

IN THE OREGON TAX COURT
REGULAR DIVISION
Court Administration

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OREGON TAX COURT
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STATE COURT ADMINISTRATOR
BY _____

IN THE MATTER OF THE ADOPTION)
OF REVISIONS TO THE RULES OF THE)
OREGON TAX COURT - REGULAR) **ORDER ADOPTING REVISIONS TO**
DIVISION) **REGULAR DIVISION RULES**

The following are revisions to the Rules of the Regular Division of the Oregon Tax Court. Material being deleted is *italicized* and [*bracketed*]; material being added or altered is set forth in **bold** with underlining. If an existing rule with multiple subsections is being revised, subsections and footnotes containing no revisions are omitted and denoted by asterisks.

RULE 1.
APPEALS TO THE REGULAR DIVISION; CORRESPONDENCE; FEES;
REPRESENTATION

C Appeals by Special Designation. Appeals are specially designated for hearing in the Regular Division by two methods: (1) by rule, and (2) by court order.

C(1) Special Designation by Rule. Based on statutory language or direction, the following appeals shall be filed directly with the Regular Division:

C(1)(a) Petitions or complaints for declaratory judgment under ORS chapter 28, including review of declaratory rulings of the Department of Revenue issued under ORS 305.105.

C(1)(b) Petitions for writ of mandamus under ORS chapter 34.

C(1)(c) Petitions to determine effect of constitutional limits on property taxes. *See* ORS 305.583, ORS 305.585 and ORS 305.589.

C(1)(d) Local budget law complaints. [*ORS 294.485*] **ORS 294.461.**

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F Representation.

F(1) Generally. Pursuant to ORS 9.320, the parties to any proceeding in the Regular Division shall either appear in person or be represented by an active member of the Oregon State Bar. Entities including, but not limited to, corporations, partnerships, limited liability companies, and [*unincorporated*] **unincorporated** associations, must appear through an attorney unless a specific statutory exception applies. A limited liability company may be treated as a partnership for purposes of this representation rule. *See* ORS 63.810. For purposes of this

subsection, “any proceeding in the Regular Division” includes filing a petition for special designation, but does not include filing a response to a petition for special designation. A response to a petition for special designation may be filed by the individual representing the party opposing the petition in the Magistrate Division.

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G Use of Declaration under penalty of Perjury in Lieu of Affidavit; “Declaration” Defined. A declaration under penalty of perjury, or an unsworn declaration under sections 1 to 8 of Or Laws 2013, chapter 218, if the declarant is physically outside the boundaries of the United States, may be used in lieu of any affidavit required or allowed by these rules. A declaration under penalty of perjury may be made without notice to adverse parties, must be signed by the declarant, and must include the following sentence in prominent letters immediately above the signature of the declarant: “I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.” As used in these rules, “declaration” means a declaration under penalty of perjury.

RULE 7 SERVICE OF COMPLAINTS; SUMMONS GENERALLY

A [Appeals from Magistrate Decisions] Service of Initial Pleadings; When Summons Required; Petitions for Determinations of Constitutional Limit on Property Taxes; Definitions.

[A(1) Appeals from Magistrate Decisions. Generally, service of summons is not required for appeals from Magistrate decisions. Pursuant to ORS 305.560, the court shall serve all defendants by mailing a copy of the complaint to each defendant. However, where the appealing party is NOT the taxpayer, the appealing party shall serve a summons and a copy of the complaint upon the taxpayer by certified mail. For purposes of these rules, the date of service shall be the date of mailing the copy of the complaint. In all cases, the defendant shall appear or defend within 30 days of the date of service.]

A(1) Appeals from Magistrate Decisions. An appeal from a magistrate decision commences when the appealing party files a complaint with the Regular Division and pays any required filing fee. The non-appealing party must appear or defend within 30 days of being served with a copy of the complaint. For purposes of this rule, the date of service of the complaint is the date that a copy of the complaint was mailed to the non-appealing party. The complaint, and when required, a summons, shall be served on the non-appealing party as follows:

A(1)(a) When the appealing party is the taxpayer, the court will serve the complaint on the Department of Revenue by mailing a copy of the complaint to the Director of the Department of Revenue. No summons is required.

A(1)(b) When the appealing party is not the taxpayer, the appealing party must serve a copy of the complaint and summons on the taxpayer by registered or certified mail, or by any other method permitted under TCR 7 D. The appealing party shall provide proof of service of the complaint and summons in accordance with TCR 7 F.

A(1)(c) Notwithstanding subsection A(1)(a), above, when the appeal involves an agreement between a state agency or department and a local government under ORS 305.620(1), the court shall serve all parties in the manner prescribed in ORS 305.620(8)

A(1)(d) Business Enterprise Zones

A(1)(d)(i) Appeal by Taxpayer. If the appeal involves a failure or refusal to authorize exemption for property within a Business Enterprise zone, or the disqualification from exemption of such property, and the appealing party is the taxpayer, the court will serve the complaint on the Department of Revenue by mailing a copy of the complaint to the Director of the Department of Revenue.

