Senate Bill 609

Sponsored by COMMITTEE ON FINANCE AND REVENUE (at the request of Association of Oregon Industries)

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.**

Creates rebuttable presumption of harm to party that discloses confidential business records, tax returns or documents containing trade secrets in tax court. Modifies procedure for obtaining protective order before tax court magistrate or judge.

Applies to appeals of tax court determinations filed on or after effective date of Act.

Takes effect on 91st day following adjournment sine die.

1 **A BILL FOR AN ACT**

2 Relating to protective orders in tax court proceedings; creating new provisions; amending ORS

3   305.430; and prescribing an effective date.

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

5   **SECTION 1.** ORS 305.430 is amended to read:

6   305.430. (1) Except as provided in subsections (2) and (3) of this section, hearings before the

7 judge or a magistrate of the tax court shall be open to the public. All proceedings in the regular

8 division of the tax court shall be reported unless waived by the parties with the consent of the

9 court. The expense of reporting shall be paid by the state from the appropriation for the court.

10 Proceedings before the magistrate division shall not be reported.

11   (2) If information is confidential under ORS 308.411 (4) or by court order under ORS 305.420 (4),

12 and is introduced into evidence in any hearing before the tax court, the court first shall make such

13 order or orders as are necessary to protect the confidentiality of the information.

14   (3) In any proceeding before a magistrate or before the tax court judge [*in which*] **involving**

15 confidential business records, tax returns or documents containing trade secrets [*are*] to be intro-

16 duced into evidence, upon motion of a party to the proceeding, the magistrate or judge may make

17 such protective orders as may be necessary to protect the confidentiality of such records or the

18 information contained therein. In determining whether such protective orders should be issued,

19 **there shall be a rebuttable presumption that disclosure of confidential business records, tax**

20 **returns and documents containing trade secrets will cause harm to the disclosing party and**

21 the court shall weigh the **potential** harm **that could be** suffered by the disclosing party against any

22 benefit received by the public as a result of the disclosure. Complaints, pleadings and other filings

23 containing confidential business record information, tax return information or trade secret informa-

24 tion shall be subject to the provisions of this subsection.

25   (4) In a matter involving a request for a protective order under subsections (2) and (3) of this

26 section, the decision of [*the judge or*] a magistrate of the tax court **may be appealed to the regular**

27 **division of the tax court and the magistrate shall stay the case on the merits until the re-**

28 **quest for a protective order is resolved by the tax court judge or the Supreme Court. A de-**

29 **cision of the tax court judge resolving a request for a protective order** shall be a final order

30 for purposes of appeal to the Supreme Court. The parties may appeal the issue of the protective

1   order to the Supreme Court at any time after the protective order was granted or denied **by the**

2   **tax court judge**. Upon appeal to the Supreme Court, the [*judge or a magistrate of the tax court*

3   *may*] **court shall** stay the case on the merits until a resolution of the protective order issue is de-

4   termined by the Supreme Court.

5   **SECTION 2. The amendments to ORS 305.430 by section 1 of this 2009 Act apply to ap-**

6   **peals of tax court determinations filed on or after the effective date of this 2009 Act.**

7   **SECTION 3. This 2009 Act takes effect on the 91st day after the date on which the reg-**

8   **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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