

34 (2)(a) The complaint shall state the nature of the plaintiff's interest, the facts showing how the
 35 plaintiff is aggrieved and directly affected by the order, act, omission or determination and the
 36 grounds upon which the plaintiff contends the order, act, omission or determination should be re-
 37 versed or modified.

38 **(b) A responsive pleading shall be required of the defendant and may include a**
 39 **counterclaim.**

40 (3) In any case in which the taxpayer is not the appealing party, a copy of the complaint shall
 41 be served upon the taxpayer by the appealing party by certified mail within the period for filing an
 42 appeal, and an affidavit showing such service shall be filed with the clerk of the tax court. A copy
 43 of the order of the department, if any, shall be attached to the complaint. The taxpayer shall have
 44 the right to appear and be heard.

45 (4)(a) At any time in the course of any appeal before the tax court, the department may inter-

1 vene as a matter of right. A copy of any order or judgment issued by the tax court in any case in
2 which the department is an intervenor shall be served upon the department in the manner provided
3 in subsection (1)(b) of this section.

4 (b) The tax court, in its discretion, may permit other interested persons to intervene by filing
5 a complaint in such manner and under such conditions as the court may deem appropriate.

6 **SECTION 9. Section 2 of this 2019 Act and the amendments to ORS 305.287, 305.403,
7 305.425, 305.490, 305.501 and 305.560 by sections 3 to 8 of this 2019 Act apply to responsive
8 pleadings filed on or after the effective date of this 2019 Act.**

9 **SECTION 10. This 2019 Act takes effect on the 91st day after the date on which the 2019
10 regular session of the Eightieth Legislative Assembly adjourns sine die.**

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