A(1)(d)(ii) Appeal by Party other than Taxpayer. If the appealing party is not the taxpayer, the appealing party shall serve a copy of the complaint and summons on the taxpayer by registered or certified mail, or by another method permitted under TCR 7 D. The appealing party shall provide proof of service of the complaint and summons in accordance with TCR 7 F.

A(2) Petitions for Determination[s] of Constitutional Limit on Property Taxes. The use of a summons is not required for petitions to the Regular Division of the Tax Court for determinations under Article XI, section 11(b) or 11(d). *See* ORS 305.583(3)(a); ORS 305.585(2). In such cases, the date of service for purposes of these rules shall be the date of the court's transmittal letter accompanying the copy of the petition sent to the government unit. For petitions under ORS 305.589, "service" is by publication of notice and the date of service is the 10th day after completion of publication. In all cases, the respondent shall appear or defend within 30 days of the date of service.

[A(3) Other Appeals Requiring Service of Summons. In all other cases requiring summons, such as writs of mandamus, under ORS 34.130, or where the method of service is not otherwise directed by statute, summons shall be used as directed by these rules. In all such cases, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D(5) of this rule, the defendant shall appear and defend within 30 days from the date stated in the summons, which shall be the date of the first publication.]

A(3) Service Requirements for Petitions for Writ of Mandamus. Pursuant to ORS 34.130, a writ of mandamus must be served in accordance with the requirements of ORCP 9 B.

A(4) Service Requirements in Declaratory Judgment Actions.

A(4)(a) When the party seeking a declaratory judgment is the taxpayer and the defendant is the Department of Revenue, any other state agency or department, or any

political subdivision of this state, the court will serve the defendant, or defendants, by mailing a copy of the complaint to the administrative head of any defendant. No summons is required.

A(4)(b) When the party seeking a declaratory judgment is the Department of Revenue, any other state agency or department, or any political subdivision of this state, the plaintiff must serve the complaint on the defendant by registered or certified mail, or by any other method permitted under TCR 7 D. The plaintiff must also serve a summons on the defendant. The appealing party shall provide proof of service in accordance with TCR 7 F.

A(4)(c) In all cases the defendant must appear and defend within 30 days from the date defendant was served with a copy of the complaint. For purposes of this subsection, the date of service of the complaint is the date that a copy of the complaint was mailed to the non-appealing party.

A(5) Service Requirements for Local Budget Law Complaints. The court will serve local budget law complaints in the manner prescribed by ORS 294.461.

[A(4)] A(6) Definitions. In all cases where summons are required, the following definitions shall apply:

[A(4)(a)] A(6)(a) "Plaintiff" shall include any party issuing summons.

[A(4)(b)] A(6)(b) "Defendant" shall include any party upon whom service of summons is sought.

[A(4)(c)] A(6)(c) "True copy" of a summons and complaint means an exact and complete copy of the original summons and complaint.

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D Manner of Service.

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D(5)(b) Mailing Summons and Complaint. If the court orders service by publication and the plaintiff knows or with reasonable diligence can ascertain the defendant's current address, the plaintiff shall mail true copies of the summons and the complaint to the defendant at such address by first-class mail and by any of the following: certified, registered, or express mail with return receipt requested. If the plaintiff does not know and cannot upon diligent inquiry ascertain the current address of any defendant, a copy of the summons and the complaint shall be mailed by the methods specified above to the defendant at the defendant's last [*know*] **known** address. If the plaintiff does not know, and cannot ascertain upon diligent inquiry, the defendant's current and last known address, mailing true copies of the summons and the complaint is not required.

**RULE 10
TIME**

A Computation.

A(1) In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the date of the act, event, or default from which the designated period [or] of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a legal holiday (including Sunday), or a day or part of a day on which the court is closed for the purpose of filing documents, closed to the extent ordered by the Chief Justice, or closed before the end of normal working hours during which documents may be filed. In any of those events, the period runs until the end of the next day the court is open.

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**RULE 19
RESPONSIVE PLEADINGS**

A Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of [it] the allegation as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all of the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all of the allegations except such designated allegations or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all of the allegations of the preceding pleading, the pleader may do so by general denial of all allegations of the preceding pleading subject to the obligations set forth in TCR 17.

B Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively: accord and satisfaction[,]; arbitration and award[,]; claim preclusion[,]; discharge in bankruptcy[,]; duress[,]; estoppel[,]; failure of consideration[,]; fraud[,]; illegality[,]; issue preclusion; laches[,]; license[,]; payment[,]; release[,]; [*res judicata*,] statute of frauds[,]; statute of limitations[,]; unconstitutionality[,]; waiver[,]; and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

C Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the

responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted [*shall be*] **are** taken as denied.

RULE 39

DEPOSITIONS UPON ORAL EXAMINATION

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C Notice of examination.

