



OREGON TAX COURT RULES

Magistrate Division

January 2, 2019

**Oregon Tax Court
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Website: <https://www.courts.oregon.gov/courts/tax/>

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PREFACE

The Oregon Tax Court consists of two divisions: the Regular Division and the Magistrate Division. An appeal from a decision of the Magistrate Division is to the Regular Division in a *de novo* proceeding; that is, a new trial. All proceedings in the Magistrate Division are original proceedings, tried without a jury.

Magistrate Division proceedings are designed to facilitate resolution of the parties' dispute through an informal and easy to use process, while maintaining the respect due a court of law. If circumstances arise that are not covered by a Magistrate Division rule, the rules of the Regular Division may be used as a guide to the extent relevant. Other Magistrate Division information may be found in chapter 305 of the Oregon Revised Statutes (ORS).

The Magistrate Division will not accept or file facsimile communications transmitted to the court in excess of 10 pages. The Magistrate Division will not accept electronic mail for pending matters. All written information submitted to the court is public record subject to public disclosure laws. Parties are responsible for redacting any sensitive personal information before submitting a document to the court.

The rules are organized to mirror the progression of a dispute through the court. The rules reflect the responsibility of the parties to contribute to the efficient management and resolution of their dispute. The court requests full cooperation and disclosure by the parties to avoid surprise or misrepresentation. These rules are designed to allow the court to resolve appeals in a fair and impartial way. All pleadings will be liberally construed with a view to substantial justice between the parties. The court may grant relief from the application of these Magistrate Division rules in an individual case for good cause if necessary to prevent hardship or injustice. Suggestions for improvements in the rules are welcome.

The rules should be cited as "Tax Court Rule-Magistrate Division" (TCR-MD). For example, Rule 1, section A, subsection 1, paragraph a, should be referred to as TCR-MD 1 A(1)(a). All citations to TCR refer to the rules of the Regular Division of the Tax Court.

**RULES OF THE OREGON TAX COURT
MAGISTRATE DIVISION**

**RULE 1
FILING APPEALS**

A Filing a Complaint; Fee.

A(1) Filing a Complaint. The plaintiff must submit to the court all of the following:

A(1)(a) A signed written complaint on the form provided by the court, or in similar format;

A(1)(b) Copies of the signed written complaint and any attached documents;

A(1)(b)(i) Plaintiff must submit one (1) copy of the complaint in income tax cases; and

A(1)(b)(ii) Plaintiff must submit two (2) copies of the complaint in property tax cases; and

A(1)(c) A fee for each complaint filed. ORS 305.490; ORS 21.135. The fee must be tendered at the time of the filing of the complaint. The current fee is \$265.¹

A(2) Fee Deferral or Waiver. The plaintiff may, by application, request the court to consider deferral or waiver of the fee, as provided under ORS 21.680 and ORS 21.685. The plaintiff must make such application in place of the required fee at the time of filing the complaint. A complaint accompanied by a request for fee deferral or waiver cannot be electronically filed. TCR 9 B(4)(d)(ii).

A(3) Electronic Filing Requirement. Electronic filing is required for attorneys with active membership in the Oregon State Bar unless a waiver from the electronic filing requirement is granted by the court. Electronic filing is permissive for parties not represented by an attorney with active membership in the Oregon State Bar. With respect to electronic filing, the Magistrate Division will follow TCR 9 A, applying UTCR 21. Where the content of those rules conflicts with a Magistrate Division rule on something other than electronic filing, the Magistrate Division rule controls.

B Contents of the Complaint.

B(1) Complaint Form. The complaint must state:

B(1)(a) The nature of the plaintiff's interest;

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¹ The Oregon Legislature may modify fees between publication dates of the Tax Court Rules. The Oregon Tax Court's website (<http://courts.oregon.gov/Tax>) states the current amount for fees.

B(1)(b) The facts showing how the plaintiff is aggrieved by the order, act, omission, or determination; and

B(1)(c) The reasons why the order, act, omission or determination should be reversed or modified.

B(1)(d) For cases involving property valuation, the complaint must state the real market value requested for each tax account and for each tax year at issue.

B(2) Complaint Attachments. Copies of the order or notice being appealed and any other submitted documents must be attached to the original and any copies of the complaint.

C Service.

C(1) Taxpayer as Plaintiff. Where the taxpayer is the plaintiff, the taxpayer does not need serve a copy of the complaint to the defendant. In those cases, the court will serve the complaint upon the defendant.

