

**Enrolled**  
**Senate Bill 268**

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CHAPTER .....

AN ACT

Relating to tax court procedures; creating new provisions; amending ORS 40.015, 305.190, 305.230, 305.392, 305.403, 305.420, 305.430, 305.490, 305.501 and 305.620; and repealing ORS 305.514.

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

**SECTION 1. ORS 305.514 is repealed.**

**SECTION 2.** ORS 40.015 is amended to read:

40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

(a) A [*tax court small claims procedure or a*] hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS 305.501;

(b) The small claims department of a circuit court as provided by ORS 46.415; and

(c) The small claims department of a justice court as provided by ORS 55.080.

(2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal actions and proceedings and to contempt proceedings except those in which the court may act summarily.

(3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and proceedings.

(4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following situations:

(a) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under ORS 40.030.

(b) Proceedings before grand juries, except as required by ORS 132.320.

(c) Proceedings for extradition, except as required by ORS 133.743 to 133.857.

(d) Sentencing proceedings, except proceedings under ORS 138.012 and 163.150 or as required by ORS 137.090.

(e) Proceedings to revoke probation, except as required by ORS 137.090.

(f) Issuance of warrants of arrest, bench warrants or search warrants.

(g) Proceedings under ORS chapter 135 relating to conditional release, security release, release on personal recognizance, or preliminary hearings, subject to ORS 135.173.

(h) Proceedings to determine proper disposition of a child in accordance with ORS 419B.325 (2) and 419C.400 (3).

(i) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and 813.255 to determine whether a driving while under the influence of intoxicants diversion agreement should be allowed or terminated.

**SECTION 3.** ORS 305.190 is amended to read:

305.190. (1) Subject to ORS 305.390 and 305.392, the Director of the Department of Revenue, in conformity to the resolutions or rules of the Department of Revenue, may subpoena and examine witnesses, administer oaths and order the production of any books or papers in the hands of any person, company or corporation, whenever necessary in the prosecution of any inquiries deemed necessary or proper.

(2) If any person disobeys any subpoena of the director, or refuses to testify when required by the director, the department may apply to the Oregon Tax Court for an order to the person to produce the books and papers or attend and testify, or otherwise comply with the demand of the department. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the person against whom it is directed to appear before the court in the county in which the person resides or has a place of business on such date as the court shall designate in its order and show cause why the person should not comply with the demand of the department. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Upon failure of such person to show cause for noncompliance, the court shall make an order requiring the person to comply with the demand of the department within such time as the court shall direct. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state.

(3) ORS 305.420 [(5)] (4) applies to the issuance of a subpoena under this section.

**SECTION 4.** ORS 305.230 is amended to read:

305.230. (1) Notwithstanding ORS 9.320:

(a) Any person who is qualified to practice law or public accountancy in this state, any person who has been granted active enrollment to practice before the Internal Revenue Service and who is qualified to prepare tax returns in this state or any person who is the authorized employee of a taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer before a tax court magistrate or the Department of Revenue in any conference or proceeding with respect to the administration of any tax.

(b) Any person who is licensed by the State Board of Tax Practitioners or who is exempt from such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(c) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, 2002, may represent the corporation in any proceeding before a tax court magistrate or the department in the same manner as if the shareholder were a partner and the S corporation were a partnership. The S corporation must designate in writing a tax matters shareholder authorized to represent the S corporation.

(d) Any person who is licensed as a real estate broker or principal real estate broker under ORS 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310 or is a registered appraiser under ORS 308.010 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any ad valorem property tax.

(e) A general partner who has been designated by members of a partnership as their tax matters partner under ORS 305.242 may represent those partners in any conference or proceeding with respect to the administration of any tax on or measured by net income.

*[(f) In a small claims procedure, a taxpayer may be represented by any of the persons described in paragraphs (a) to (e) of this subsection or by any other person permitted by the tax court.]*

(2) *[No person shall]* **A person may not** be recognized as representing a taxpayer pursuant to this section unless there is first filed with the magistrate or department a written authorization, or unless it appears to the satisfaction of the magistrate or department that the representative does in fact have authority to represent the taxpayer. A person recognized as an authorized representative

under rules or procedures adopted by the tax court shall be considered an authorized representative by the department.

(3) A taxpayer represented by someone other than an attorney is bound by all things done by the authorized representative, and may not thereafter claim any proceeding was legally defective because the taxpayer was not represented by an attorney.

(4) Prior to the holding of a conference or proceeding before the tax court magistrate or department, written notice shall be given by the magistrate or department to the taxpayer of the provisions of [subsections (1)(f) and] **subsection** (3) of this section.

