

TAX APPEALS



OREGON TAX COURT

Mailing Address:
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Salem, OR 97301

Physical Address:
1241 State Street
Salem, OR 97301

Floor 3R (Magistrate Division)
Floor 4R (Regular Division)

(503) 986-5650 (Magistrate Division)
(503) 986-5645 (Regular Division)

(800) 773-1162 (Toll Free)

Website: <https://www.courts.oregon.gov/courts/tax>
Email: Tax.Court@ojd.state.or.us.

Hours of public service operation:
MONDAY through FRIDAY
8:00 a.m. to 12 Noon and 1:00 p.m. to 5:00 p.m.

**Oregon law requires all writings submitted
to this court to be in English. ORS 1.150.**

All forms and writings must be in English. If you have another person translate your non-English answers to English, you must have the translator complete the Certificate of Translation (certificate). The certificate form is available by request from the court at 503-986-5650 (Magistrate Division), 503-986-5645 (Regular Division), or 800-773-1162 (toll free). The form is also on the court's website at <https://www.courts.oregon.gov/courts/tax/help/Pages/forms.aspx> Select "Spanish Forms and Resources" then "Translator's Certificate of Translation."

Requesting an Interpreter

If you or any of your witnesses will require an interpreter for remote or in-person court proceedings, please contact the court within ten (10) days of receiving notice of a proceeding.

**NOTE: THIS HANDBOOK IS NOT INTENDED AS LEGAL
ADVICE AND SHOULD NOT BE USED AS A
SUBSTITUTE FOR THE OREGON REVISED
STATUTES AND RULES OF THE COURT.**

This handbook is available in pdf text searchable format at
<https://www.courts.oregon.gov/courts/tax/help/Documents/TAX-CourtHandbook.pdf>

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Common terms are defined in the
glossary at the end of this handbook.

OREGON TAX COURT MISSION STATEMENT

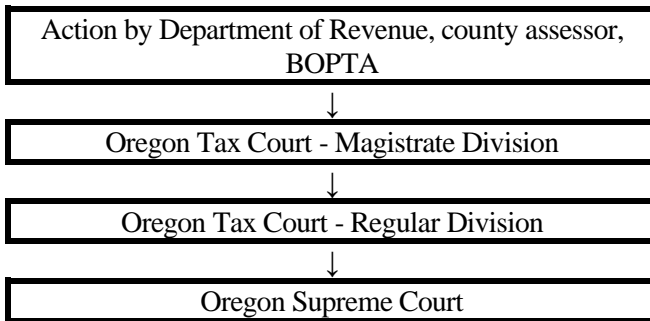
As part of the independent judicial branch of government, the Tax Court's mission is:

- *To impartially resolve disputes between taxpayers and tax administrators;*
- *To accurately apply Oregon law in written decisions for the guidance of the public; and*
- *To make its services accessible to all.*

INTRODUCTION

This Oregon Tax Court Handbook (handbook) provides general information about tax appeals and the Oregon Tax Court. It also provides information on the differences between the two divisions of the court: The Magistrate Division and the Regular Division.

Generally, cases are filed in the Tax Court by a taxpayer who disagrees with an action by the Oregon Department of Revenue (the department), a county assessor, or a county board of property tax appeals (BOPTA). The chart below shows the general path of a tax appeal.



Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) and to the Oregon Administrative Rules (OAR) are to the current statutes in effect. The ORS are available online (see Reference Materials).

IF YOUR CASE IS IN THE REGULAR DIVISION: Read this handbook with caution. Formal rules of evidence and procedure apply. Exhibits and testimony provided in the Magistrate Division may not be admitted. Most litigants are represented by attorneys. See below for details.

OREGON TAX COURT

The Oregon Tax Court has exclusive jurisdiction to hear appeals arising under the tax laws of Oregon, including personal income tax, property tax, corporate excise tax, certain commodity taxes (cigarettes, timber etc.), local budget law, and property tax limitations. In property tax cases, the court “has jurisdiction to determine the real market value or correct valuation on the basis of the evidence before the court, without regard to the values pleaded by the parties.” ORS 305.412. In income tax cases, the court is tasked with determining the “correct amount of deficiency, even if the amount so determined is greater or less than” the amount assessed by the Oregon Department of Revenue. ORS 305.575.

Magistrate Division: In the Magistrate Division of the Oregon Tax Court, cases are heard by a magistrate who is a judicial officer sworn to apply the laws in a fair and impartial manner. Magistrates encourage cooperation between the parties. If the parties are unable to resolve their dispute by mutual agreement, the magistrate may hold a trial. During the trial, the magistrate will listen to what the parties say and consider the evidence. A written decision resolving the dispute will be issued by the magistrate. The decision is based only on the parties’ written and oral evidence admitted by the court. There is no official transcript or recording of the proceeding. For more information, see Tax Court Rule-Magistrate Division (TCR-MD) 15.

Regular Division: Magistrate decisions may be appealed to the Regular Division of the Oregon Tax Court. All proceedings in the Regular Division are original proceedings tried without a jury and *de novo*, meaning the case is tried anew. Cases in the Regular Division are heard by a judge, who is an elected judicial officer sworn to apply the laws in a fair and impartial manner. The judge’s decision is based on the official record of the case that includes the written and oral evidence properly submitted to the court. Unlike the Magistrate Division, formal rules of evidence apply; most taxpayers and all government agencies are represented by attorneys. The decision of the court is in the form of a written opinion or order.

In both divisions of the Oregon Tax Court, the parties are responsible for contributing to the efficient management and resolution of their case. If you pursue your appeal without the assistance of an attorney or other authorized representative, you will be expected to follow the rules of the court and to be familiar with relevant legal practices and procedures related to your case.

GENERAL QUESTIONS

How do I file a complaint?

Magistrate Division: You can appeal to the Magistrate Division by signing and filing a complaint and paying the fee. A blank complaint form is available on the court's website; upon request, the court will mail you the form at no charge. Please carefully follow the instructions on the second page of the complaint form and include the required number of copies. Please note that the court's mailing address is different from the court's physical address. A complaint sent by mail or private express carrier is considered "filed" on the date shown by the U.S. Postal Service cancellation mark stamped on the envelope containing the complaint, or on the date of mailing or dispatch if plaintiff provides satisfactory evidence from USPS or a private express carrier. *See* ORS 305.418; TCR-MD 1 A(4). Filers who are intending to rely on the date of mailing or the date of dispatch by private express carrier are encouraged to keep relevant receipts, shipment notification, and tracking history. Otherwise, the "file" date will be the date the complaint is received by the court.