C(2) Taxing Authority as Plaintiff. Where the plaintiff is not the taxpayer, the plaintiff must serve by certified mail a copy of the complaint upon the taxpayer within the period for filing an appeal and file an affidavit or declaration with the court attesting to the service within a reasonable time. The affidavit or declaration must specify that the complaint was mailed to the taxpayer's address by certified mail on a certain date, and must include a copy of the return receipt as an attachment.

D Confidential Information. The filing of a signed Authorization to Represent form is recognized by the court as permitting authorized representatives to receive information from the Department of Revenue that would otherwise be confidential under ORS 314.835. *See* ORS 305.230(2).

E Representation.

E(1) Generally.

E(1)(a) Individual Representation. In any proceeding before the Magistrate Division, a party who is an individual may represent and appear on his or her own behalf.

E(1)(b) Authorized Representatives Permitted. A party may be represented by:

E(1)(b)(i) An Oregon attorney;

E(1)(b)(ii) An Oregon Certified Public Accountant;

E(1)(b)(iii) The authorized employee of a taxpayer who is regularly employed by the taxpayer in tax matters;

E(1)(b)(iv) A designated representative of a nonprofit organization or an organization exempt from taxation;

E(1)(b)(v) A spouse, child who has arrived at the age of majority, or parent; or

E(1)(b)(vi) A person designated as representative in an authorization to represent filed with the court in the form required by TCR-MD 1 E(1)(c). *See* ORS 305.230(1)(g).

E(1)(c) Authorization to Represent Forms. Except for an Oregon attorney, a representative appearing pursuant to the provisions of ORS 305.230 must file an authorization to represent with the court and serve it on all opposing parties. The authorization to represent must be on the form provided by the court.²

E(1)(d) Income Tax Matters Representation Generally. A licensed tax practitioner may represent a taxpayer in matters related to the administration of any tax on or measured by net income. ORS 305.230(1)(b).

E(1)(e) Property Tax Matters Representation Generally. A licensed real estate broker or state certified, licensed, or registered appraiser may represent a taxpayer in matters related to the administration of any *ad valorem* property tax. ORS 305.230(1)(d).

E(2) Representing a Partnership, S Corporation, or Other Entity. A partnership, limited liability company, trust, or other entity may be represented in all matters pursuant to ORS 305.230(1)(a), in income tax matters pursuant to ORS 305.230(1)(b), and in property tax matters pursuant to 305.230(1)(d).

E(2)(a) Limited Liability Company. A limited liability company may be treated as a partnership for purposes of this representation rule. *See* ORS 63.810.

E(2)(b) Partnership. Pursuant to ORS 305.230(1)(e) and ORS 305.242, partners in a partnership may be represented by the designated tax matters partner with respect to appeals involving taxes on or measured by net income. Oregon Administrative Rules (OAR) 150-305.242(2) and 150-305.242(5) contain the rules the court will follow as to the form of designation. A designation must be filed with the complaint or responsive pleading.

E(2)(c) S Corporation. Pursuant to ORS 305.230(1)(c), an S corporation (as defined in section 1361 of the Internal Revenue Code as amended and in effect on December 31, 2014) may be represented by a shareholder in the same manner as if the S corporation were a partnership and the shareholder were a partner. A representative shareholder may be designated by the corporation. OAR 150-305.230(1) and 150-305.230(2) contain the rules the court will follow as to the form of designation. A designation must be filed with the complaint or responsive pleading.

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² The court's form is available on its website (<http://courts.oregon.gov/Tax>).

E(3) Authorized Representatives: Designation, Communication, and Change.

E(3)(a) Number of Authorized Representatives. A party may be represented by no more than two authorized representatives. If a party designates more than one authorized representative, any document filed with the Magistrate Division of the Oregon Tax Court may be signed by either individual designated as an authorized representative for that party. A document is not signed unless it bears the signature of an authorized representative.

E(3)(b) Communication Through an Authorized Representative. The first authorized representative named will be the primary representative. The court and opposing parties will provide written communications to the primary representative. A party that has designated an authorized representative may only communicate with the court through its authorized representative.

E(3)(c) Change in Authorized Representative. Once an individual is designated as an authorized representative and recognized by the court as the authorized representative, that individual must inform the court and all other parties in writing when he or she no longer represents a party. In the case where the authorized representative represents a party who is an individual, that party may also provide written notice of a change in authorized representative to the court. In the case where the named party is other than an individual, if an authorized representative is an employee and is no longer employed by the named party or otherwise unavailable due to illness or death, that party may appoint another individual to replace the authorized representative. In the case of any change in representation, notification of the change must be made in writing to the court and all other parties.

