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JUDGE



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OREGON TAX COURT
1163 STATE STREET
SALEM OREGON
97301-2563

February 6, 2023

VIA EMAIL

Nikki Dobay
Nikki.Dobay@gtlaw.com

Jeff Newgard
jeff@peakpolicy.com

Re: Oregon House Bill 2576

Dear Ms. Dobay and Mr. Newgard:

As stated in my testimony before the House Revenue Committee on January 31, 2023, the Judicial Department is neutral on HB 2576. However, I appreciate the opportunity to work with you and any persons potentially affected by the bill to suggest clarifying and conforming amendments for the purpose of avoiding unnecessary disputes, in the event the bill becomes law. I have attempted below to "spot the issues" and to propose a way to address them. Obviously, you and other stakeholders may have your own views. I will be happy to remain available for further review as the bill progresses.

Below are reprints of provisions in the 2021 edition of the Oregon Revised Statutes. Markings in blue or red are my suggested amendments. The changes to ORS 305.410 shown in the as-introduced version of HB 2576 appear in bold, just as in the bill itself.

305.275 Persons who may appeal due to acts or omissions. (1) Any person may appeal under this subsection to the magistrate division of the Oregon Tax Court as provided in ORS 305.280 and 305.560, if all of the following criteria are met:

(a) The person must be aggrieved by and affected by an act, omission, order or determination of:

(A) The Department of Revenue in its administration of the revenue and tax laws of this state;

(B) A county board of property tax appeals other than an order of the board;

(C) A county assessor or other county official, including but not limited to the denial of a claim for exemption, the denial of special assessment under a special assessment statute, or the denial of a claim for cancellation of assessment; ~~or~~

(D) A tax collector; ~~or~~

Commented [RTM1]: Note: "Tax collector" is defined to mean a county property tax collector. See ORS 311.005.

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(E) A local government in its administration of a tax described in ORS 305.410(3), if the person first exhausts all administrative remedies provided before the local government.

(b) The act, omission, order or determination must affect the property of the person making the appeal or property for which the person making the appeal holds an interest that obligates the person to pay taxes imposed on the property. As used in this paragraph, an interest that obligates the person to pay taxes includes a contract, lease or other intervening instrumentality.

(c) There is no other statutory right of appeal for the grievance.

(2) Except as otherwise provided by law, any person having a statutory right of appeal under the revenue and tax laws of the state, or under ORS 305.410(3), may appeal to the tax court as provided in ORS 305.404 to 305.560.

(3) If a taxpayer may appeal to the board of property tax appeals under ORS 309.100, then no appeal may be allowed under this section. The appeal under this section is from an order of the board as a result of the appeal filed under ORS 309.100 or from an order of the board that certain corrections, additions to or changes in the roll be made.

(4) A county assessor who is aggrieved by an order of the county board of property tax appeals may appeal from the order as provided in this section, ORS 305.280 and 305.560. [1977 c.870 §5; 1985 c.85 §10; 1987 c.512 §4; 1991 c.459 §12; 1993 c.270 §7; 1995 c.79 §107; 1995 c.650 §7; 1997 c.541 §§52,52a,53,53a; 1999 c.314 §62; 1999 c.340 §2; 2011 c.111 §3]

305.280 Time for filing appeals; denial of appeal. (1) Except as otherwise provided in this section, an appeal under ORS 305.275 (1) or (2) shall be filed within 90 days after the act, omission, order or determination becomes actually known to the person, but in no event later than one year after the act or omission has occurred, or the order or determination has been made. An appeal under ORS 308.505 to 308.674 shall be filed within 90 days after the date the order is issued under ORS 308.584 (3). An appeal from a supervisory order or other order or determination of the Department of Revenue shall be filed within 90 days after the date a copy of the order or determination or notice of the order or determination has been served upon the appealing party by mail as provided in ORS 306.805.

(2) An appeal under ORS 323.416 or 323.623 or from any notice of assessment or refund denial issued by the Department of Revenue with respect to a tax imposed under ORS chapter 118, 308, 308A, 310, 314, 316, 317, 318, 321 or this chapter, or collected pursuant to ORS 305.620, shall be filed within 90 days after the date of the notice. An appeal from a proposed adjustment under ORS 305.270 shall be filed within 90 days after the date the notice of adjustment is final.

(3) Notwithstanding subsection (2) of this section, an appeal from a notice of assessment of taxes imposed under ORS chapter 314, 316, 317 or 318 may be filed within two years after the date the amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.

(4) Except as provided in subsection (2) of this section or as specifically provided in ORS chapter 321, an appeal to the tax court under ORS chapter 321 or from an order of a county board of property tax appeals shall be filed within 30 days after the date of the notice of the determination made by the department or date of mailing of the order, date of publication of notice of the order, date the order is personally delivered to the taxpayer or date of mailing of the notice of the order to the taxpayer, whichever is applicable.

