

Enrolled House Bill 2576

Sponsored by Representative RESCHKE, Senator SMITH DB; Representative WRIGHT (Pre-session filed.)

CHAPTER

AN ACT

Relating to judicial review of local income tax questions; creating new provisions; amending ORS 305.275, 305.410, 305.425, 305.437, 305.447, 305.490 and 305.560; and prescribing an effective date.

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

SECTION 1. ORS 305.275 is amended to read:

305.275. (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**

(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 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.

SECTION 2. ORS 305.410 is amended to read:

305.410. (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 arising under any tax law of a local government that is imposed upon or measured by net income. The tax court does not have jurisdiction to review determinations of a local government relating to the collection, enforcement, administration or distribution of a tax described in this subsection.

[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 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.

SECTION 3. ORS 305.425 is amended to read:

305.425. (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 local government in its administration of a tax described in ORS 305.410 (3)**, a board of property tax appeals or of any other administrative agency, 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.

SECTION 4. ORS 305.437 is amended to read:

305.437. (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.

SECTION 5. ORS 305.447 is amended to read:

305.447. If, in an appeal under ORS 305.445 involving taxes **imposed** upon or measured by net income **and administered by the Department of Revenue and** 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:

(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.

SECTION 6. ORS 305.490 is amended to read:

305.490. (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 involving taxes upon or measured by net income **and arising under any law administered by the Department of Revenue and** 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.

(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.

SECTION 7. 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 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 a 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 imposed by the local government.** 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 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 8. The amendments to ORS 305.275, 305.410, 305.425, 305.437, 305.447, 305.490 and 305.560 by sections 1 to 7 of this 2023 Act apply to petitions filed on or after the effective date of this 2023 Act.

SECTION 9. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by House April 10, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 21, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State