Regular Division: If your case has been heard in the Magistrate Division, and you are unhappy with the result, you may appeal the magistrate's decision to the Regular Division of the Oregon Tax Court by paying the fee and filing: (1) an original written complaint; (2) a copy of the magistrate's decision and any dispositive order; and (3) any attachments. A sample complaint form is available on the court's website; the court will mail you the form for no charge upon request. A complaint sent by mail is considered "filed" on the date shown by the U.S. Postal Service cancellation mark stamped on the envelope containing the complaint, or on the date of mailing or dispatch if plaintiff provides satisfactory evidence from USPS or a private express carrier. *See* ORS 305.418; Tax Court Rule (TCR) 1 H. Filers who are intending to rely on the date of mailing or the date of dispatch by private express carrier are encouraged to keep relevant receipts, shipment notification, and tracking history. Otherwise, the "file" date will be the date the complaint is received by the court.

NOTE: Staff at the court has observed that the U.S. Postal Service no longer consistently applies the cancellation mark to envelopes. Filers are encouraged to consult with their local U.S. Postal Service office about obtaining a cancellation mark. *See* https://about.usps.com/handbooks/po408/ch1_003.htm.

What is the fee to file a complaint?

The filing fee is set forth in ORS 305.490.¹ The fee must accompany the signed complaint, or the complaint cannot be filed by the court.

Magistrate Division	\$50
Regular Division	\$281

NOTE: In most income tax matters, all taxes, interest, and penalties must be paid before filing a complaint with the Regular Division. ORS 305.419.

What if I cannot afford the filing fee?

For individual taxpayers, if you cannot afford the filing fee, you can apply to have the court waive or defer the fee. To apply for a fee waiver or deferral, you must complete and sign an Application for Deferral or Waiver of Fees & Declaration in Support. That form is available on the court's website or may be sent to you upon request.

- If the court **waives** your fee, you will not be responsible for paying the filing fee.
- If your filing fee is **deferred**, you are responsible for paying the filing fee at the end of the case after the judgment has issued. Failure to pay fees, in full, within 30 days after the judgment is issued will result in additional fees being assessed. You may request a payment plan and start making payments on your deferred fee while your case is pending.
- If the court **denies** your application, you must pay the filing fee immediately. Failure to pay the filing fee in full after your application is denied may result in your appeal being returned to you.

NOTE: Individuals should consider applying for a fee waiver as early as possible to know the results prior to their filing deadline.

¹ The Oregon Legislature may modify fees between publications of this handbook. If you are concerned that the fee may have changed, please call the court.

Can I get my filing fee back?

Costs and disbursements, including the filing fee, may only be awarded to a prevailing party. A party may request costs and disbursements, including the filing fee, by filing a Statement for Costs and Disbursements, no later than 14 days after a trial is held. The form is available on the court's website. *See* TCR-MD 16.

What happens after a complaint is filed?

The court will serve the complaint on defendant with a notice of filing (summons) giving defendant 30 days to file a response to the complaint. This response is called an answer. Sometimes the defendant will file a motion to dismiss instead of an answer. After the defendant files its written response, the court will email² or mail you a notice of scheduled court proceeding with the date and time for a case management conference. Case management conferences are held via telephone or video conference. The court generally will hold the initial case management conference two-four weeks after the defendant's written response is received. If you do not receive a hearing notice, but think that you should have, please call the court.

Who hears my case?

Magistrate Division: A magistrate, who is a judicial officer with training and experience in tax law and valuation techniques, will be assigned to hear your case. A magistrate will prepare a written decision.

Regular Division: The judge of the Oregon Tax Court, who is an elected judicial officer, will hear your appeal. The judge will prepare a written opinion or order.

NOTE: There are no juries in the Oregon Tax Court.

Do I need a lawyer or other representative?

Individual taxpayers are not required to hire a lawyer. In the Magistrate Division:

² If you provide an email address and check the box to receive email notifications, hearing notices will be sent to your email. Representatives receive email notices automatically if they provide an email address.

- an individual taxpayer may handle his or her own case without a representative, hire a lawyer, or designate another representative.
- a legal entity such as a corporation or a partnership must designate a representative, but the representative need not be a lawyer.
- a government entity typically appears through employees, such as an auditor or an appraiser, but the government entity may use a lawyer.

In the Regular Division, an individual taxpayer may handle his or her own case without a lawyer, but most hire a lawyer. No other representative is allowed. All legal entities must be represented by a lawyer, and the government always is represented by a lawyer.

The process in the Magistrate Division is often less formal than a typical court proceeding. In the Regular Division, the appeal process is formal because proceedings must “conform, as far as practical to the rules of equity practice and procedure in this state.” ORS 305.425(3).

Several factors may be considered when deciding whether to have representation, including: how complicated your case may be, and how much you know about the case, including any laws or valuation techniques that might be applicable or relevant. Only you know how comfortable you will feel presenting your case. If your case is being heard in the Magistrate Division, there are people other than lawyers who can represent you if you feel you should be represented. See the next section for more details.

Who may represent me?

Magistrate Division. Anyone authorized by the court may represent you. Individuals who represent themselves, including those who act as trustees of a trust or personal representatives of an estate, may appear without completing an Authorization to Represent form. All other representatives, except those licensed to practice law in Oregon, must be appointed by filing an Authorization to Represent form.

Some examples of common representatives in the Magistrate Division include:

- An Oregon public accountant (includes CPAs and other licensed accountants)
- An employee of the taxpayer regularly employed by the taxpayer in tax matters
- A designated representative of a nonprofit or exempt organization.
- A spouse, child who has arrived at the age of majority, or parent of the named party
- An Oregon licensed tax consultant
- A shareholder of an S corporation
- A partner of a partnership
- An Oregon licensed real estate broker
- A state certified, licensed, or registered appraiser

NOTE: If your representative is not an Oregon attorney, a signed Authorization to Represent must be submitted to the court. That form is available on the court’s website and from the court upon request. **If you want to remove or change your authorized representative, you or your representative must notify the court in writing and provide a copy to all parties.**

Regular Division: Representation choices are limited for cases before the Regular Division. See above.

