

**TESTIMONY ON HB 2178
REDUCING TAX COURT FEES
BEFORE THE HOUSE JUDICIARY CIVIL LAW SUBCOMMITTEE
FEBRUARY 1, 2021**

PRESENTED BY: ROBERT MANICKE, JUDGE OF THE OREGON TAX COURT

Hon. Chair Power, Vice-Chair Wallan, Members of the Committee, my name is Robert Manicke and I am the elected judge and the administrative head of the Oregon Tax Court.

Introduction to the Oregon Tax Court

The Oregon Tax Court has jurisdiction over cases involving the tax laws of Oregon. We have two divisions. The Magistrate Division is where almost all tax cases start and where 90 percent of cases are resolved without any further appeal. When a party appeals a magistrate's decision, the case comes to me in the Regular Division, where I serve as the only judge. This bill mainly involves the Magistrate Division.

The Magistrate Division has three magistrates, who are attorneys, plus four staff. They typically receive 400 to 500 appeals each year, from taxpayers all over the state. Most cases are filed by individual taxpayers or small businesses contesting property tax or state income or other taxes administered by the Department of Revenue. Unlike the Circuit Courts, almost all our court's cases are lawsuits against the government.

The Magistrate Division is designed to be informal and impartial. In about two-thirds of cases lawyers are not involved. Many taxpayers represent themselves, and the statutes allow CPAs and other non-attorneys to appear on behalf of taxpayers. The Department of Revenue and county assessors often are represented by their audit staff or appraisers, and not by lawyers. About 75% of the cases are resolved without a trial.

What does HB 2178 do?

HB 2178 does two things: (1) lowers the financial barrier to entry to the Magistrate Division and (2) clarifies the date of filing for those seeking fee waivers.

As to the filing fee, we are here today because we believe that keeping the cost of a tax dispute low in the Magistrate Division will increase public confidence that the tax system is fair. Believing in a system that is fair and just is critical for public confidence.

Today, a person who files a complaint in either the Magistrate Division or the Regular Division pays \$281. That amount is tied to the statutory "standard" filing fee in the Circuit Courts. **Unfortunately, the fee approaches the amount of tax at issue in many cases, and we have found that the filing fee itself has become a significant point of contention.** Taxpayers link the fee to the additional tax they've been assessed, and

they tell our court staff that they think the system is unfair and stacked against them. We believe that message spreads quickly to family, friends, and co-workers.

HB 2178 would set the Magistrate Division fee at \$50. HB 2178 furthers the Oregon Judicial Department's commitment to examining the impacts of fines and fees, developing best practices for their imposition, and taking affirmative steps to ensure that they do not create unnecessary barriers or disproportionate outcomes. Although this commitment predates the COVID-19 state of emergency, we anticipate that the economic fallout from COVID-19 may increase the number of tax disputes, including those where the \$281 filing fee seems disproportionate. This bill addresses that issue.

Regarding the \$50 amount proposed in the bill: We proposed that amount with access to justice in mind, along with increasing public confidence in government. We recently have received input from some of our government-side stakeholders suggesting that \$50 may be too low. We also are aware that, under ORS 46.570, the fee for a small claims matter in Circuit Court is \$102 if the amount claimed exceeds \$2,500; and the fee for a so-called "simple proceeding" under ORS 21.145 is \$124. Therefore, if the committee were inclined to consider a fee higher than \$50, we offer the options of a fee of \$102 or \$124 for your consideration. We believe that any of these fee amounts would further our access to justice goals.

The second thing HB 2178 does is a technical change for taxpayers who believe they cannot afford a filing fee. The Tax Court is authorized to defer or waive filing fees on the same basis as Circuit Courts. In our "Purple Book" (the Tax Court's [Handbook for Litigants](#)), we explain how to apply for a waiver or deferral with the goal of helping those who are self-represented successfully obtain a waiver if eligible. However, current law requires the Tax Court fee to be paid when a complaint is "filed." Because we are a statewide court with many self-represented litigants, we receive many of our complaints by mail, or by courier services.

Current law treats the date of mailing as the date of filing, but the law is not clear whether a Tax Court complaint is to be considered filed on time if the taxpayer has not paid the fee or *received* a fee deferral or waiver by the due date. The bill clarifies that if a filer requests a fee deferral or waiver by the due date together with the complaint, the filer will not miss the deadline for appeal. If the court denies the waiver or deferral, the filer will have 14 days to pay the filing fee.

What is the revenue impact of HB 2178?

Because of the number of cases typically filed in the Magistrate Division – 400 to 500 per year - we expect HB 2178 to have a very minor impact on General Fund revenue in each biennium. Although it is difficult to determine the exact impact, the loss in revenue will likely be partially offset by a small increase in the number of cases filed in the Magistrate Division because this bill will increase access to our court.

As for fiscal impact, speaking only for the Judicial Branch, the magistrates routinely resolve tax disputes short of trial. They are often able to achieve resolution after one or

two conference calls with the parties, in which they hear everyone out and ask about documents and evidence. About 75 percent of cases are resolved informally, without a trial or extensive motions practice. Although lowering the fee may increase the number of cases, we expect that most of those additional cases will be resolved informally as well. We believe that the court can handle that additional workload within the amount in the Chief Justice's requested budget.

Thank you for the opportunity to testify in support of HB 2178. We welcome any questions.