**SECTION 5.** ORS 305.392 is amended to read:

305.392. (1) This section applies to subpoenas issued under ORS 305.190 or 305.420 [(5)] (4) to owners of industrial plants, as defined in ORS 308.408, for the production of books, papers, correspondence or any other documents to be used in a judicial proceeding that involves the determination of the value of a different industrial plant, for purposes of ad valorem property taxation. The purpose of this section is to provide a process by which the parties may limit the scope of a subpoena for the production of documents, if possible.

(2) Before any person or the Department of Revenue may issue a subpoena to which this section applies, the person or department shall give written notice to the person or agency to be subpoenaed that a subpoena will be issued no sooner than 60 days after the date the notice is received. The notice shall state the general nature of the documents desired to be produced and the purpose for which they will be used. The notice shall state that the person or agency to be subpoenaed may request an informal meeting with the person or department giving notice to identify the nature and form of documents the person or agency has and to verify the need for the documents desired to be produced.

(3) If the person or agency receiving a notice given under subsection (2) of this section requests an informal meeting as provided in the notice, the person or department giving notice shall meet with the person or agency before issuing the subpoena. If the parties can agree that only specific documents need to be produced, the subpoena may then be issued and shall be limited to those documents.

(4) If the person or agency receiving a notice under subsection (2) of this section does not request a meeting, or if the parties cannot agree on the specific documents to be produced, the person or department giving notice may issue the subpoena on or after the date specified in the notice.

(5) A person or agency given notice under subsection (2) of this section may not seek relief from compliance with a subpoena or for protection of documents to be produced until a subpoena has been issued.

**SECTION 6.** ORS 305.420 is amended to read:

305.420. (1) The judge, a magistrate or the clerk of the tax court, on the request of any party to the proceeding, or the attorney of the party, shall issue subpoenas requiring the attendance of and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of any returns, books, papers, documents, correspondence and other evidence pertaining to the matter under inquiry at any designated place of hearing in the manner prescribed by law in civil actions in courts of this state.

(2) Any employee of the court designated in writing for the purpose by the judge may administer oaths.

(3) Any party to the proceeding may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state. To that end, the party may compel the attendance of witnesses and the production of returns, books, papers, documents, correspondence and other evidence pertaining to the matter under inquiry.

*[(4) Subpoenas in a small claims procedure shall be issued only at the discretion of the court. The court may not issue a subpoena that requires the witness to attend for examination at a place outside the county in which the witness resides or is served, unless the residence or place of service of the witness is within 100 miles of the place of examination.]*

[(5)] (4) Subject to ORS 305.390 and 305.392, subpoenas in a proceeding involving the determination of the value of an industrial plant, as defined in ORS 308.408, for purposes of ad valorem property taxation, may be issued as provided in subsection (1) of this section. However, upon petition of the person subpoenaed, the court shall make an order determining if the evidence sought by the subpoena is relevant to the pending proceeding and, if requested by the person subpoenaed, an order as required in the interests of justice to protect the confidentiality of the information subpoenaed.

**SECTION 7.** ORS 305.430 is amended to read:

305.430. (1) Except as provided in subsections (2) and (3) of this section, hearings before the judge or a magistrate of the tax court shall be open to the public. All proceedings in the regular division of the tax court shall be reported unless waived by the parties with the consent of the court. The expense of reporting shall be paid by the state from the appropriation for the court. Proceedings before the magistrate division shall not be reported.

(2) If information is confidential under ORS 308.411 (4) or by court order under ORS 305.420 [(5)] (4), and is introduced into evidence in any hearing before the tax court, the court first shall make such order or orders as are necessary to protect the confidentiality of the information.

(3) In any proceeding before a magistrate or before the tax court judge in which confidential business records, tax returns or documents containing trade secrets are to be introduced into evidence, upon motion of a party to the proceeding, the magistrate or judge may make such protective orders as may be necessary to protect the confidentiality of such records or the information contained therein. In determining whether such protective orders should be issued, the court shall weigh the harm suffered by the disclosing party against any benefit received by the public as a result of the disclosure. Complaints, pleadings and other filings containing confidential business record information, tax return information or trade secret information shall be subject to the provisions of this subsection.

(4) In a matter involving a request for a protective order under subsections (2) and (3) of this section, the decision of the judge or a magistrate of the tax court shall be a final order for purposes of appeal to the Supreme Court. The parties may appeal the issue of the protective order to the Supreme Court at any time after the protective order was granted or denied. Upon appeal to the Supreme Court, the judge or a magistrate of the tax court may stay the case on the merits until a resolution of the protective order issue is determined by the Supreme Court.