Commented [RTM2]: These amendments would specify what types of actions can prompt an appeal. Under the "exhaustion" provision, a taxpayer would have to pursue a local appeal before appealing to the Tax Court.

Note that suits for declaratory judgment are covered separately, in existing ORS chapter 28.

Commented [RTM3]: Not suggesting an amendment here; just pointing out that this existing provision would specify the deadline for filing an appeal to the Tax Court.

(5) If the tax court denies an appeal made pursuant to this section on the grounds that it does not meet the requirements of this section or ORS 305.275 or 305.560, the tax court shall issue a written decision rejecting the petition and shall set forth in the decision the reasons the tax court considered the appeal to be defective. [1977 c.870 §6; 1979 c.687 §1; 1985 c.61 §2; 1991 c.67 §76; 1993 c.270 §8; 1995 c.650 §8; 1997 c.99 §§32,33; 1997 c.541 §§55,56; 1999 c.249 §2; 1999 c.314 §90; 1999 c.340 §3; 2003 c.804 §63a; 2007 c.616 §11; 2009 c.23 §1]

305.410 Authority of court in tax cases within its jurisdiction; concurrent jurisdiction; exclusive jurisdiction in certain cases. (1) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme Court and to subsection (2) of this section, the tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact arising under the tax laws of this state. For the purposes of this section, and except to the extent that they preclude the imposition of other taxes, the following are not tax laws of this state:

- (a) ORS chapter 577 relating to Oregon Beef Council contributions.
- (b) ORS 576.051 to 576.455 relating to commodity commission assessments.
- (c) ORS chapter 477 relating to fire protection assessments.
- (d) ORS chapters 731, 732, 733, 734, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 relating to insurance company fees and taxes.
- (e) ORS chapter 473 relating to liquor taxes.
- (f) ORS chapter 825 relating to motor carrier taxes.
- (g) ORS chapter 319 relating to motor vehicle and aircraft fuel taxes and the road usage charges imposed under ORS 319.885.
- (h) ORS title 59 relating to motor vehicle and motor vehicle operators' license fees and ORS title 39 relating to boat licenses.
- (i) ORS chapter 578 relating to Oregon Wheat Commission assessments.
- (j) ORS chapter 462 relating to racing taxes.
- (k) ORS chapter 657 relating to unemployment insurance taxes.
- (L) ORS chapter 656 relating to workers' compensation contributions, assessments or fees.
- (m) ORS 311.420, 311.425, 311.455, 311.650, 311.655 and ORS chapter 312 relating to foreclosure of real and personal property tax liens.
- (n) ORS 409.800 to 409.816 and 409.900 relating to long term care facility assessments.

(2) The tax court and the circuit courts shall have concurrent jurisdiction to try actions or suits to determine:

- (a) The priority of property tax liens in relation to other liens.
- (b) The validity of any deed, conveyance, transfer or assignment of real or personal property under ORS 95.060 and 95.070 (1983 Replacement Part) or 95.200 to 95.310 where the Department of Revenue has or claims a lien or other interest in the property.

(3) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme Court, the tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact concerning any tax imposed by a local government that is imposed upon or measured by net income. The tax court shall not have jurisdiction to review determinations of a local government relating to the collection, enforcement, administration or distribution of taxes described in this section.

[(3)] (4) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme Court, the tax court shall be the sole, exclusive and final judicial authority for the

Commented [RTM4]: Provides for Oregon Supreme Court review, as for all other Tax Court cases.

Commented [RTM5]: Local income tax collections matters would continue to be within the jurisdiction of the Circuit Court. That is generally consistent with the treatment of collections matters involving state-imposed taxes.

hearing and determination of all questions of law and fact concerning the authorized uses of the proceeds of bonded indebtedness described in section 11 (11)(d), Article XI of the Oregon Constitution.

[(4)] (5) Except as permitted under section 2, amended Article VII, Oregon Constitution, this section and ORS 305.445, no person shall contest, in any action, suit or proceeding in the circuit court or any other court, any matter within the jurisdiction of the tax court. [1961 c.533 §12; 1965 c.6 §2; 1967 c.359 §688; 1969 c.48 §1; 1971 c.567 §14; 1975 c.365 §1; 1977 c.407 §1; 1985 c.149 §5; 1985 c.664 §18; 2003 c.195 §18; 2003 c.604 §100; 2007 c.780 §29; 2013 c.85 §2; 2013 c.781 §26]

305.425 Proceedings to be without jury and de novo; issues reviewable; rules of procedure. (1) All proceedings before the judge or a magistrate of the tax court shall be original, independent proceedings and shall be tried without a jury and de novo.