What are the responsibilities of a representative?

Even if you are not an Oregon attorney, as a representative in the Magistrate Division, you are responsible for following all the rules of the court. (See the section titled “What are the rules of the court?” for further information.)

You will be the contact on the case for that party. You need to provide the court and the opposing party with your correct address and telephone number(s) so that you can receive information and filings related to the case. If your contact information changes, you are required to notify the court, in writing, and provide copies to all parties. If your case is settled or needs to be delayed or any other significant developments occur, you must promptly contact the court.

In every legal dispute one party has the burden of proof, which means the responsibility to prove the facts related to the case. The

plaintiff—the person bringing the case—bears the burden of proof. Whether you represent plaintiff or defendant, you should prepare your case by gathering evidence and researching the law involved in your case. If your case goes to trial, you will be responsible for presenting the evidence you have gathered and explaining how the evidence meets the legal requirements. You may need to call witnesses and question them. You will also have the right to question or cross-examine any witnesses brought by the opposing party.

Who will represent the government?

In the Magistrate Division, representation depends on the complexity of the case and whether legal arguments are involved. In income tax cases, the Department of Revenue (the department) is the defendant. The department may be represented by an auditor or by an Oregon Department of Justice attorney. In most property tax cases, the county assessor is the defendant. The county may be represented by an appraiser from the assessor’s office or by a county attorney.

In the Regular Division, the case is by or against the department. Unless the department has filed the complaint, the department is the defendant. The legal counsel for the department is provided by the Oregon Department of Justice. In certain property tax cases, the county assessor may ask the court to participate as an intervenor. If the county chooses to participate, a county attorney will act as the county’s representative.

COURT PROCEDURES

How do I communicate with the court and file documents?

The court accepts filings via **mail, in person, fax, or electronic filing**:

By mail: 1163 State Street
Salem, Oregon 97301-2563

In-person/private express carrier:
1241 State Street
Salem, Oregon 97301-2563
3rd Floor - Magistrate Division (3R)
4th Floor - Regular Division (4R)

By fax:

(503) 986-4507 (Magistrate Division)

(503) 986-5507 (Regular Division)

OJD efile:

<https://oregon.tylertech.cloud/ofswb/home>

The court does not accept documents for filing via email.

A party or authorized representative is not permitted to communicate privately with the judge or magistrate without the other parties being copied or present. In general, to avoid *ex parte* contact, **a party is required to provide all other parties with copies of every writing** sent to the judge or magistrate, or to court staff. See TCR 9 and TCR-MD 5.

After a **complaint** has been filed, any time any party sends a writing to the court, the party must also

- (1) send a copy of the writing to the other parties and
- (2) send the court a copy with a **certificate of service or other evidence, in writing, that a copy was provided to all parties.**

Please note that, in the Magistrate Division, a “cc” noting the parties copied on the document is sufficient.

WARNING: If the court does not receive a Certificate of Service or other evidence that a copy of the writing was provided to all parties, the court will not file your document.

A sample certificate of service form is available on the court’s website at <http://courts.oregon.gov/Tax/docs/certificateofservice.pdf>

The rules for service in the Regular Division are more specific and may require additional steps or information. See the Tax Court Rules, including TCR 7, 9, 10, and 55, for more information

NOTE: The court does not accept faxes over 10 pages.

What are the rules of the court?

The rules of court govern the processes and procedures of the court. You must follow all the rules of court unless the magistrate gives

other instructions. All the [rules of court](#) are available on the court’s website www.courts.oregon.gov/courts/tax/help/Pages/rules.aspx or you may request that a paper copy be sent to you.

Magistrate Division: The rules of the Magistrate Division are cited as “Tax Court Rule-Magistrate Division” (TCR-MD). If a situation arises that is not covered by a Magistrate Division rule, the Tax Court Rules may be used as a guide to the extent relevant. By statute, the Magistrate Division is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. *See* ORS 305.501(4)(a).

Regular Division: ORS 305.425(3) provides:

“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.”

Because of that law, the Tax Court has adopted rules that closely follow the Oregon Rules of Civil Procedure. All rules of the Regular Division are cited as “Tax Court Rule” (TCR).

What is a case management conference?

A case management conference is a conversation about the case with all parties present, usually conducted by telephone or video conference. The purpose is for the judge or magistrate and the parties to discuss the issues in the case and decide how best to proceed. The conference helps the judge or magistrate understand the issues, explore settlement, and determine whether a trial or mediation is appropriate. See TCR 52 and TCR-MD 8 for more information on case management conferences.

What happens if I cannot be available when my case is scheduled?

The process for having a court hearing rescheduled is explained in TCR-MD 8 B or TCR 52 D. You will have to make a written request to have the proceeding reset. If you do not request a reset and fail to appear at a court hearing, your case may be dismissed, or other sanctions may be

imposed. If you are having a serious emergency that prevents you from appearing, please notify the court as soon as possible.

Where will my case be heard? Can I present my case remotely?

For Trials: The court will hold a trial either in person or by video conference or telephone. For budgetary reasons, in-person trials are usually restricted to the Oregon Tax Court in Salem.

For Mediations: Mediations are held in person. For budgetary reasons, mediations are usually restricted to the Oregon Tax Court in Salem.

What is efilings?

Efiling via Oregon’s electronic filing system is mandatory for active members of the Oregon State Bar in both the Magistrate Division and the Regular Division of the Oregon Tax Court. For more information regarding the court’s efilings rules see TCR-MD 1 A(3), TCR 9, and UTCR 21. If you are not an active member of the Oregon State Bar efilings is allowed but not required. Registration and information available at: <https://oregon.tylertech.cloud/ofswb/home>

NOTE: *Pro hac vice* attorneys are not considered active members of the Oregon State Bar and are not required to efile.

What if I or a witness needs an interpreter or accommodations under the Americans with Disabilities Act?

If you or your witnesses require a language interpreter, assistive listening device, materials in an alternate format, or other accommodations, please promptly notify the court. More information about ADA accessibility is available at: www.courts.oregon.gov/courts/tax/go/Pages/accessibility.aspx

MUTUAL AGREEMENT AND MEDIATION

Can I try to settle the case before it is heard?

Yes. The court encourages the parties to try to settle their case or at least find areas of mutual agreement whenever possible. Settlement will save the parties time and money. Settlement discussions also give the parties a chance to share information and reach a better

understanding of the issues of the case. If you do reach an agreement, please contact the court.