RULE 2 RESPONSIVE PLEADINGS; AMENDED PLEADINGS

A Answer or Motion to Dismiss. A defendant must respond to the complaint by answer or motion within 30 days from the date of the court's notice of filing of the complaint. *See* TCR-MD 3. The response, usually titled Answer or Motion to Dismiss, must be signed by (1) the named party if the named party is a self-represented individual, or (2) one of its authorized representatives. Unless the response is electronically filed, *see* TCR 9 A, applying UTCR 21, it must be filed by delivering or mailing the response to the court and a copy to all other parties, or, if the other parties have authorized representatives, the copy must be delivered or mailed to those representatives.

B Contents of Answer or Motion to Dismiss. The response must contain the names of the parties, the case number, and a brief response to the claims raised in the complaint. Claims and affirmative defenses, *e.g.*, an ORS 305.287 determination request or an allegation that plaintiff failed to timely file an appeal, must be alleged in a defendant's first filed pleading, captioned Motion to Dismiss, Answer, or other appropriate caption. If a motion to dismiss is filed and subsequently denied, a defendant must file an answer responsive to the claims contained in the complaint, no later than 30 days after service of the order denying the motion.

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C Amended Pleadings. Amended pleadings must conform to the requirements of TCR 23 A-D. Unless the court directs otherwise, a party must respond to an amended pleading within the time remaining for a response to the original pleading or within 10 days after service of the amended pleading, whichever period is longer.

D Facsimile Transmittal. The court will not receive or file pleadings submitted to the court by facsimile in excess of 10 pages.

RULE 3 SERVICE; COMPUTING TIME

A Service.

A(1) Form of Service. Unless otherwise provided by statute or rule, a response, motion, or other document may be served on all the other parties by personal delivery, United States Postal Service first class mail (mail), email, facsimile communication, or by service through the electronic filing system. After the complaint is filed, TCR 9 may be used as a guide to the extent relevant.

A(2) Service Completed. Service is complete upon personal delivery in the manner provided by TCR 9 B(2) or upon transmission in a manner allowed by this rule.

A(3) Additional Time for Documents Served by Means Other Than Personal Service. Except for documents personally served on a party, whenever a party has the right or is required to do some act within a prescribed period after service of a document, three days will be added to the prescribed period. This rule does not apply to the period for filing a complaint in the Magistrate Division or filing an appeal to the Regular Division from the decision of the magistrate.

B Computing Time. The court follows TCR 10 A when computing a time period required or allowed by these rules, by statute, or by order of the court.

RULE 4 SPECIAL DESIGNATION

A Generally. After a complaint is filed in the Magistrate Division, it may be specially designated for hearing in the Regular Division by two methods: (1) by rule (based on statutory language) and (2) by court order (upon the written petition of a party or on the court's own motion). The requirements for special designation are set out in TCR 1 C.

B Documents Filed. Once a petition for special designation is filed in the Regular Division, proceedings in the Magistrate Division will be suspended until the Regular Division issues its order. TCR 1 C(2)(a). Documents submitted to the Magistrate Division after the filing of a petition but before the Regular Division issues an order will be filed, but all responsive time periods will be tolled. Responsive time periods will begin at the time the Regular Division issues an order denying designation.

RULE 5
EX PARTE COMMUNICATION

A party must provide to all other parties a copy of every writing sent to the court, with the exception of the Complaint, which is served by the court. *See* TCR-MD 1 C. Writings include, but are not limited to, letters, motions, and documents. A writing submitted to the court must be accompanied by a certificate of service or other evidence that the writing was provided to all parties.³ Your document may not be filed if a certificate of service or other evidence of service is not included with your filing.

RULE 6
COURT PROCEEDINGS AND PROCEDURES

A Initial Case Management Conference. In most appeals, the court will set an initial telephone case management conference. *See* TCR-MD 8. At the time of the initial case management conference, each party must be prepared to briefly identify the issue(s), discuss discovery (*see* TCR-MD 9) and discovery cut-off dates if applicable, and have a calendar available for scheduling purposes.

B Trial Date. A trial date may be scheduled at the initial case management conference. If mediation is scheduled with the agreement of the court and the parties, a trial date will be set no more than 60 days after the mediation date.

