

Requested by Representative RESCHKE

**PROPOSED AMENDMENTS TO
HOUSE BILL 2576**

1 On page 1 of the printed bill, line 3, delete “305.410;” and insert “305.275,
2 305.410, 305.425, 305.437, 305.447, 305.490 and 305.560;”.

3 Delete lines 5 through 30 and delete page 2 and insert:

4 **“SECTION 1.** ORS 305.275 is amended to read:

5 “305.275. (1) Any person may appeal under this subsection to the
6 magistrate division of the Oregon Tax Court as provided in ORS 305.280 and
7 305.560, if all of the following criteria are met:

8 “(a) The person must be aggrieved by and affected by an act, omission,
9 order or determination of:

10 “(A) The Department of Revenue in its administration of the revenue and
11 tax laws of this state;

12 “(B) A county board of property tax appeals other than an order of the
13 board;

14 “(C) A county assessor or other county official, including but not limited
15 to the denial of a claim for exemption, the denial of special assessment under
16 a special assessment statute, or the denial of a claim for cancellation of as-
17 sessment; or

18 “(D) A tax collector[.]; **or**

19 **“(E) A local government in its administration of a tax described in**
20 **ORS 305.410 (3), if the person first exhausts all administrative remedies**
21 **provided before the local government.**

1 “(b) The act, omission, order or determination must affect the property
2 of the person making the appeal or property for which the person making the
3 appeal holds an interest that obligates the person to pay taxes imposed on
4 the property. As used in this paragraph, an interest that obligates the person
5 to pay taxes includes a contract, lease or other intervening instrumentality.

6 “(c) There is no other statutory right of appeal for the grievance.

7 “(2) Except as otherwise provided by law, any person having a statutory
8 right of appeal under the revenue and tax laws of the state may appeal to
9 the tax court as provided in ORS 305.404 to 305.560.

10 “(3) If a taxpayer may appeal to the board of property tax appeals under
11 ORS 309.100, then no appeal may be allowed under this section. The appeal
12 under this section is from an order of the board as a result of the appeal filed
13 under ORS 309.100 or from an order of the board that certain corrections,
14 additions to or changes in the roll be made.

15 “(4) A county assessor who is aggrieved by an order of the county board
16 of property tax appeals may appeal from the order as provided in this sec-
17 tion, ORS 305.280 and 305.560.

18 **“SECTION 2.** ORS 305.410 is amended to read:

19 “305.410. (1) Subject only to the provisions of ORS 305.445 relating to ju-
20 dicial review by the Supreme Court and to subsection (2) of this section, the
21 tax court shall be the sole, exclusive and final judicial authority for the
22 hearing and determination of all questions of law and fact arising under the
23 tax laws of this state. For the purposes of this section, and except to the
24 extent that they preclude the imposition of other taxes, the following are not
25 tax laws of this state:

26 “(a) ORS chapter 577 relating to Oregon Beef Council contributions.

27 “(b) ORS 576.051 to 576.455 relating to commodity commission assess-
28 ments.

29 “(c) ORS chapter 477 relating to fire protection assessments.

30 “(d) ORS chapters 731, 732, 733, 734, 737, 742, 743, 743A, 743B, 744, 746,

1 748 and 750 relating to insurance company fees and taxes.

2 “(e) ORS chapter 473 relating to liquor taxes.

3 “(f) ORS chapter 825 relating to motor carrier taxes.

4 “(g) ORS chapter 319 relating to motor vehicle and aircraft fuel taxes and
5 the road usage charges imposed under ORS 319.885.

6 “(h) ORS title 59 relating to motor vehicle and motor vehicle operators’
7 license fees and ORS title 39 relating to boat licenses.

8 “(i) ORS chapter 578 relating to Oregon Wheat Commission assessments.

9 “(j) ORS chapter 462 relating to racing taxes.

10 “(k) ORS chapter 657 relating to unemployment insurance taxes.

11 “(L) ORS chapter 656 relating to workers’ compensation contributions,
12 assessments or fees.

13 “(m) ORS 311.420, 311.425, 311.455, 311.650, 311.655 and ORS chapter 312
14 relating to foreclosure of real and personal property tax liens.

15 “(n) ORS 409.800 to 409.816 and 409.900 relating to long term care facility
16 assessments.

17 “(2) The tax court and the circuit courts shall have concurrent jurisdic-
18 tion to try actions or suits to determine:

19 “(a) The priority of property tax liens in relation to other liens.

20 “(b) The validity of any deed, conveyance, transfer or assignment of real
21 or personal property under ORS 95.060 and 95.070 (1983 Replacement Part)
22 or 95.200 to 95.310 where the Department of Revenue has or claims a lien or
23 other interest in the property.