What is mediation?

Mediation is not a trial. The goal is to have the parties settle the case by agreement. In the Magistrate Division, a magistrate will facilitate the discussion to help the parties talk about their case and resolve it voluntarily.

For more information about mediation please see the court's mediation handbook located here:

www.courts.oregon.gov/courts/tax/help/Documents/TAX-MediationHandbook.pdf

NOTE: Court-sponsored mediation is not available in the Regular Division. Parties in the Regular Division may arrange mediation privately, or they may try to settle the case informally without a mediator.

PREPARING YOUR CASE – GENERALLY

If the case goes to trial, how do I prepare?

The court cannot instruct you on how to prepare for trial; however, the following suggestions may be helpful:

- **FOCUS ON THE ISSUE(S)** before the court. Avoid emotional arguments and personal attacks on the other party. Arguments based on the facts and law are more persuasive. In a property tax appeal, the issue is typically the value of the property or entitlement to exemption or special assessment, not the amount of tax. This may involve legal issues or appraisal methods. In an income tax appeal, the issue is often taxable income or allowable deductions.
- **GATHER OBJECTIVE EVIDENCE (INFORMATION)** that relates to the issues in your case. What is the legal standard you need to meet? Are there experts, such as accountants or appraisers, who may be able to help you? What evidence does the other party have? Do not be afraid

to ask the other party about their evidence or to share your own.

- **ORGANIZE YOUR EVIDENCE** in a way that will help the court understand your position. What are the undisputed facts? The disputed facts? Be prepared to explain how each piece of evidence supports your position. Make a list of the key points you wish to make.
- **SEE THE APPENDIX** discussing Property Value Tax Appeals - Residential Property for more information.

What if my case is in the Regular Division?

You should read this handbook with caution. In the Regular Division, the formal rules of evidence apply, as do other formal procedural rules. These include complex rules against admitting documents that are hearsay, rules about laying a foundation for certain testimony, etc. For that reason, it is possible that testimony and materials you provided in the Magistrate Division may not be admitted as evidence in the Regular Division. Although an individual taxpayer is allowed to proceed without an attorney, in the Regular Division most taxpayers are represented by attorneys. The government is always represented by an attorney. See the end of this handbook for information about hiring an attorney.

What materials should I send to the court?

The court's rules require that *all* materials you want considered for the case be sent to the court and to the other party before trial. Do not expect that materials provided to the Board of Property Tax Appeals or the Department of Revenue will be available to the magistrate. Each party makes a final decision during the trial about which of the materials to ask the court to consider. (For that reason, you should not assume that the court will consider every document you received from the other party before trial. If you want the court to consider something, ask the court yourself.) Materials include, but are not limited to, writings, reports, notes, graphs, pictures, maps, receipts, diaries, ledgers, tax returns, and articles.

Each party may request information from the other party that is relevant and not privileged. The court may be requested to issue an order if the parties are unwilling to provide the requested information. See TCR 36-46; TCR-MD 9.

Is information sent to the court confidential?

In general, information provided to the court is considered public. However, some information cannot be disclosed because it is deemed confidential either by law or by court rule. If you have concerns regarding confidentiality of information, you should discuss it with the Judge or Magistrate assigned to your case. The court may issue an order protecting certain information as provided in ORS 305.430. For more information on segregation and protection of personal information see TCR 35.

When should I send exhibits?

Magistrate Division: For trial, all materials must be either *postmarked at least 14 days* before the trial date or *received at least 10 days* before the trial date unless otherwise set by the court. Exhibits may not be faxed to the court without magistrate approval. See TCR-MD 12 and TCR 56 for further information.

Regular Division: The court sets a date for exchange of exhibits. For example, exhibits in valuation cases, such as appraisal reports, are usually due 30 days before trial. Other documents must be provided no later than five business days before trial. Evidence must be offered into evidence and admitted by the court during trial. See TCR 56 for further information.

NOTE: The court may set an earlier or later time than required by the rules of the court for parties to exchange materials.

How should I label my materials?

Plaintiff's exhibits are to be marked numerically. Each document should be given its own number (1, 2, 3); if the document has multiple pages the labeling should include page numbers (*e.g.*, Ex 1, p1 of 3, Ex 1, p2 of 3, Ex 1, p3 of 3, etc.).

Defendant's exhibits are to be marked alphabetically. Each document should be given its own letter (A, B, C); if the document has multiple pages the labeling should include page numbers (*e.g.*, Ex A, p1 of 3, Ex A, p2 of 3, Ex A, p3 of 3, etc.).

Exhibits must be securely bound, for example with a staple, or within a binder. The case number must appear on the first page or the binder cover. Please contact the court *BEFORE* submitting your exhibits if you have questions about how to properly label your exhibits.

What if I miss the deadline for submitting materials?

In both divisions, the court is not required to accept into evidence (admit) any materials not submitted by the pre-trial deadlines established by the court. Materials not admitted into evidence by the court will not be considered by the judge or the magistrate deciding your case. For that reason, it is important that you submit any materials you want the court to consider on or before the deadline.

How can I prove the value of property?

One of the most common reasons for filing a property value tax appeal is that you think the real market value (RMV) of the property, as determined by the county assessor or BOPTA, is incorrect.

The burden of proof rests with the plaintiff. That means the plaintiff must present factual evidence to prove the value of the property.

To prove the value of property is incorrect, you must present evidence as to its actual value as of the assessment date. How much does an appraiser say the property is worth? What price would a buyer pay to own the property and a seller accept? When presenting evidence to the court about the value of property, it is important to keep in mind that, although evidence of how much a property sold for (*i.e.*, how much it cost to purchase the property) is persuasive and will be given some weight, it is not necessarily conclusive evidence of the property's real market value. *See Ward v. Dept. of Revenue*, 293 Or 506, 510, 650 P2d 923 (1982) (holding that evidence of the agreed price in a voluntary, arm's length sale is persuasive evidence of the property's market value, however, the sale "is not necessarily determinative of market value and does not foreclose other methods of valuation") (citations omitted).

There are many different methods of proving the value of property. Some options include:

- hiring an appraiser to prepare a report of the value of the property.
- researching county records showing sales of nearby comparable properties that sold on or about the date of assessment for the property. Comparable properties must be similar to the subject property or adjusted for differences.
- hiring a real estate agent to assist in valuing the property.