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C(4) Non-stenographic recording. The notice of deposition required under subsection (1) of this section may provide that the testimony **will** be recorded by other than stenographic means, in which event the notice shall designate the manner of recording and preserving the deposition. A court may require that the deposition be taken by stenographic means if necessary to assure that the recording be accurate.

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C(6) Deposition of organization. A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall **provide notice of no fewer than three (3) days before the scheduled deposition, absent good cause or agreement of the parties and the deponent, [designate] designating the name(s) of** one or more officers, directors, managing agents, or other persons who consent to testify on its behalf[,] and [*shall set*] **setting** forth, for each person designated, the matters on which such person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

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RULE 56

EXHIBITS; VIEW OF PROPERTY

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B Exchange of Exhibits.

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B(2) Exchange in Valuation Cases.

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B(2)(c) "Appraiser" defined. For purposes of TCR 56 B, "appraiser" means any witness, other than the owner of the property at issue, whose testimony or work product is offered to establish the valuation of the property at issue.

**RULE 68
ALLOWANCE AND AWARD OF ATTORNEY FEES
AND COSTS AND DISBURSEMENTS.**

A Definitions. As used in this rule:

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A(2) Costs and disbursements. "Costs and disbursements" are reasonable and necessary expenses incurred in the prosecution or defense of an action, other than for legal services, and include the **filing fee**; fees of officers; the statutory fees for witnesses; the postage for summonses or notices; the necessary expense of copying of any public record, book or document used as evidence on the trial; recordation of any document where recordation is required to give notice of the creation, modification or termination of an interest in real property; a reasonable sum paid a person for executing any bond, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by **any** other rule or statute. The court, acting in its sole discretion, may allow as costs reasonable expenses incurred by a party for interpreter services. If such costs are not awarded and the beneficiary of the interpreter services is unable to pay, then interpreter services shall be paid for in the same manner as interpreters used in the circuit court. *See* ORS 45.275(4)(c). The expense of taking depositions shall not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute.

B Allowance of costs and disbursements. In any action, costs and disbursements shall be allowed to the prevailing party[,] unless these rules or **any** other rule or statute direct that in the particular case costs and disbursements shall not be allowed to the prevailing party or shall be allowed to some other party, or unless the court otherwise directs. If, under a special provision of these rules or any other rule or statute, a party has a right to recover costs, such party shall also have a right to recover disbursements.

C Award of and Entry of Judgment for Attorney Fees and Costs and Disbursements.

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C(2)(b) Objections. A party may object to a statement seeking attorney fees or costs and disbursements or any part thereof by written objections to the statement. The objections shall be served within 14 days after service on the objecting party of a copy of the statement. The objections shall be specific and may be founded in law or in fact and shall be deemed

controverted without further pleading. *[Statements and objections may be amended in accordance with TCR 23. Upon leave of the court, the party seeking attorney fees or costs may file a written reply.]* **The objecting party may present affidavits, declarations, and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.**

C(2)(c) Response to objections. *The party seeking an award of attorney fees may file a response to an objection filed pursuant to paragraph C(2)(b) of this rule. The response and supporting documents, if any, shall be served within seven days after service of the objection. The response shall be specific and may address issues of law or fact. The party seeking attorney fees may present affidavits, declarations, and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.*

C(2)(d) Amendments. *Statements, objections, and responses may be amended or supplemented in accordance with TCR 23.*

C(2)(e) Hearing on objections. *No hearing shall be held and the court may rule on the request for attorney fees based upon the statement, objection, response, and any accompanying affidavits or declarations unless a party has requested a hearing in the caption of the objection or response or unless the court sets a hearing on its own motion.*

[C(2)[(c)] Hearing on Objections.]

C(2)[(c)(i)](f)(i) *[If objections are filed in accordance with paragraph C(2)(b) of this rule,] **If a hearing is requested** the court, without a jury, shall hear and determine all issues of law and fact raised by *[the statement of attorney fees or costs and disbursements and by] the objection[s]. [The parties shall be given a reasonable opportunity to present affidavits, declarations and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.]**

C(2)[(c)(ii)](f)(ii) *The court shall deny or award in whole or in part the amounts sought as attorney fees or costs and disbursements.*

C(2)[(d)](g) No Timely Objections. *If objections are not timely filed the court may award attorney fees or costs and disbursements sought in the statement.*

C(2)[(e)](h) Findings and conclusions. *On the request of a party, the court shall make special findings of fact and state its conclusions of law on the record regarding the issues material to the award or denial of attorney fees. A party **must** *[shall]* make a request pursuant to this paragraph by including a request for findings and conclusions in the title of the statement of attorney fees or costs and disbursements, *[or] objection[s], or response* filed pursuant to*

paragraph (a), [or] (b), or (c) of this subsection. In the absence of a request under this paragraph, the court may make either general or special findings of fact and may state its conclusions of law regarding attorney fees.

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Being duly advised, the court adopts the revised rule as set forth above, effective January 1, 2014.

Dated this 3rd day of December 2013.



Henry C. Breithaupt
Judge