C Exhibit Exchange. Exhibit exchange dates will be set at the initial case management conference. *See* TCR-MD 12.

D Settlement. After the initial case management conference, the parties are encouraged to discuss the issues and work toward a resolution.

E Stipulation. If the parties resolve all issues raised in an appeal, a signed stipulation must be submitted to the court prior to trial.⁴ If a party is represented, the stipulation must be signed by an authorized representative. *See* TCR-MD 20 B.

F Motion to Withdraw. A plaintiff seeking to dismiss or withdraw its appeal must submit the request to the court with evidence that a copy was provided to the other parties. *See* TCR-MD 7 E, TCR-MD 20 A.

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³ A sample certificate of service is available on the court's website (<http://courts.oregon.gov/Tax>).

⁴ A sample form of a stipulated agreement is available on the court's website (<http://courts.oregon.gov/Tax>).

RULE 7 MOTIONS

A Request to the Court. After the filing of a complaint, any request for an order of the court is a motion. Every motion, except those made during a court proceeding, must be in writing and must state the reasons and authorities for the motion and the relief requested and should be accompanied by any necessary declarations, affidavits, or other documentary evidence.

B Response to Motion Generally. A party other than the party making the motion may file a written response to any written motion. A party other than the party making the motion may respond orally to a motion made during a court proceeding or may request to file a written response. Except as provided in this rule, a response to a motion filed prior to the initial case management conference is not due until after the initial case management conference. A party other than the party making the motion may respond orally to the motion at the initial case management conference or, if the party other than the party making the motion requests, the court will allow time after the initial case management conference for a written response to be filed.

C Preliminary Motion Filed Prior to Initial Case Management Conference. Prior to the initial case management conference, the court may rule on one or more of the following preliminary motions: motion to amend pleading, motion to make more definite and certain, motion to strike, motion to consolidate, motion to dismiss a named party, and motion to intervene. A nonmoving party is permitted to file a written response within 10 days of the date of service of the preliminary motion. After the response period has passed, or all parties other than the party making the motion have filed a response, the court may rule on the preliminary motion.

D Motion Filed After Initial Case Management Conference.

D(1) Time to File. Except as provided in subsection E, and unless otherwise specified by the court, a response to a written motion filed after the initial case management conference, including a status report and recommendations, is due 10 days after the date of service or 20 days after the date of service in the case of a response to a motion for summary judgment. A response to an oral motion made during a court proceeding must be made during the proceeding unless the court allows a written response to be filed.

D(2) When Court Will Rule. Except as provided in subsection E, the court will not rule on a motion until responses from all nonmoving parties have been filed or the response time has lapsed.

E Motion to Dismiss or Withdraw Filed by Plaintiff. The court may rule on a written motion to dismiss or withdraw filed by a plaintiff without waiting for a response from the nonmoving parties when the motion indicates that the parties agree that no party will seek costs and disbursements. In all other cases, the nonmoving parties have 10 days from the date of service to file a response before the court will rule on the motion. The court may rule on an oral

motion to dismiss or withdraw made by a plaintiff during a court proceeding if the parties other than the party making the motion do not request to file a written response.

F Oral Argument. Any party may request oral argument on a motion. The court will determine whether oral argument is held.

G(1) Motion for Default. A motion for default may be filed when a defendant has failed to file an answer or a response. The court may notify all parties that defendant failed to file an answer or a response. The plaintiff may submit a motion for default asking that the relief requested in its complaint be granted. Once the motion for default is filed, the complaint cannot be amended unless the court approves. If the defendant fails to file an answer or a response within 10 days of the filing of the motion for default, the court will consider the motion and may enter an order of default.

G(2) Order of Default. Once an order of default is entered, the defaulting party is no longer allowed to appear or present evidence and other parties are not required to provide copies of court filings to that party notwithstanding TCR-MD 5. A defaulting party may request to set aside an order of default for good cause.

G(3) Decision Following Order of Default. The court will consider plaintiff's appeal and may hold an evidentiary hearing before entering a decision. Appeal may be taken from a decision by following the provisions of TCR-MD 19.

H Facsimile Transmittal. The Magistrate Division will not receive or file documents submitted to the court via facsimile in excess of 10 pages.

RULE 8 SCHEDULING

A Scheduling Requests. In general, cases pending before the court will be scheduled for an initial case management conference and additional proceedings as needed.

A(1) Initial Case Management Conference. An initial case management conference is scheduled after all defendants have filed an answer or other response to a complaint.