If you hire an appraiser, real estate agent, or other expert to provide a written report of the property's value, that expert should be available to testify at the trial. Court rules of fairness require that the opposing party have the opportunity to question any witnesses. The defendant's appraisers or other experts should also attend trial and be available for questions. Additionally, you may call other witnesses who can offer information about the property and its value.

For a taxpayer, merely criticizing the value determined by the assessor or BOPTA will not help to prove your case. *See Woods v. Dept. of Rev.*, 16 OTR 56, 59 (2002) ("As this court has pointed out, it is not enough for a taxpayer to criticize a county's position. Taxpayers must provide competent evidence of the RMV of their property.") (citation omitted).

Also, keep in mind that the cost of building, purchasing, or remodeling a home or other structure (*e.g.*, a garage or workshop) does not necessarily equate with the value of the improvements on the property. That is because it is difficult to know what value the market will place on certain costs of constructing or improving a property.

CAUTION: When preparing your case, remember that the court places little weight on evidence that compares the assessed value (AV) of the property under appeal with the AV of neighboring or similar properties.

The court puts little weight on that type of evidence because there is generally no evidence that demonstrates the AV of any given property is truly representative of the RMV of the property. Another reason that AV of other properties is given little weight by the court is because AV is the

result of a formula created by statute as required by Measure 50. Because of that formula, the AV of property varies widely from one property to the next even where the properties are very similar.

THE DAY OF TRIAL – PRESENTING YOUR CASE

IF YOUR TRIAL IS IN THE REGULAR DIVISION: See section *What if my case is in the Regular Division?* above

What should I bring to court?

Be sure to bring all the materials previously submitted to the court and the other parties. Also, you should be sure that all your witnesses are planning to attend and know how to get to the court. The courtroom in Salem has an easel for making presentations. If you need other special equipment, such as a slide projector, video player, or computer, you must make your own arrangements. Please notify the court if you will be bringing special equipment.

Do I need witnesses?

Witnesses are people with firsthand knowledge about important things you need to prove in your case. You are not required to bring witnesses, but you should if they will help your case. Think about whether someone else has information to tell the court that you cannot tell yourself, or whether they may be able to say it better. Talk to them first to find out what they know and arrange for them to be at the court on the day of trial.

What are the trial procedures?

In most cases, trials will proceed according to the following format, unless the judge or magistrate directs otherwise:

Opening Statements: At the beginning of trial, both sides will have the opportunity to present an overview of their case. You should be prepared to give the court a short summary of the evidence you are about present, along with a brief statement of the reasons you believe the evidence supports your legal theory of the case. In general, the plaintiff will go first.

Presentation of Evidence: After opening statements, each party will have the opportunity to present its evidence. Generally, the plaintiff presents their evidence first. Evidence is usually presented in the form of testimony and exhibits. If you are the plaintiff, you will be allowed to “testify” before the judge or magistrate as to why you should get what you asked for in your complaint. If you have witnesses, you may ask your witnesses questions. The answers to those questions are their testimony. After each witness testifies, the other party will be given an opportunity to ask questions of the witness. This is known as “cross examination.” After the other party has had a chance to ask questions, the witness will be given another chance to give additional testimony (“redirect”). The judge or the magistrate may also ask the witness questions. If you have exhibits, you should plan to explain what the exhibits are and how they support your position.

The court cannot instruct you on how to present your case; however, the following suggestions may be helpful:

- **Follow courtroom etiquette.** Be on time. Dress neatly. Stand when the judge or magistrate enters and exits the courtroom; address him or her respectfully as Your Honor or Judge. Be polite. If you are not sure what to do during the trial, ask the court clerk, the judge or magistrate.
- **Focus on the issue.** In a property value tax appeal, the issue is the value of the property, *not* the amount of the tax. In other cases, focus on the law and facts.
- **Give context.** The court is not as familiar with your case as you are, start your presentation by giving some background information and telling the judge or magistrate about your situation.

For example, in a property value tax appeal, describe some or all of the following: where the property is located, what types of buildings are on the property, how long you have owned the property, what improvements have been made to the property, and how much you would sell the property for on the open market. Include other information about the property that is important to your case.

- Present factual information. Keep your presentation brief and factual. Organize your evidence in a way that will help the court understand your position. What are the undisputed facts? The disputed facts?
- Be prepared to explain how each piece of evidence supports your position. Create a list of the key points you wish to make. Keep it with you for reference.
- Avoid emotional arguments. After you have told your story and called your witnesses, it will be the other party's turn to make its case. Listen respectfully. Be calm. Do not interrupt. Make notes on any points you would like to clarify. You will have the opportunity to ask questions of the defendant's witnesses.
- Ask specific questions of witnesses. Whether you are asking questions of your own witnesses or the witnesses for the defendant, ask specific questions to gather information. Do not argue with witnesses. Do not repeat what has already been said.
- Do not rely on the other party's evidence. For most issues, the plaintiff bears the burden of proof. If there is information that you think is helpful to your case, make sure you present it to the court.

Closing statements. At the end of the trial, both sides will have the opportunity to give their closing statements. That is an opportunity to tie together all your evidence, witness testimony, and other information so that the judge or magistrate understands your position.

How will the case be decided?

The judge or magistrate will review all the evidence, witness testimony, and other information presented at the trial, determine what the relevant facts are, apply the law to the facts, and make a decision.

AFTER THE TRIAL

How long will it take to get a decision?

It depends on the court's docket and the complexity of the case. If you are concerned, please call the court to check the status. All of the court's decisions and opinions are also available on the court's website at: www.courts.oregon.gov/publications/tax/Pages/default.aspx

Can the case be appealed?

Magistrate Division: If you disagree with the magistrate's decision, you may appeal to the Regular Division of the Tax Court. Your appeal **must be filed with the court within 60 days** from the date the magistrate's written decision is entered *See* ORS 305.501(5)(a). If neither party appeals the magistrate's decision within *60 days* of the date it was entered, the decision becomes final. The magistrate will then issue a written judgment that is binding on all parties and cannot be appealed. *See* ORS 305.501(7).