24 “(3) **Subject only to the provisions of ORS 305.445 relating to judicial**
25 **review by the Supreme Court, the tax court shall be the sole, exclusive**
26 **and final judicial authority for the hearing and determination of all**
27 **questions of law and fact concerning any tax law of a local govern-**
28 **ment that is imposed upon or measured by net income. The tax court**
29 **does not have jurisdiction to review determinations of a local govern-**
30 **ment relating to the collection, enforcement, administration or dis-**

1 **tribution of a tax described in this subsection.**

2 “[3] (4) Subject only to the provisions of ORS 305.445 relating to judicial
3 review by the Supreme Court, the tax court shall be the sole, exclusive and
4 final judicial authority for the hearing and determination of all questions
5 of law and fact concerning the authorized uses of the proceeds of bonded
6 indebtedness described in section 11 (11)(d), Article XI of the Oregon Con-
7 stitution.

8 “[4] (5) Except as permitted under section 2, amended Article VII,
9 Oregon Constitution, this section and ORS 305.445, no person shall contest,
10 in any action, suit or proceeding in the circuit court or any other court, any
11 matter within the jurisdiction of the tax court.

12 **“SECTION 3.** ORS 305.425 is amended to read:

13 “305.425. (1) All proceedings before the judge **or a magistrate** of the tax
14 court shall be original, independent proceedings and shall be tried without
15 a jury and de novo.

16 “(2) If a statute provides for an appeal to or a review by the court of an
17 order, act, omission or determination of the Department of Revenue, **a local**
18 **government in its administration of a tax described in ORS 305.410 (3),**
19 a board of property tax appeals or of any other administrative agency, the
20 proceeding shall be an original proceeding in the nature of a suit in equity
21 to set aside such order or determination or correct the act or omission. The
22 time within which the statute provides that the proceeding shall be brought
23 is a period of limitations and is not jurisdictional.

24 “(3) All hearings and proceedings before the tax court judge shall be in
25 accordance with the rules of practice and procedure promulgated by the
26 court, which shall conform, as far as practical to the rules of equity practice
27 and procedure in this state.

28 **“SECTION 4.** ORS 305.437 is amended to read:

29 “305.437. (1) **In any case arising under the tax laws of this state or**
30 **under any law administered by the Department of Revenue,** whenever

1 it appears to the Oregon Tax Court that proceedings before it have been in-
2 stituted or maintained by a taxpayer primarily for delay or that the
3 taxpayer's position in such proceeding is frivolous or groundless, a penalty
4 in an amount not to exceed \$5,000 shall be awarded to the Department of
5 Revenue by the Oregon Tax Court in its judgment. The penalty so awarded
6 shall be paid within 10 days after the judgment becomes final. If the penalty
7 remains unpaid, the department may collect the amount awarded in the same
8 manner as income taxes are collected under ORS 314.430.

9 “(2) As used in this section:

10 “(a) A taxpayer's position is ‘frivolous’ if there was no objectively rea-
11 sonable basis for asserting the position.

12 “(b) ‘Position’ means any claim, defense or argument asserted by a tax-
13 payer without regard to any other claim, defense or argument asserted by the
14 taxpayer.

15 **“SECTION 5.** ORS 305.447 is amended to read:

16 “305.447. If, in an appeal under ORS 305.445 involving taxes **imposed**
17 upon or measured by net income **and administered by the Department of**
18 **Revenue and** in which an individual taxpayer is a party, the court grants
19 the refund claimed by the taxpayer or denies the additional assessment of
20 taxes claimed by the department [*of Revenue*] to be due from the taxpayer,
21 the court may allow the taxpayer:

22 “(1) Reasonable attorney fees for the appeal under ORS 305.445 and for
23 any prior proceeding in the matter before the tax court; and

24 “(2) Reasonable expenses as determined by the court in addition to costs
25 and disbursements. Expenses include accountant fees and fees for other ex-
26 perts incurred by the taxpayer in preparing for and conducting the appeal
27 under this section and any prior proceeding in the matter before the tax
28 court.

29 **“SECTION 6.** ORS 305.490 is amended to read:

30 “305.490. (1) Plaintiffs or petitioners filing a complaint or petition in the

1 tax court shall pay, at the time of filing for each complaint or petition, a
2 filing fee as follows:

3 “(a) For a complaint or petition in the magistrate division, \$50.

4 “(b) For a complaint or petition in the regular division, the filing fee es-
5 tablished under ORS 21.135.

6 “(2) A plaintiff or petitioner may, by application at the time of filing,
7 request waiver or deferral of any filing fee under ORS 21.680 to 21.698. If the
8 tax court grants a fee waiver or deferral, or the plaintiff or petitioner pays
9 the outstanding filing fee in full within 14 days after the date the court de-
10 nies the fee waiver or deferral, the date of the filing of the complaint or
11 petition is:

12 “(a) The date the complaint or petition and application were deposited
13 or dispatched under ORS 305.418, if applicable; or

14 “(b) The date the complaint or petition and application were otherwise
15 filed under court rules.

16 “(3) Neither the State of Oregon, nor any county, school district, munic-
17 ipal corporation or other public corporation therein, nor any officer of any
18 such public political division or corporation, appearing in the representative
19 capacity of the officer of any public political division or corporation, shall
20 be required to pay the fee prescribed under this section. The party entitled
21 to costs and disbursements on such appeal shall recover from the opponent
22 of the party the amount so paid upon order of the court, as in equity suits
23 in the circuit court.

