

Enrolled
Senate Bill 269

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Judiciary for Oregon Tax Court, Judicial Department)

CHAPTER

AN ACT

Relating to tax court procedures; amending ORS 294.485, 305.403, 305.418, 305.560, 305.583, 305.585 and 305.620.

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

SECTION 1. ORS 294.485 is amended to read:

294.485. (1) Any ad valorem property tax made contrary to the provisions of ORS 294.305 to 294.565 or any other law relating to the making of tax levies shall be voidable as provided in subsection (2) of this section and ORS 310.070.

(2) The county assessor, county court, board of county commissioners, the Department of Revenue, tax supervising and conservation commission or 10 or more interested taxpayers may appeal to the regular division of the Oregon Tax Court and such appeal shall be perfected in the following manner only:

(a) Within 30 days after the certification of ad valorem property taxes is filed with the county assessor under ORS 310.060, the appealing party shall file [*an original and two certified copies of*] a complaint with the clerk of the tax court at its principal office in Salem, Oregon. Such filing in the tax court shall constitute the perfection of the appeal. Service upon the Department of Revenue shall be accomplished by the clerk of the tax court filing a [*certified*] copy of the complaint with the Director of the Department of Revenue and with the secretary or clerk of the municipal corporation. When a complaint is filed under this section by 10 or more interested taxpayers, if following perfection of the court's jurisdiction to hear the case:

(A) One or more of the taxpayers withdraws from the proceedings, and five or more of the taxpayers do not withdraw, the court shall nevertheless retain jurisdiction to hear the matter; or

(B) One or more of the taxpayers withdraws from the proceedings, and fewer than five of the taxpayers remain parties and do not withdraw, the court shall not retain jurisdiction to hear the matter but shall dismiss the case with prejudice.

(b) The complaint shall state the facts and the grounds upon which the plaintiff contends the tax should be voided or modified. The case shall proceed thereafter in the manner provided in ORS 305.405 to 305.494.

(3) If the tax court finds that the budget and the tax certification in question were not prepared and made in substantial compliance with ORS 294.305 to 294.565 and any other applicable law relating to the making of ad valorem property taxes, it shall declare void or modify any such tax and shall direct that such action be taken, all as in the circumstances it shall deem appropriate.

SECTION 2. 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 a principal or secondary industrial property, the taxpayer may elect to proceed directly to 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) The complaint shall be entitled in the name of the person filing the complaint as plaintiff and the Department of Revenue or the county assessor, whichever did the appraisal, as defendant. Service of the complaint upon the department shall be accomplished by the clerk of the tax court filing [*the certified*] a copy of the complaint with the Director of the Department of Revenue. 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) 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 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) 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 3. ORS 305.418 is amended to read:

305.418. Any complaint required by law to be filed with the Oregon Tax Court [*which*] **that** is:

(1) Transmitted through the United States mail, shall be deemed filed (a) on the date shown by the post-office cancellation mark stamped upon the envelope containing it, or (b) on the date it was mailed if there is also mailed to the tax court a declaration of mailing, signed by the appealing party or the attorney of the appealing party and verified by oath or affirmation, subject to penalties for false swearing, in substantially the following form:

DECLARATION OF MAILING

I hereby declare under the penalties for false swearing contained in ORS chapter 162 that on the _____ day of _____, 2____, I deposited a complaint entitled _____, and dated _____, in a sealed envelope, with postage prepaid, in the United States Post Office at _____, Oregon (or other state of mailing), addressed to the Oregon Tax Court, [520 Justice Building, 1162 Court] **1163 State** Street, Salem, Oregon [97310] **97301-2563** (or current address).

(Signature of appealing party or the attorney of the appealing party)

(2) Lost in transmission through the United States mail, shall be deemed filed on the date it was mailed if the appealing party:

(a) Can establish by competent evidence satisfactory to the tax court that the complaint was deposited on or before the date due for filing in the United States mail and addressed correctly to the court; and

(b) Files with the court a duplicate of the lost complaint[, *with certified copy as required by ORS 305.560,*] within 30 days after written notification is given by the court of its failure to receive such complaint, but in no event later than 90 days after the date the complaint was otherwise required to be filed under ORS 305.560.