Regular Division: After a final opinion or order is issued, a judgment will be entered. Judgments of the Regular Division may be appealed to the Oregon Supreme Court. Your appeal to the Oregon Supreme Court **must be filed within 30 days** from the date of the Tax Court's final judgment. *See* ORS 19.255. On appeal to the Supreme Court, the opinion or order of the judge of the Tax Court is reviewed for errors or questions of law or lack of substantial evidence in the record to support the Tax Court's opinion or order. *See* ORS 305.445. If there is no appeal, the opinion or order and judgment of the Tax Court becomes final. *See* ORS 305.440(1).

If I am owed a refund how will I get it?

Generally, refunds are handled by the county or Department of Revenue. You should contact the county or the department to make any special arrangements or if you have questions.

APPENDIX

PROPERTY VALUE TAX APPEALS – RESIDENTIAL PROPERTY

NOTE: THIS HANDBOOK IS NOT INTENDED AS LEGAL ADVICE AND SHOULD NOT BE USED AS A SUBSTITUTE FOR THE OREGON REVISED STATUTES AND RULES OF THE COURT.

Cases that involve property taxes are commonly referred to as property tax appeals. However, the issue in a property value tax appeal is not the amount of tax. Rather, the issue is the value of the property on which the taxes are assessed. Because the value of the property is the issue of the appeal, you should bring evidence that shows the property's value, not evidence of the tax amount.

Oregon's property tax system is *COMPLEX*; the section below explains some of the complicated statutes and constitutional provisions that make up Oregon's property tax system. Be sure to take your time and read the section below carefully. A clear understanding of how Oregon's property tax system works is an important part of preparing and presenting a strong case to the court.

Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) and to the Oregon Administrative Rules (OAR) are to the current statutes in effect.

Oregon's property tax system

Before 1997, property in Oregon was generally assessed at 100 percent of its real market value (RMV). *See* ORS 308.232 (1995). RMV is defined by statute as "the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction occurring as of the assessment date for the tax year." ORS 308.205(1).

Significant changes were made to the law in 1997 when ballot Measure 50 passed. Measure 50 amended the Oregon constitution to change a property's assessed value (AV) from 100 percent of RMV to

the lesser of: “(a) the property’s maximum assessed value (MAV); or (b) the property’s real market value.” ORS 308.146(2) (1997).

In the 1997-98 tax year, MAV was set at 90 percent of the property’s RMV for the 1995-96 tax year. Or Const, Art XI, § 11(1)(a). For example, a property with a 1995-96 RMV of \$100,000 would have had a MAV in 1997-98 of \$90,000. For each successive year, absent an exception (see next paragraph), the MAV shall equal 103 percent of the property’s AV from the prior year or 100 percent of the property’s MAV, whichever is greater. Or Const, Art XI, § 11(1)(b); *see also* ORS 308.146(1).

Several exceptions exist to the general rule that the MAV cannot increase by more than three percent. For example, property that is “new property or new improvements to property” is not subject to the three percent rule. *See* ORS 308.146(3)(a). An example of “new property” is the construction of a home on a lot. An example of “new improvements to property” is a remodel of an existing home or building.

When there is a special circumstance, such as when property is considered to be “new property or new improvements to property,” a special calculation must be done for that property to receive the benefits of Measure 50. That calculation results in what is often called exception value. *See generally* ORS 308.146(3) and ORS 308.153; *see also* OAR 150-308-0170.

Remember, AV is the lesser of RMV or MAV. ORS 308.146(2).

Board of property tax appeals

Generally, when a taxpayer disagrees with the value set forth in the annual property tax statement, the taxpayer’s first step is to file a petition of appeal with the county board of property tax appeals (BOPTA) in the county where the property is located. BOPTA hears property tax value disputes for the current tax year. *See* ORS 309.026 and OAR 150-309-0030. BOPTA only has jurisdiction to reduce the real market value. ORS 309.026. (By contrast, an appeal to the court may result in an increase or decrease in the property value. *See* ORS 305.412.) Taxpayers must file appeals with BOPTA no later than December 31. *See* ORS 309.100(2). Appeals are heard by BOPTA from the first Monday in February through April 15. *See* ORS 309.026.

The taxpayer filing the petition may appear before BOPTA and present evidence or argument about the correct value of the property.

The requirements for petitioning BOPTA and appearing before BOPTA are set forth in ORS 309.100 and OAR 150-309-0070. BOPTA will issue a written order of its decision. ORS 309.110(1).

A taxpayer who disagrees with the order issued by BOPTA has 30 days from the date the order was mailed to file an appeal with the Magistrate Division of the Oregon Tax Court. *See* ORS 309.110(7); *see also* ORS 305.280(4). If no appeal is filed, the BOPTA order becomes final.

Appeals under ORS 305.288

When a taxpayer does not appeal to BOPTA and appeals directly to the Tax Court, the court’s authority to hear a case and grant relief is limited by law. The taxpayer must either allege a substantial error in the RMV (at least 20 percent) in property used primarily as a dwelling or show good and sufficient cause for failing to petition BOPTA before coming to the court. *See generally* ORS 305.288. The court only has authority to hear the current tax year and the two proceeding tax years under ORS 305.288.

Error of at least 20 percent: ORS 305.288(1) allows the court to reduce the value of certain property when there is an error in the RMV of at least 20 percent when measured against the roll value. The 20 percent rule is limited to “property [that] was or is used primarily as a dwelling (or is vacant) * * *.” That includes, for example, residential property, manufactured homes, or condominiums. *See* ORS 305.288(1)(a). Taxpayer must both allege and prove a 20 percent error.

Good and sufficient cause: Because situations may exist that prevent a taxpayer from timely appealing to BOPTA, the legislature granted the court authority to review untimely appeals when the taxpayer establishes “good and sufficient cause” for not filing an appeal on time with BOPTA. *See* ORS 305.288(3).

The term “good and sufficient cause” is defined as “an extraordinary circumstance that is beyond the control of the taxpayer, or

the taxpayer’s agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal.” See ORS 305.288(5)(b)(A).

The statute states that “inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information” do not meet the definition of “good and sufficient cause.” See ORS 305.288(5)(b)(B).

Presenting a property value tax appeal

Generally, property value tax appeals involve questions of fact. How much was the property worth on the market on the assessment date? How did the property compare with similar properties? You must present evidence to the court that establishes and supports the RMV of your property as of the assessment date.