(2) If a statute provides for an appeal to or a review by the court of an order, act, omission or determination of the Department of Revenue, a board of property tax appeals, ~~or of~~ any other administrative agency, or a local government in its administration of a tax described in ORS 305.410(3), the proceeding shall be an original proceeding in the nature of a suit in equity to set aside such order or determination or correct the act or omission. The time within which the statute provides that the proceeding shall be brought is a period of limitations and is not jurisdictional.

(3) All hearings and proceedings before the tax court judge shall be in accordance with the rules of practice and procedure promulgated by the court, which shall conform, as far as practical to the rules of equity practice and procedure in this state. [1961 c.533 §16; 1965 c.6 §3; 1967 c.78 §9; 1973 c.484 §7; 1977 c.870 §29; 1981 s.s. c.1 §23; 1995 c.650 §19; 1997 c.541 §60]

305.437 Damages for frivolous or groundless appeal or appeal to delay. (1) In any case arising under the tax laws of this state or under any law administered by the Department of Revenue, whenever it appears to the Oregon Tax Court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless, a penalty in an amount not to exceed \$5,000 shall be awarded to the Department of Revenue by the Oregon Tax Court in its judgment. The penalty so awarded shall be paid within 10 days after the judgment becomes final. If the penalty remains unpaid, the department may collect the amount awarded in the same manner as income taxes are collected under ORS 314.430.

(2) As used in this section:

(a) A taxpayer's position is "frivolous" if there was no objectively reasonable basis for asserting the position.

(b) "Position" means any claim, defense or argument asserted by a taxpayer without regard to any other claim, defense or argument asserted by the taxpayer. [1987 c.843 §4; 1995 c.650 §6a; 2009 c.640 §5]

305.447 Recovery by taxpayer of certain costs and expenses upon appeal to Supreme Court. If, in an appeal under ORS 305.445 involving taxes upon or measured by net income and administered by the Department of Revenue, in which an individual taxpayer is a party, the court grants the refund claimed by the taxpayer or denies the additional assessment of taxes claimed by the Department of Revenue to be due from the taxpayer, the court may allow the taxpayer:

Commented [RTM6]: This specifies that the Tax Court's review would use the same standard now applicable in state tax cases. "De novo" means that the court would determine "anew" whether to undo or correct the local government's decision or order, using evidence introduced at trial or stipulated to by the parties. The court would not be bound by the facts or legal conclusions determined by a local appeals board.

Commented [RTM7]: I suggest limiting the \$5,000 frivolous argument penalty to state tax cases because existing law makes the penalty payable to DOR. An alternative would be to expressly say that the penalty is payable to the local government if the case arises under local income tax laws.

Commented [RTM8]: As written, ORS 305.447 already arguably does not apply to cases involving locally administered local income taxes, because the statute refers to assessments "by the Department of Revenue." However, I suggest adding this phrase to make that clear.

(1) Reasonable attorney fees for the appeal under ORS 305.445 and for any prior proceeding in the matter before the tax court; and

(2) Reasonable expenses as determined by the court in addition to costs and disbursements. Expenses include accountant fees and fees for other experts incurred by the taxpayer in preparing for and conducting the appeal under this section and any prior proceeding in the matter before the tax court. [1971 c.265 §3; 1977 c.870 §31a; 1995 c.650 §26; 1997 c.99 §§37,38]

305.490 Filing fees; fee waiver or deferral; recovery of certain costs and disbursements; additional recovery for certain taxpayers; disposition of receipts. (1) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay, at the time of filing for each complaint or petition, a filing fee as follows:

(a) For a complaint or petition in the magistrate division, \$50.

(b) For a complaint or petition in the regular division, the filing fee established under ORS 21.135.

(2) A plaintiff or petitioner may, by application at the time of filing, request waiver or deferral of any filing fee under ORS 21.680 to 21.698. If the tax court grants a fee waiver or deferral, or the plaintiff or petitioner pays the outstanding filing fee in full within 14 days after the date the court denies the fee waiver or deferral, the date of the filing of the complaint or petition is:

(a) The date the complaint or petition and application were deposited or dispatched under ORS 305.418, if applicable; or

(b) The date the complaint or petition and application were otherwise filed under court rules.

(3) Neither the State of Oregon, nor any county, school district, municipal corporation or other public corporation therein, nor any officer of any such public political division or corporation, appearing in the representative capacity of the officer of any public political division or corporation, shall be required to pay the fee prescribed under this section. The party entitled to costs and disbursements on such appeal shall recover from the opponent of the party the amount so paid upon order of the court, as in equity suits in the circuit court.