24 “(4)(a) If, in any proceeding before the tax court judge involving taxes
25 upon or measured by net income **and arising under any law administered**
26 **by the Department of Revenue and** in which an individual taxpayer is a
27 party, or involving inheritance or estate taxes, or involving transit taxes
28 imposed on net earnings from self-employment, the court grants a refund
29 claimed by the executor or taxpayer or denies in part or wholly an additional
30 assessment of taxes claimed by the department [*of Revenue*] to be due from

1 the estate or taxpayer, the court may allow the taxpayer, in addition to costs
2 and disbursements, the following:

3 “(A) Reasonable attorney fees for the proceeding under this subsection
4 and for the prior proceeding in the matter, if any, before the magistrate; and

5 “(B) Reasonable expenses as determined by the court. Expenses include
6 accountant fees and fees of other experts incurred by the executor or indi-
7 vidual taxpayer in preparing for and conducting the proceeding before the
8 tax court judge and the prior proceeding in the matter, if any, before the
9 magistrate.

10 “(b) Payment of attorney fees or reasonable expenses under this sub-
11 section shall be made by the department [*of Revenue*] in the manner provided
12 by ORS 305.790.

13 “(5)(a) If, in any proceeding before the tax court judge involving ad
14 valorem property taxation, exemptions, special assessments or omitted prop-
15 erty, the court finds in favor of the taxpayer, the court may allow the tax-
16 payer, in addition to costs and disbursements, the following:

17 “(A) Reasonable attorney fees for the proceeding under this subsection
18 and for the prior proceeding in the matter, if any, before the magistrate; and

19 “(B) Reasonable expenses as determined by the court. Expenses include
20 fees of experts incurred by the individual taxpayer in preparing for and
21 conducting the proceeding before the tax court judge and the prior proceed-
22 ing in the matter, if any, before the magistrate.

23 “(b) Payment of attorney fees or reasonable expenses under this sub-
24 section shall be made by the department [*of Revenue*] in the manner provided
25 by ORS 305.790.

26 “(6) All fees and other moneys received or collected by the clerk by virtue
27 of the office of the clerk shall be paid over to the State Treasurer and shall
28 be held by the clerk in the General Fund as miscellaneous receipts.

29 **“SECTION 7.** ORS 305.560 is amended to read:

30 “305.560. (1)(a) Except for an order, or portion thereof, denying the dis-

1 cretionary waiver of penalty or interest by the Department of Revenue, an
2 appeal under ORS 305.275 may be taken by filing a complaint with the clerk
3 of the Oregon Tax Court at its principal office at Salem, Oregon, within the
4 time required under ORS 305.280.

5 “(b) The clerk of the tax court shall serve copies of all complaints and
6 petitions on the department [*of Revenue*], **or, if applicable, on a local**
7 **government administering a tax described in ORS 305.410 (3)**. Service
8 upon the department **or the local government** shall be accomplished by the
9 clerk of the tax court filing the copy of the complaint with the Director of
10 the Department of Revenue **or the administrator of the tax imposed by**
11 **the local government**. Except as otherwise provided by law, other service
12 shall be accomplished as provided in the rules of practice and procedure
13 promulgated by the tax court.

14 “(c)(A) The complaint shall be entitled in the name of the person filing
15 the same as plaintiff and the department [*of Revenue*], county, taxpayer or
16 other person or entity as defendant. If the complaint relates to value of
17 property for ad valorem property tax purposes and the county has made the
18 appraisal, the complaint shall be entitled in the name of the person filing the
19 same as plaintiff and the county assessor as defendant.

20 “(B) If any, a copy of the order of the department or board of property
21 tax appeals shall be attached to the complaint.

22 “(2) The complaint shall state the nature of the plaintiff’s interest, the
23 facts showing how the plaintiff is aggrieved and directly affected by the or-
24 der, act, omission or determination and the grounds upon which the plaintiff
25 contends the order, act, omission or determination should be reversed or
26 modified. A responsive pleading shall be required of the defendant.

27 “(3) In any case in which the taxpayer is not the appealing party, a copy
28 of the complaint shall be served upon the taxpayer by the appealing party
29 by certified mail within the period for filing an appeal, and an affidavit
30 showing such service shall be filed with the clerk of the tax court. A copy

1 of the order of the department, if any, shall be attached to the complaint.
2 The taxpayer shall have the right to appear and be heard.

3 “(4)(a) At any time in the course of any appeal before the tax court, the
4 department may intervene as a matter of right. A copy of any order or
5 judgment issued by the tax court in any case in which the department is an
6 intervenor shall be served upon the department in the manner provided in
7 subsection (1)(b) of this section.

8 “(b) The tax court, in its discretion, may permit other interested persons
9 to intervene by filing a complaint in such manner and under such conditions
10 as the court may deem appropriate.

11 **“SECTION 8. The amendments to ORS 305.275, 305.410, 305.425,
12 305.437, 305.447, 305.490 and 305.560 by sections 1 to 7 of this 2023 Act
13 apply to petitions filed on or after the effective date of this 2023 Act.**

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

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