Sometimes questions of law are also at issue in a property value tax appeal. Two common questions of law that arise in property tax cases are: (1) Aggrievement: whether the property taxpayer is “aggrieved” such that the court can grant relief that will result in a reduction in tax, and (2) Uniformity: whether the property is treated equally under the current property tax system. Both of those topics are explained in more detail below.

Question of Law - Aggrievement: For a property value tax appeal to be properly heard by the court, the party seeking relief from the court must be aggrieved under ORS 305.275. A taxpayer is not aggrieved if action by the court on the case would not affect the tax liability or amount of tax due.

This means that, in most cases, for a taxpayer to be aggrieved the taxpayer must allege a RMV for the property is less than the AV on the roll for the property. See *Parks Westsac L.L.C. v. Dept. of Rev.*, 15 OTR 50, 52 (1999) (holding that a taxpayer is not aggrieved within the meaning of ORS 305.275 where the “property’s maximum assessed value is less than its real market value”).

However, in some cases the court can hear your case even if the RMV you propose is more than the AV on the roll because it will result

in some tax savings due to “compression.” This is a case-by-case situation based on where you live, local tax rates, and the special taxes (*i.e.*, local option taxes) imposed by your county—check with your county assessor.

Question of Law - Uniformity: A common argument by taxpayers is that the AV of a taxpayer’s property is not consistent with other similar properties located nearby. That argument is often based on a view that taxes are supposed to be uniform as between similar properties. That argument was discussed in the case *Ellis v. Lorati*, 14 OTR 525 (1999), and the court concluded that, based on the explicit provisions of Measure 50, uniformity is not required.

Changes made to the property tax system in 1997 because of Measure 50 may result “in various degrees of nonuniformity in the property tax system. Section 11(18) [of the Oregon Constitution] contemplates this and excuses itself from complying with other constitutional provisions requiring uniformity, specifically Article IX, section 1, and Article I, section 32.” *Ellis v. Lorati*, 14 OTR at 535.

GLOSSARY OF TERMS

Answer: A defendant's first pleading that addresses the merits of the case admitting or denying the plaintiff's allegations and sets forth any defenses or counterclaims.

Appraisal: An appraisal of property is typically a report prepared by an appraiser expressing an opinion of real property value that reflects pertinent market information. Various approaches may be used in the process of appraising property, including cost, income, and sales comparison.

Appraiser: A licensed professional who estimates property value. In property tax cases, the county assessor is typically the defendant and appears through a staff appraiser. Taxpayers, of course, may hire their own appraisers.

Assessed value (AV): Taxes are computed on the property's assessed value. AV is the property's assessed value (Measure 50 value) or the property's real market value, whichever is less. *See* ORS 308.146(2). AV is sometimes referred to as taxable assessed value.

Assessment date: The date on which real or personal property is valued. *See* ORS 308.007(1). For example: the assessment date for the 2015-16 tax year is January 1, 2015.

Assessment/tax roll: The complete record of the assessment of all taxable property for each year as of January 1, at 1:00 a.m. of the assessment year. *See* ORS 308.210(1).

Assessment year: The assessment year begins January 1 and corresponds to the tax year that begins July 1 of the same calendar year. *See* ORS 308.007(2). For example, the 2006-07 tax year began on July 1, 2006, and ended on June 30, 2007, and the corresponding assessment year began on January 1, 2006, and ended on December 31, 2006.

Assessor: An elected or appointed official in each county charged with the administration of the property taxes for the county.

Board of property tax appeals (BOPTA): Each county has a board of property tax appeals. Members of the board are appointed as required by

statute. *See* ORS 309.067; ORS 309.020. An owner of property may file a petition with BOPTA after tax statements are mailed until December 31 of the current year. *See* ORS 309.100(1), (2). BOPTA will consider the petition, enter a written order of determination, and mail the order to the petitioner. *See* ORS 309.110.

Burden of proof: The burden of proof is a preponderance of the evidence, meaning the greater weight and the more convincing evidence. For example, the plaintiff in a property value tax appeal bears the burden to show that their valuation best reflects the real market value of the property. *See* ORS 305.427; *Lewis v. Dept. of Rev.*, 302 Or 289, 293, 728 P2d 1378 (1986).

Comparable properties: Also referred to as “comparables,” that term refers to properties that are similar to the property being appraised and that have been sold recently.

Complaint: The first document filed with the court by the plaintiff; it starts the case and states what the issues are and what action or relief the plaintiff would like from the court.

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, including filing fees. For more information see TCR-MD 16.

De novo review: An appeal of a decision of a magistrate is reviewed *de novo* by the Regular Division, which means the case is presented anew to the Regular Division judge.

Decision: The document containing a magistrate’s written opinion of the merits in a case. Parties may appeal magistrate’s decision to the Regular Division. A decision usually comes after trial or on motion(s) for summary judgment. If a case is dismissed, it is called a decision of dismissal.

Defendant: Generally, the county assessor or the Oregon Department of Revenue.

Evidence: Information including, but not limited to, testimony, documents, tangible objects, pictures, maps, tax returns, receipts, etc.,

that tends to prove or disprove a material fact. The judge or magistrate may find that certain evidence is not admissible; for example, when it is submitted after the deadline.

Exception value: Generally, a property's MAV cannot be increased from the prior year by more than three percent except for certain exceptions. Exception value refers to value added under one of those exceptions. *See* ORS 308.146(3).

Ex parte contact: Prohibited communication between a party and the magistrate when the opposing party is not present or copied. A party is required to provide the other parties with copies of every writing sent to the court, including letters, motions, and documents. *See* TCR 9, TCR-MD 5, and "Statement (certificate) of service" in this glossary for more information.

Judgment:

Magistrate Division: A judgment is entered after all appeal rights have expired. After a judgment is entered in the Magistrate Division, the decision of the magistrate is final and cannot be appealed. TCR-MD 20.

Regular Division: A judgment is the final determination of the rights of the parties in an action. TCR 67A. A judgment sets forth the conclusions stated in orders and opinions. A party may appeal to the Oregon Supreme Court from a judgment issued by the Regular Division of the Oregon Tax Court. *See* ORS 305.445

Maximum assessed value (MAV): Oregon law provides that for the 1997-98 tax year, each property's MAV was 90 percent of the property's 1995-96 real market value. Generally, the MAV cannot increase by more than 3% per year, subject to certain exceptions.