(4)(a) If, in any proceeding before the tax court judge arising under any law administered by the Department of Revenue, involving taxes upon or measured by net income in which an individual taxpayer is a party, or involving inheritance or estate taxes, or involving transit taxes imposed on net earnings from self-employment, the court grants a refund claimed by the executor or taxpayer or denies in part or wholly an additional assessment of taxes claimed by the Department of Revenue to be due from the estate or taxpayer, the court may allow the taxpayer, in addition to costs and disbursements, the following:

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

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

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

Commented [RTM9]: Under this suggested amendment, the provision allowing attorney fees specifically in favor of an individual taxpayer would be limited to state tax cases and cases involving local taxes administered by DOR pursuant to ORS 305.620. Attorney fee awards would continue to be available to any prevailing party where the other party has made an objectively unreasonable argument: **"20.105 Attorney fees where party disobeys court order or asserts claim, defense or ground for appeal without objectively reasonable basis.** (1) In any civil action, suit or other proceeding in a circuit court or in the regular division or the magistrate division of the Oregon Tax Court, or in any civil appeal to or review by the Court of Appeals or Supreme Court, the court shall award reasonable attorney fees to a party against whom a claim, defense or ground for appeal or review is asserted, if that party is a prevailing party in the proceeding and to be paid by the party asserting the claim, defense or ground, upon a finding by the court that the party willfully disobeyed a court order or that there was no objectively reasonable basis for asserting the claim, defense or ground for appeal."

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

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

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

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

(6) All fees and other moneys received or collected by the clerk by virtue of the office of the clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General Fund as miscellaneous receipts. [1961 c.533 §15(1), (3); 1965 c.6 §7; 1971 c.265 §1; 1977 c.870 §32; 1993 c.612 §1; 1995 c.650 §6; 1997 c.99 §§40,41; 1999 c.21 §10; 2001 c.287 §1; 2005 c.345 §8; 2009 c.53 §1; 2011 c.526 §24; 2011 c.595 §62; 2012 c.48 §12; 2021 c.451 §1; 2021 c.555 §6]

305.560 Appeals procedure generally; procedure when taxpayer is not appellant; intervention. (1)(a) Except for an order, or portion thereof, denying the discretionary waiver of penalty or interest by the Department of Revenue, an appeal under ORS 305.275 may be taken by filing a complaint with the clerk of the Oregon Tax Court at its principal office at Salem, Oregon, within the time required under ORS 305.280.

(b) The clerk of the tax court shall serve copies of all complaints and petitions on the Department of Revenue or, if applicable, on the local government administering a tax described in ORS 305.410(3). Service upon the department or the local government shall be accomplished by the clerk of the tax court filing the copy of the complaint with the Director of the Department of Revenue or the administrator of the tax described in ORS 305.410(3). Except as otherwise provided by law, other service shall be accomplished as provided in the rules of practice and procedure promulgated by the tax court.

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

(B) If any, a copy of the order of the department or board of property tax appeals shall be attached to the complaint.

(2) The complaint shall state the nature of the plaintiff's interest, the facts showing how the plaintiff is aggrieved and directly affected by the order, act, omission or determination and the grounds upon which the plaintiff contends the order, act, omission or determination should be reversed or modified. A responsive pleading shall be required of the defendant.

(3) In any case in which the taxpayer is not the appealing party, a copy of the complaint shall be served upon the taxpayer by the appealing party by certified mail within the period for filing an appeal, and an affidavit showing such service shall be filed with the clerk of the tax court. A copy of the order, if any, of the department or the local government administering a tax described in ORS 305.410(3), if any, shall be attached to the complaint. The taxpayer shall have the right to appear and be heard.

Commented [RTM10]: This amendment would have the Tax Court serve any taxpayer complaint on the administrator of a local income tax, as the court does under current law in state tax cases. This avoids forcing taxpayers to prepare a summons and potentially hire a process server in order to commence their appeal.

Commented [RTM11]: This amendment would require a taxpayer filing an appeal to attach the local government order, such as an appeals board decision.

(4)(a) At any time in the course of any appeal before the tax court involving a question of law or fact arising under the tax laws of this state or under laws administered by the department, the department may intervene as a matter of right. A copy of any order or judgment issued by the tax court in any case in which the department is an intervenor shall be served upon the department in the manner provided in subsection (1)(b) of this section.

(b) The tax court, in its discretion, may permit other interested persons to intervene by filing a complaint in such manner and under such conditions as the court may deem appropriate. [1977 c.870 §10; 1989 c.760 §3; 1991 c.459 §23; 1993 c.270 §16; 1995 c.650 §10; 1997 c.541 §71; 2005 c.225 §4]

Please contact me if you have any questions or would like further input on clarifying or conforming amendments to this bill.

Very Truly Yours,

/s/

Robert T. Manicke
Judge

cc:

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Commented [RTM12]: Under this amendment, the Department of Revenue would continue to have the right to intervene at any time in state tax cases or in cases involving local taxes it administers. In locally administered local income tax cases, the Department could file a motion asking to intervene, and the court would decide the motion after hearing any response from the other parties.