

Senate Bill 268

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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**.

Eliminates tax court small claims procedure.

A BILL FOR AN ACT

1
2 Relating to tax court procedures; creating new provisions; amending ORS 40.015, 305.190, 305.230,
3 305.392, 305.420, 305.430, 305.490, 305.501 and 305.620; and repealing ORS 305.514.

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

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 ORS 305.514 is repealed.**

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

7 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

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

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

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

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

15 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and pro-
16 ceedings.

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

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

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

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

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

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

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

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

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

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

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 or terminated.

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

3 305.190. (1) Subject to ORS 305.390 and 305.392, the Director of the Department of Revenue, in
4 conformity to the resolutions or rules of the Department of Revenue, may subpoena and examine
5 witnesses, administer oaths and order the production of any books or papers in the hands of any
6 person, company or corporation, whenever necessary in the prosecution of any inquiries deemed
7 necessary or proper.

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

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

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

24 305.230. (1) Notwithstanding ORS 9.320:

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

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

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

40 (d) Any person who is licensed as a real estate broker or principal real estate broker under ORS
41 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310 or is a reg-
42 istered appraiser under ORS 308.010 may represent a taxpayer before a tax court magistrate or the
43 department in any conference or proceeding with respect to the administration of any ad valorem
44 property tax.

45 (e) A general partner who has been designated by members of a partnership as their tax matters

1 partner under ORS 305.242 may represent those partners in any conference or proceeding with re-
 2 spect to the administration of any tax on or measured by net income.

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

5 (2) *[No person shall]* **A person may not** be recognized as representing a taxpayer pursuant to
 6 this section unless there is first filed with the magistrate or department a written authorization, or
 7 unless it appears to the satisfaction of the magistrate or department that the representative does in
 8 fact have authority to represent the taxpayer. A person recognized as an authorized representative
 9 under rules or procedures adopted by the tax court shall be considered an authorized representative
 10 by the department.

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

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

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

18 305.392. (1) This section applies to subpoenas issued under ORS 305.190 or 305.420 *[(5)]* (4) to
 19 owners of industrial plants, as defined in ORS 308.408, for the production of books, papers, corre-
 20 spondence or any other documents to be used in a judicial proceeding that involves the determi-
 21 nation of the value of a different industrial plant, for purposes of ad valorem property taxation. The
 22 purpose of this section is to provide a process by which the parties may limit the scope of a
 23 subpoena for the production of documents, if possible.

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

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

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

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

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

44 305.420. (1) The judge, a magistrate or the clerk of the tax court, on the request of any party
 45 to the proceeding, or the attorney of the party, shall issue subpoenas requiring the attendance of

1 and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of
 2 any returns, books, papers, documents, correspondence and other evidence pertaining to the matter
 3 under inquiry at any designated place of hearing in the manner prescribed by law in civil actions
 4 in courts of this state.

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

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

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

16 ~~[(5)]~~ (4) Subject to ORS 305.390 and 305.392, subpoenas in a proceeding involving the determi-
 17 nation of the value of an industrial plant, as defined in ORS 308.408, for purposes of ad valorem
 18 property taxation, may be issued as provided in subsection (1) of this section. However, upon peti-
 19 tion of the person subpoenaed, the court shall make an order determining if the evidence sought by
 20 the subpoena is relevant to the pending proceeding and, if requested by the person subpoenaed, an
 21 order as required in the interests of justice to protect the confidentiality of the information
 22 subpoenaed.

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

24 305.430. (1) Except as provided in subsections (2) and (3) of this section, hearings before the
 25 judge or a magistrate of the tax court shall be open to the public. All proceedings in the regular
 26 division of the tax court shall be reported unless waived by the parties with the consent of the
 27 court. The expense of reporting shall be paid by the state from the appropriation for the court.
 28 Proceedings before the magistrate division shall not be reported.

29 (2) If information is confidential under ORS 308.411 (4) or by court order under ORS 305.420
 30 ~~[(5)]~~ (4), and is introduced into evidence in any hearing before the tax court, the court first shall
 31 make such order or orders as are necessary to protect the confidentiality of the information.

32 (3) In any proceeding before a magistrate or before the tax court judge in which confidential
 33 business records, tax returns or documents containing trade secrets are to be introduced into evi-
 34 dence, upon motion of a party to the proceeding, the magistrate or judge may make such protective
 35 orders as may be necessary to protect the confidentiality of such records or the information con-
 36 tained therein. In determining whether such protective orders should be issued, the court shall
 37 weigh the harm suffered by the disclosing party against any benefit received by the public as a re-
 38 sult of the disclosure. Complaints, pleadings and other filings containing confidential business record
 39 information, tax return information or trade secret information shall be subject to the provisions of
 40 this subsection.

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

1 resolution of the protective order issue is determined by the Supreme Court.

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

3 305.490. (1) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay a
4 filing fee for each complaint or petition as follows:

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

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

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

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

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

16 (3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net
17 income in which an individual taxpayer is a party, or involving inheritance taxes, the court grants
18 a refund claimed by the executor or taxpayer or denies in part or wholly an additional assessment
19 of taxes claimed by the Department of Revenue to be due from the estate or taxpayer, the court
20 may allow the taxpayer, in addition to costs and disbursements, the following:

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

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

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

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

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

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

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

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

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

43 305.501. (1) Except as provided in subsection (2) of this section, an appeal to the tax court shall
44 be heard by a tax court magistrate unless specially designated by the tax court judge for hearing
45 in the regular division. In any matter arising under the [*ad valorem*] **property** tax laws and involv-

1 ing a county or county assessor that is designated for hearing in the regular division, the Depart-
2 ment of Revenue shall be substituted for the county as a party.

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

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

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

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

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

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

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

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

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

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

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

36 305.620. (1) Any state agency or department may enter into agreements with any political sub-
37 division of this state for the collection, enforcement, administration and distribution of local taxes
38 of the political subdivision imposed upon or measured by gross or net income, wages or net earnings
39 from self-employment or local general sales and use taxes.

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

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

44 (4) A political subdivision may appear as an intervenor at any conference held by the Depart-
45 ment of Revenue or conference, hearing or proceeding held by another department or agency in

1 connection with a local tax administered by the department or agency. The political subdivision may
2 be represented by its own counsel. The department or agency shall adopt rules governing the pro-
3 cedures to be followed by the political subdivision in making an appearance.

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

8 (6) The Oregon Tax Court shall have exclusive jurisdiction to review determinations of the De-
9 partment of Revenue or orders of another department or agency relating to the collection, enforce-
10 ment, administration and distribution of local taxes under agreements entered into under subsection
11 (1) of this section.

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

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

31 **SECTION 11. The repeal of ORS 305.514 by section 1 of this 2005 Act and the amendments**
32 **to ORS 40.015, 305.190, 305.230, 305.392, 305.420, 305.430, 305.490, 305.501 and 305.620 by sections**
33 **2 to 10 of this 2005 Act do not apply to small claims procedures filed in the tax court prior**
34 **to the effective date of this 2005 Act.**

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