SECTION 4. ORS 305.560 is amended to read:

305.560. (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 [an original and one certified copy of] 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 [certified] copies of all complaints and petitions on the Department of Revenue. Service upon the department shall be accomplished by the clerk of the tax court filing the [certified] copy of the complaint with the Director of the Department of Revenue. 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 [original] 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 of the department, if any, shall be attached to the complaint. The taxpayer shall have the right to appear and be heard.

(4)(a) At any time in the course of any appeal before the tax court, 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.

SECTION 5. ORS 305.583 is amended to read:

305.583. (1) An interested taxpayer may petition the regular division of the Oregon Tax Court to determine a question described in ORS 305.580. For purposes of this section and a question described in ORS 305.580 (1)(a), "interested taxpayer" means a person that is subject to the tax, fee, charge or assessment in question. For purposes of this section and a question described in ORS 305.580 (1)(b), "interested taxpayer" means a person that is subject to a tax, fee, charge or assessment that is pledged to secure or available for payment of bonded indebtedness described in section 11 (11)(d), Article XI of the Oregon Constitution.

(2) The petition shall be filed and perfected in the following manner only:

(a) The petitioner shall file [an original and two certified copies of] a petition with the clerk of the tax court at its principal office in Salem, Oregon. The petition shall name as respondent the government unit that imposes the tax, fee, charge or assessment, that issues the bonded indebtedness or, in the case of an urban renewal agency, that receives the taxes. The filing in the tax court shall constitute the perfection of the petition. The clerk of the tax court shall serve the government unit by mailing a [certified] copy of the petition to the recording officer or chief administrative officer of the local government unit or to the Attorney General if the tax, fee, charge or assessment in question is imposed by the State of Oregon. The clerk also shall serve a copy of any petition naming a local government unit as respondent upon the Oregon Department of Justice.

(b) The petition shall state the facts and grounds upon which the petitioner contends that the tax, fee, charge or assessment is affected by section 11 or 11b, Article XI of the Oregon Constitution, or that a use of the proceeds of bonded indebtedness is not authorized. The case shall proceed

thereafter in the manner provided for appeals concerning ad valorem property tax assessments. ORS 305.405 to 305.494 shall apply to such actions.

(3)(a) Except as provided in subsections (4) to (7) of this section, in the case of a question regarding the effect of the limits of section 11b, Article XI of the Oregon Constitution, on any tax, fee, charge or assessment that is imposed under a resolution or ordinance approved by the governing body of a local government unit, the petition shall be filed within 60 days after the action of the governing body approving the ordinance or resolution, adopting a new ordinance or resolution or changing an existing ordinance or resolution under which the tax, fee, charge or assessment is imposed, if the resolution or ordinance includes a classification of the tax, fee, charge or assessment as subject to or not subject to section 11 or 11b, Article XI of the Oregon Constitution. If the local government unit has not classified the tax, fee, charge or assessment, the petition shall be filed within 60 days after the later of:

(A) The last date, but no later than November 15, that the tax statements were mailed for the tax year in which the tax, fee, charge or assessment was imposed; or

(B) The date of imposition of the tax, fee, charge or assessment on the petitioner.

(b) If the local government unit adopts an ordinance or resolution classifying all or any of the taxes, fees, charges or assessments it imposes as subject to or not subject to section 11 or 11b, Article XI of the Oregon Constitution, as described in ORS 310.145, the petition shall be filed within 60 days after the governing body adopts the ordinance or resolution.

(4) In the case of a question concerning any tax, fee, charge or assessment that is characterized by the local government unit as an assessment for local improvements, the petition shall be filed within 60 days after the local government unit gives notice of its intention to characterize the charge as an assessment for local improvements. Notice may be given to affected property owners by the local government unit either when a local improvement district is formed, in a notice of intent to assess given by the local government unit or by other individual notice prior to assessment. Notice shall be given no later than the date the assessment is imposed. Notice given as provided under this subsection is in lieu of the notice required under subsection (8) of this section.

(5) In the case of a question concerning any taxes levied to pay principal and interest on bonded indebtedness approved by the governing body of a local government unit, the petition shall be filed within 60 days after the date the issuance of the bonded indebtedness was approved by the governing body of the local government unit if the resolution or ordinance of the governing body authorizing issuance of the bonded indebtedness includes a classification of the bonded indebtedness as subject to or not subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution. If the local government unit has not classified the bonded indebtedness, the petition shall be filed within 60 days after the date specified in subsection (3)(a) of this section.