Measure 5: A citizen initiative that took effect in the 1991-92 tax year setting constitutional tax rate limitations. Or Const, Art XI, § 11b. Measure 5 now limits that tax rate to \$5 per \$1,000 of assessed value, and general government (nonschool) taxes to \$10 per \$1,000 of assessed value. Since the provisions of Measure 50 were enacted, Measure 5 rate limits are based on real market value rather than on assessed value.

Measure 50: In May 1997, the voters approved Measure 50 by referendum. Measure 50 imposes limits on assessments and tax rates for

property. To implement the limits on assessments, the concept of “maximum assessed value” (MAV) was established. MAV cannot increase by more than three percent except in certain circumstances. ORS 308.146(1). Property is taxed at the lesser of its MAV or its RMV. ORS 308.146(2).

Opinion: A written opinion or order is prepared in each case decided in the Regular Division by the judge of the Oregon Tax Court. Selected written opinions are published in the Oregon Tax Reports pursuant to ORS 305.450. Parties dissatisfied with the written opinion may file a motion for reconsideration within 20 days after the opinion has been rendered and before the judgment is signed. *See* TCR 80.

Order:

Magistrate Division: An order in the Magistrate Division is the title of a document containing a decision by a magistrate. An order may decide an issue or procedure. Some examples are: an order granting an extension of time for parties to report to the court; an order denying a motion to dismiss; or an order requiring a party to produce documents.

Regular Division: An order in the Regular Division is the title of a document containing a decision by the judge of the Oregon Tax Court. An order may either decide an issue or procedure or determine the outcome of the case. Some examples are: an order allowing third party intervention; an order granting an extension of time; or an order granting or denying a motion for summary judgment. *See* TCR 67A.

Plaintiff: The plaintiff is the party who filed the appeal.

Real market value (RMV): Defined as “the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm’s-length transaction occurring as of the assessment date for the tax year.” *See* ORS 308.205(1).

Rules of the court: The rules of the court set out the procedures the parties follow as the case proceeds before the court. The Tax Court Rules (TCRs) govern the Regular Division of the Oregon Tax Court and closely follow the Oregon Rules of Civil Procedure. For cases in the Magistrate Division, the Tax Court Rules-Magistrate Division (TCR-MD) apply. <https://www.courts.oregon.gov/courts/tax/help/Pages/rules.aspx>

Statement (certificate) of service: A statement confirming that you provided the other party or parties with a copy of documents or other materials sent to the court, that also states when and how the copy was provided (via mail, fax, hand delivery, etc.). Note that in the Magistrate Division, a “cc” (carbon copy) on the court’s copy of the document is enough to inform the court that the other party has received a copy. See the Tax Court Rules, including TCR 7, 9, 10, and 55, for more information on service requirements in the Regular Division.

Tax year: ORS 308.007 defines “tax year” or “fiscal year” to mean a 12-month period beginning July 1 and ending June 30. For example, the tax year 2006-07 began on July 1, 2006, and ended on June 30, 2007. The following tax year was 2007-08, which began on July 1, 2007, and ended on June 30, 2008.

REFERENCE MATERIALS

Oregon State Bar:

www.osbar.org

Referral and Information Services

503-684-3763; or

800-452-7636 (toll-free)

www.osbar.org/public/ris/ris.html

- Lawyer Referral Service
- Modest Means Program (low income)
- Military Assistance Panel

Legal Information for the Public

- General information on popular legal topics and the basics of Oregon law.
- <http://www.osbar.org/public>

Legal Representation for Personal Income Tax:

Lewis and Clark Law School Tax Clinic

310 SW Fourth Ave., Suite 1018

Portland, OR 97204-2305

Tel: 503-768-6500

FAX: 503-768-6540

Email: lclc@lclark.edu

Website:

https://law.lclark.edu/clinics/low_income_taxpayer_clinic/prospective-clients/

Legal Aid Services of Oregon

Website: <https://lasoregon.org/>

Tel: 1-888-610-8764

This organization has various offices statewide. The phone number connects to the Portland office, which operates the tax program for clients throughout the state.

Oregon Law Help:

<http://oregonlawhelp.org/>

Free legal information for low income Oregonians.

Cases and other reference materials are cited throughout this handbook and are useful tools when appealing to the Oregon Tax Court. Those resources and others are listed below and are available at either a local public library or law library. These are only a few examples of the resources available that may be helpful in filing an appeal.

Oregon Tax Reports: Bound volumes containing decisions of the Oregon Tax Court. For example, the Tax Court’s opinion in the case *Feves v. Department of Revenue*, 4 OTR 302 (1971), is found in Volume 4 of the Oregon Tax Reports, begins on page 302, and was issued by the court in 1971.

Oregon Reports: Bound volumes containing decisions of the Oregon Supreme Court. For example, the Supreme Court’s opinion in the case *Gall v. Department of Revenue*, 337 Or 427 (2004), is found in Volume 337 of the Oregon Reports, begins on page 427, and was issued by the court in 2004.

Appraisal Institute, *The Appraisal of Real Estate* (15th ed 2020).

Oregon Department of Revenue

www.oregon.gov/DOR

Oregon Secretary of State

<http://sos.oregon.gov/Pages/index.aspx>

Links to relevant Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR).

Oregon Revised Statutes (ORS)

www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

(Bound volumes of the ORS are also available at law libraries and some public libraries.) Be sure to use the version that applies to the year(s) under appeal. Prior year ORS are available here:

www.oregonlegislature.gov/bills_laws/Pages/ORSarchive.aspx

Article: *The Oregon Tax Court at Mid-Century*, 48 Willamette L Rev 147 (2011).

Oregon law requires all writings submitted to this court to be in English. ORS 1.150.

All forms and writings must be in English. If you have another person translate your non-English answers to English, you must have the translator complete the Certificate of Translation (certificate). The certificate form is available by request from the court at 503-986-5650 (Magistrate Division), 503-986-5645 (Regular Division), or 800-773-1162 (toll free). The form is also on the court's website at <http://courts.oregon.gov/courts/tax>, In the menu bar, select "Materials & Resources," then "Tax Court Forms," and then "Translator's Certificate of Translation."

Requesting an Interpreter

If you or any of your witnesses will require an interpreter for remote or in-person court proceedings, please contact the court within ten (10) days of receiving notice of a proceeding.

**Oregon Tax Court
1163 State Street
Salem OR 97301-2563**