**SECTION 8.** ORS 305.490 is amended to read:

305.490. (1) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay a filing fee for each complaint or petition as follows:

[(a) *If a small claims procedure is elected, \$10.*]

[(b)] (a) For a complaint or petition in the magistrate division, \$25.

[(c)] (b) For a complaint or petition in the regular division, \$50.

[(d)] (c) If a complaint or petition is specially designated under ORS 305.501 for hearing in the regular division, a fee of \$50.

(2) 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.

(3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net income in which an individual taxpayer is a party, or involving inheritance taxes, 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.

(4)(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.

(5) 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.

**SECTION 9.** ORS 305.501 is amended to read:

305.501. (1) Except as provided in subsection (2) of this section, an appeal to the tax court shall be heard by a tax court magistrate unless specially designated by the tax court judge for hearing in the regular division. In any matter arising under the [*ad valorem*] **property** tax laws and involving a county or county assessor that is designated for hearing in the regular division, the Department of Revenue shall be substituted for the county as a party.

(2) A party to the appeal may request mediation, or the tax court on its own motion may assign the matter to mediation. If the mediation does not result in an agreed settlement within 60 days after the date of the assignment, the appeal shall be assigned to a magistrate for hearing.

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

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

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

(5)(a) Any party dissatisfied with a written decision of a magistrate may appeal the decision to the judge of the tax court by filing a complaint in the regular division of the tax court within 60 days after the date of entry of the written decision.

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

(c) If a decision of a magistrate involves any matter arising under the [*ad valorem*] **property** tax laws and a party other than a county appeals the decision to the tax court judge, the Department of Revenue shall be the defendant.

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

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

(7) If no appeal is taken to the tax court judge within 60 days, the decision of the magistrate shall become final. The tax court shall enter a judgment enforcing all final decisions of the magistrate, which judgment shall be binding upon all parties. *[Upon] ORS 305.440 (2) applies to the final determination of any [ad valorem] property tax matter[, either in a proceeding before the magistrate division or in a small claims procedure, ORS 305.440 (2) shall be applicable].*

**SECTION 10.** ORS 305.620 is amended to read:

305.620. (1) Any state agency or department may enter into agreements with any political subdivision of this state for the collection, enforcement, administration and distribution of local taxes of the political subdivision imposed upon or measured by gross or net income, wages or net earnings from self-employment or local general sales and use taxes.

(2) The department or agency shall prescribe the rules by which the agreements entered into under subsection (1) of this section are administered.

(3) The department or agency shall prescribe the rules by which the taxes described by subsection (1) of this section are administered, collected, enforced and distributed.

(4) A political subdivision may appear as an intervenor at any conference held by the Department of Revenue or conference, hearing or proceeding held by another department or agency in connection with a local tax administered by the department or agency. The political subdivision may be represented by its own counsel. The department or agency shall adopt rules governing the procedures to be followed by the political subdivision in making an appearance.

(5) Costs incurred by the department or agency in the administration, enforcement, collection and distribution of taxes under the agreements entered into under subsection (1) of this section shall be first deducted from the taxes collected before distribution is made to the political subdivision which is a party to the agreement.

(6) The Oregon Tax Court shall have exclusive jurisdiction to review determinations of the Department of Revenue or orders of another department or agency relating to the collection, enforcement, administration and distribution of local taxes under agreements entered into under subsection (1) of this section.

(7) A proceeding for refund or to set aside additional taxes or taxes assessed when no return was filed may be initiated before the state agency or department *[or as provided in ORS 305.514 (1)(f)]*.

(8) An appeal from a determination or an order may be taken by the taxpayer or by the political subdivision whose taxes are in issue, by filing an original and two certified copies of a complaint with the clerk of the Oregon Tax Court at its principal office at the state capital, Salem, Oregon, within 60 days after the notice of the determination of the Department of Revenue or the order of the department or agency is sent to the taxpayer or the political subdivision. The filing of the complaint in the Oregon Tax Court shall constitute perfection of the appeal. Service of the taxpayer's complaint shall be accomplished by the clerk of the tax court by filing a certified copy of the complaint with the administrative head of the department or agency and a certified copy with the political subdivision. Service of the political subdivision's complaint shall be accomplished by the clerk of the tax court by filing a certified copy of the complaint with the administrative head of the department or agency and mailing a certified copy of the complaint to the taxpayer. The complaint of a taxpayer shall be entitled in the name of the person filing as plaintiff and the department or agency as defendant. The complaint of a political subdivision shall be entitled in the name of the political subdivision as plaintiff and the taxpayer and the department or agency as defendants. A copy of the order of the department or agency shall be attached to the original complaint. All procedures shall be in accordance with ORS 305.405 to 305.494.