(6) In the case of a question concerning any taxes levied to pay principal and interest on bonded indebtedness not subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, that was approved by the electors of the local government unit at an election held on or after September 29, 1991, the petition shall be filed within 60 days after the date of the election at which the question of issuing the bonded indebtedness was approved by the electors of the local government unit.

(7) In the case of a question concerning the effect of section 11 or 11b, Article XI of the Oregon Constitution, on any tax, fee, charge or assessment imposed by the state, the petition shall be filed within 60 days after the first imposition of the tax, fee, charge or assessment by a state agency. For purposes of this subsection, a tax, fee, charge or assessment shall be considered imposed when it is due as provided by statute or when the state agency notifies a person that the tax, fee, charge or assessment is due.

(8) A local government unit:

(a) Shall give notice of its adoption of an ordinance or resolution classifying any of its taxes, fees, charges or assessments as not being subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, by publishing, within 15 days after adoption of the ordinance or resolution, an advertisement in a newspaper of general circulation in the county in which the local government

unit is located or, if there is no newspaper of general circulation, in a newspaper of general circulation in a contiguous county.

(b) May give notice of its adoption of an ordinance or resolution specifying the authorized uses of the proceeds of bonded indebtedness by publishing, within 15 days after adoption of the ordinance or resolution, an advertisement in a newspaper of general circulation in the county in which the local government unit is located or, if there is no newspaper of general circulation, in a newspaper of general circulation in a contiguous county.

(9) A notice described in subsection (8) of this section shall:

(a) Appear in the general news section of the newspaper, not in the classified advertisements;

(b) Measure at least three inches square;

(c) Be printed in a type size at least equal to 8-point type; and

(d) State that the local government unit has adopted a resolution or ordinance:

(A) Classifying one or more of its taxes, fees, charges or assessments as not being subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, that the reader may contact a designated individual within the local government unit to obtain a copy of the ordinance or resolution and that judicial review of the classification of the taxes, fees, charges or assessments may be sought within 60 days of the date of the resolution or ordinance; or

(B) Specifying the authorized uses of the proceeds of bonded indebtedness, that the reader may contact a designated individual within the local government unit to obtain a copy of the ordinance or resolution and that judicial review of the specification of authorized uses may be sought within 60 days of the date of the resolution or ordinance.

(10) An ordinance or resolution that results in a mere change in the amount of a tax, fee, charge or assessment and does not result in a change in the characteristics or attributes of the tax, fee, charge or assessment, or contain a change in purpose to which the revenue is applied, may not be considered a change that may result in a proceeding commenced under subsection (3) of this section.

(11) In the case of a question concerning the authorized uses of the proceeds of bonded indebtedness, if the governing body has not published the notice described in subsection (8)(b) of this section, the petition shall be filed within 180 days after the questioned use of the proceeds is made.

SECTION 6. ORS 305.585 is amended to read:

305.585. (1) A local government unit may petition the regular division of the Oregon Tax Court to determine whether the limits of section 11b, Article XI of the Oregon Constitution apply to a tax, fee, charge or assessment of another local government unit if the boundaries of both units include common territory and if the petitioning local government unit will lose or has lost revenue because of the tax, fee, charge or assessment that is the subject of the petition.

(2) The petitioner shall file [*an original and two certified copies of*] a petition with the clerk of the tax court at its principal office in Salem, Oregon. The petition shall name the local government unit that imposes the tax, fee, charge or assessment as respondent. Such filing in the tax court shall constitute the perfection of the petition. The clerk of the tax court shall serve the respondent local government unit by mailing a [*certified*] copy of the petition to the recording officer or chief administrative officer of the local government unit. The clerk also shall serve a copy of the petition upon the Oregon Department of Justice.

(3) The petition shall state the facts and grounds upon which the petitioner contends that the tax, fee, charge or assessment at issue is not subject to the limits of section 11b, Article XI of the Oregon Constitution. The case shall proceed thereafter in the manner provided for appeals concerning ad valorem property tax assessments. ORS 305.405 to 305.494 shall apply to such actions.

(4) The petition shall be filed not later than 30 days after the date the respondent local government unit filed its certificate required under ORS 310.060 with the county assessor.

SECTION 7. 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.

Passed by Senate February 14, 2005

.....
Secretary of Senate

.....
President of Senate

Passed by House May 31, 2005

.....
Speaker of House

Received by Governor:

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

Approved:

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

.....
Governor

Filed in Office of Secretary of State:

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

.....
Secretary of State