

**TESTIMONY ON HB 2576
BEFORE THE HOUSE COMMITTEE ON REVENUE
JANUARY 31, 2023**

**PRESENTED BY: ROBERT MANICKE, OREGON TAX COURT JUDGE
OREGON JUDICIAL DEPARTMENT**

Chair Nathanson, Vice Chairs Reschke and Walters, and Members of the Committee:

My name is Robert Manicke, and I am the Judge and administrative head of the Oregon Tax Court, located about two blocks to your right on State Street across 12th. The Oregon Judicial Department (OJD) is neutral on HB 2576 and we provide this testimony for informational purposes.

Introduction to the Oregon Tax Court.

As very quick background, the legislature formed the Tax Court in 1961 in order to concentrate all cases involving state tax law in one court with specialized expertise, instead of having those cases spread among all the local county circuit courts. Today, we handle mostly state income tax cases and property tax cases. Since 1995, the Tax Court has had two divisions. The Magistrate Division is where almost all tax cases start, and 90 percent of cases are resolved there without any further appeal. When a party appeals a magistrate's decision, the case comes to me in the Regular Division, where I serve as the only judge. Any further appeal goes directly to the Oregon Supreme Court.

What does HB 2576 do?

HB 2576 would make the Tax Court the exclusive and final judicial authority for all cases concerning local income-based taxes.

At present, Oregon has four local income taxes, and all are in or around Portland. They are:

- The City of Portland Business License Tax;
- The Multnomah County Business Income Tax;
- Multnomah County's Preschool for All Personal Income Tax; and
- The Metro regional government's Supportive Housing Services Business and Personal Income Tax.

All four of these taxes are currently administered by the Portland Revenue Division (PRD), which has a local Appeals Board that hears disputes. A taxpayer who is dissatisfied with the decision of the Appeals Board can sue the city in Multnomah County Circuit Court. As some of you may remember, there have been local income tax measures on the ballot in other parts of the state from time to time, and this bill would apply if any of those are adopted in the future.

I note that there is precedent for Tax Court jurisdiction over local income taxes. A statute that has existed since the 1970s (ORS 305.620) gives the Tax Court jurisdiction over local income taxes if the locality uses the Oregon Department of Revenue to administer the tax. Additionally,

until about 30 years ago, Multnomah County used the Oregon Department of Revenue to administer the county's business income tax, so those cases came to the Tax Court. However, the county eventually hired Portland's Revenue Division as its tax administrator, and those cases now go to Multnomah County Circuit Court. HB 2576 would route local income tax cases to the Tax Court instead of circuit courts, even where the local jurisdiction does not have an agreement with the Department of Revenue to administer its tax.

Suggested Clarifications.

That is my interpretation of the bill and, although OJD is neutral on the bill, I do want to point out a few areas where further clarification of intent or technical amendments would be helpful if you are inclined to move forward with the bill.

First, it's unclear whether the intent is to continue the work of local tribunals such as Portland's Appeals Board. If so, the Tax Court would simply review decisions of those local tribunals, just as Multnomah County Circuit Court does today. Assuming that is the intent, our preliminary data suggests that the number of cases reaching the Tax Court would likely be small. On the other hand, if the intent is to eliminate those local tribunals, we assume that a larger number of cases would reach the Tax Court. This first issue could be clarified by modifying existing statutes that govern when a party has standing to sue in the Tax Court, including ORS 305.275.

Second, the current version of the bill would have all local income tax cases that reach the Tax Court start in the Magistrate Division, just like almost all cases the Tax Court handles today. We suggest confirming that that is the intention because there are big differences between the two divisions of the Tax Court. The 1995 legislature created the Magistrate Division as an intentionally informal forum, where neither party must be represented by a lawyer. In fact, in most Magistrate Division cases, neither the government nor the taxpayer is represented by a lawyer. In addition, the formal rules of evidence do not apply in the Magistrate Division. However, if the case is appealed to me in the Regular Division, more formal rules apply, and all parties must have an attorney except individual taxpayers. Only a few kinds of cases, including declaratory judgment actions, start in the Regular Division.

Third, the Supreme Court generally has statutory authority to review decisions of the Tax Court. See current ORS 305.410, subsections (1) and (3). The current version of the bill, however, does not appear to allow for Supreme Court review as it states that the Tax Court's authority is "sole, exclusive, and final." It does not explicitly refer to Supreme Court review. This is a policy question for the legislature, but I note that tax cases regularly raise questions under the Oregon constitution, the United States Constitution, or both.

Conclusion.

In conclusion, I would be happy to work with proponents and any other interested stakeholders on a technical amendment that addresses these points.

Thank you for the opportunity to provide additional information on HB 2576. I welcome any questions.