**SECTION 11.** The repeal of ORS 305.514 by section 1 of this 2005 Act and the amendments to ORS 40.015, 305.190, 305.230, 305.392, 305.420, 305.430, 305.490, 305.501 and 305.620 by sections 2 to 10 of this 2005 Act do not apply to small claims procedures filed in the tax court prior to the effective date of this 2005 Act.

**SECTION 12.** Sections 13 and 14 of this 2005 Act are added to and made a part of ORS 305.404 to 305.560.

**SECTION 13.** (1) The Legislative Assembly finds that:

(a) Principal and secondary industrial property that is appraised by the Department of Revenue under ORS 306.126 and property that is centrally assessed by the department under ORS 308.505 to 308.665 involve large amounts of property value and complex appraisal issues.

(b) Appeals of the value of principal and secondary industrial property or centrally assessed property can have significant impact on the stable funding of essential local government services because of the fiscal consequences of substantial tax refunds.

(c) The citizens of this state and the owners of industrial or centrally assessed property are best served by the efficient resolution of property tax appeals related to these properties.

(2) The Legislative Assembly declares that it is the policy of this state to strongly encourage taxpayers, local governments, the department and the Oregon Tax Court to resolve appeals related to the value of principal or secondary industrial property or centrally assessed property as quickly and efficiently as possible, in order to reduce the financial impacts of lengthy appeal processes.

**SECTION 14.** The Department of Revenue shall consider the findings and declarations of the Legislative Assembly under section 13 of this 2005 Act when adopting administrative rules related to appeals to the Oregon Tax Court of the value of principal or secondary industrial property or centrally assessed property, in order to ensure that the rules that the department adopts promote the objectives of quick and efficient resolution of these appeals.

**SECTION 15.** ORS 305.403 is amended to read:

305.403. (1) In the case of a taxpayer dissatisfied with the assessed or specially assessed value of **land or improvements of** a principal or secondary industrial property, the taxpayer may elect to proceed directly to the tax court. **An appeal involving the assessed or specially assessed value of both the land and improvements of a principal or secondary industrial property must be brought together in the same forum, whether the forum is the board of property tax appeals or the tax court.**

(2) Election shall be made by filing a complaint with the tax court in the manner as other complaints are filed under ORS 305.560 within the time otherwise prescribed for filing an appeal to the board of property tax appeals. An election under this subsection may not be revoked and the taxpayer shall have no further right of appeal to the county board of property tax appeals.

(3)(a) The complaint shall be entitled in the name of the person filing the complaint as plaintiff, and the Department of Revenue [or] **and** the county assessor[, *whichever did the appraisal, as defendant*] **as defendants. In answering and defending against the allegations of the complaint:**

(A) **The department shall respond only to those allegations that relate to the appraisal or assessment performed by the department; and**

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

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

(4) Service of the complaint upon the department **and the county assessor** shall be accomplished by the clerk of the tax court [*filing the certified*] **mailing** a copy of the complaint [*with*] **to the Director of the Department of Revenue and to the county assessor.** [*Service on the county assessor shall be accomplished by certified mail and an affidavit showing the service shall be filed with the clerk of the tax court.*]

[(4)] (5) Upon an appeal directly to the tax court under this section, [*the presiding magistrate shall cause notice of the appeal to be given to*] the county board of property tax appeals[, *and*] **shall dismiss** any appeal filed with the board involving the issue of assessed value or specially assessed value for the same property for the same tax year [*shall be dismissed*].

[(5)] (6) As used in this section, “principal industrial property” and “secondary industrial property” have the meanings given the terms under ORS 306.126 and include those properties appraised by the department for ad valorem property tax purposes.

**SECTION 16.** The amendments to ORS 305.403 by section 15 of this 2005 Act apply to appeals filed on or after the effective date of this 2005 Act.

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**Passed by Senate February 2, 2005**

**Received by Governor:**

**Repassed by Senate June 9, 2005**

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Secretary of Senate

**Approved:**

.....M,....., 2005

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President of Senate

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Governor

**Passed by House June 6, 2005**

**Filed in Office of Secretary of State:**

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Speaker of House

.....M,....., 2005

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Secretary of State