A(1)(a) Definition. A case management conference is a telephone proceeding where a magistrate talks with the parties about their dispute. Case management conferences are not recorded.

A(1)(b) Purpose. The purposes of the conference are, among others, to consider the issues and areas of agreement or disagreement and to determine whether to set a trial or mediation. An additional schedule may be established.

A(1)(c) Industrial Property. In appeals involving state-appraised or county-appraised industrial property or centrally assessed property, both sides must be prepared to discuss the

reporting requirements of ORS 311.814 and to discuss participation by or notification of affected government entities.

A(2) Mediation. A party may verbally request mediation at the initial case management conference. All other requests for court-assisted mediation must be in writing. A party submitting a written request for mediation must obtain the consent of the other parties prior to filing the request with the court. A requesting party must submit the written request to the court, listing three mutually convenient mediation dates. Any request for mediation must be submitted no later than 45 days prior to a scheduled trial. Generally, mediations are held in person at the Oregon Tax Court, Tanner Mediation Center, Salem, Oregon.

A(3) Trial. A trial date usually will be scheduled at the initial case management conference. All trial requests submitted by a party after the initial case management conference must be in writing. A party requesting a trial must notify all other parties before submitting the written request to the court. The request must list three mutually convenient trial dates and state whether the parties prefer an in-person or a telephone trial. Note: for budgetary reasons, in-person trials are restricted to the Oregon Tax Court in Salem.

B Rescheduling Requests. All requests to reschedule proceedings must be submitted in writing and copied to all other parties as required by TCR-MD 5. Before filing a rescheduling request, parties should contact the court to determine whether the court is available on the dates proposed. However, the court does not hold dates without magistrate approval. The court allows two individuals to be designated as authorized representatives and expects that one of those two authorized representatives be available for any scheduled proceeding. A request to reschedule a proceeding will be denied absent a showing that both authorized representatives are unavailable.

B(1) Case Management Conference Rescheduling. If a party seeks to reschedule a case management conference, the party must submit a written request to the court. Before submitting its written request, the party must contact the other parties and identify three mutually convenient alternative dates.

B(2) Oral Argument Rescheduling. If a party seeks to reschedule an oral argument, the party must, before contacting the court, obtain the approval of all other parties as well as three mutually convenient alternative dates and times. The request must state whether the parties prefer an in-person or a telephone oral argument. All rescheduling requests must be for good cause and must be submitted to the court in writing no later than 10 days prior to the oral argument. The court may deny the request if good cause is not shown.

B(3) Trial and Mediation Rescheduling. Requests to reschedule mediation and trial proceedings that are made no later than 30 days before the proceeding will be granted only for good cause shown. Requests made later than 30 days before the proceeding will not be granted except in exceptional circumstances.

RULE 9 DISCOVERY

A Generally. A party must make available for copying any relevant documents requested in writing by another party. TCR 36 through TCR 46 will apply only when the court so orders.

B Motion to Compel.

B(1) Documents. If a party is unable to obtain discoverable items within a reasonable time after requesting them in writing from another party, the moving party may request from the court an order compelling the production of those items. In its motion to compel, the moving party must state with sufficient particularity the items it seeks to discover, the reasons for the request, and its prior attempt(s) to obtain the requested items.

B(2) Site Inspection. A party may request from the court an order compelling a site inspection. Before requesting a motion to compel a site inspection, a party must make to the other party a written request for a site inspection and submit a copy of the written request to the court with the motion.

C Sanctions. The court may sanction any party withholding information, including exclusion of the information from future proceedings, or any other measure the court considers appropriate.

RULE 10 MEDIATION

A Assignment to Mediation. A party to the appeal may request mediation or the court on its own motion may assign the matter to mediation. The court will consider an appeal appropriate for mediation only where all parties agree to participate. The court will set the date and time of the mediation. Mediation will be set as soon as possible in order to reduce the financial impact of a lengthy appeal process.

B Responsibilities of Mediating Parties. A magistrate acting as mediator will ask the parties to submit position papers to the mediator. Premediation position papers are exempt from mandatory electronic filing requirements and must be filed conventionally. An individual participating in mediation, whether a party or a representative, must have authority to settle all issues. Failure to appear at a scheduled mediation may cause a party to be sanctioned.

C Confidentiality. In general, statements made during mediation are confidential. If a state agency is a party to the mediation, statements may only be confidential to the extent provided by statute or agency rules. Statements of fact(s) already known, or of matters that are independently discoverable, for example, matters of public record, are not treated as confidential. A magistrate acting as a mediator will not serve as the trial magistrate in that same appeal.

RULE 11 EVIDENCE; TRIAL PROCEDURE

A Presentation of Evidence. Any evidence the parties want considered must be filed with the court and exchanged with all other parties as an exhibit even if it was already presented in a prior administrative hearing or submitted with an earlier pleading or document. *See* TCR-MD 12 for the exchange of evidence requirements.

B Testimony and Trial Procedure. The Magistrate Division follows the testimony and trial procedure guidelines stated in Tax Court Rules 56 through 61. Where the content of those rules conflicts with a Magistrate Division rule, the Magistrate Division rule controls. *See* TCR 56-61.

C Return of Evidence. Written or tangible evidence will not be returned unless requested by the submitting party. After final disposition of the case, a notice will be sent to the parties stating that all exhibits will be disposed of by the court unless they are retrieved within 30 days. At a party's timely written request, the court will return up to 200 pages of exhibits by mail. Exhibits that exceed 200 pages must be retrieved at the time and expense of the requesting party.

RULE 12 EXHIBITS

A Exhibits: Definition. Exhibits are documents or other items that will be offered as evidence in support of a party's case. Exhibits include, but are not limited to, writings, reports, notes, graphs, pictures, photographs, documents, maps, receipts, records, diaries, minutes, ledgers, returns, calculations, articles, papers, data, field notes, work papers, and tests.

B Marking and Binding Exhibits. Each document, report, or other paper or item is a separate exhibit. The parties have the responsibility of organizing, binding, and marking their exhibits. Each party's exhibits must be securely bound, for example with a staple or within a binder, and the case number must appear on the first page or on the binder cover. Each exhibit must be marked as follows:

B(1) Plaintiff's exhibits must be marked numerically. Each exhibit should be given its own number (1, 2, 3); if the exhibit 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.)

B(2) Defendant's exhibits must be marked alphabetically. Each exhibit should be given its own letter (A, B, C); if the exhibit has multiple pages the labeling should include page numbers. (E.g., Ex A; p1 of 3, Ex A; p2 of 2, Ex A; p3 of 3, etc.)

B(3) Intervenor's exhibits must be marked numerically with a capital "I" in front of the number. Each exhibit should be given its own number (I-1, I-2, I-3); if the exhibit has multiple pages the labeling should include page numbers. (E.g. Ex I-1; p1 of 3, Ex I-1; p2 of 3, Ex I-1; p3 of 3, etc.)

C Exchange of Exhibits. The early exchange of information is encouraged. Each party must provide the court and all other parties with copies of all exhibits to be introduced into evidence in support of that party's case.⁵ Exhibits will not be filed with the court unless they are correctly labeled as required by this rule and proof of service on all other parties is provided.

C(1) Time of Exchange.

C(1)(a) Generally. Unless otherwise set by the court, all exhibits must be either postmarked at least 14 days before the trial date or physically received by the court and all other parties at least 10 days before the trial date. The tenth day ends at 5:00 p.m. local time of the recipient. In the event that the tenth day falls on a legal holiday or weekend, the next business day following the legal holiday or weekend will be considered the tenth day. For purposes of this rule, a legal holiday is defined in ORS 187.010 and ORS 187.020.

C(1)(b) Database Disclosure. If an appraiser relies on a computer database to form an opinion of value of the property that is the subject of the appeal, the appraiser must disclose the use of that database to all parties at or before the time for exchanging exhibits. If the database is not freely available to the general public or readily available for commercial purchase or subscription, the party making use of the database must provide, as part of the exhibit exchange, the portions of the database relied on in forming the appraiser's value opinion. For purposes of this rule, an appraiser is 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.

C(1)(c) Rebuttal Exhibits. Exhibits submitted as rebuttal evidence do not need to be exchanged pursuant to the deadlines stated in TCR-MD 12 C(1)(a). A party submitting rebuttal evidence in a telephone or videoconferencing trial must file all rebuttal exhibits no later than 5 p.m. prior to the trial date.

C(2) Facsimile Transmittal. Exhibits may not be submitted to the court by facsimile without requesting written approval of the assigned magistrate.

C(2)(a) Facsimile Transmittal of Rebuttal Exhibits. Rebuttal exhibits that are properly labeled may be submitted by facsimile without requesting approval of the assigned magistrate. Rebuttal exhibits submitted by facsimile cannot exceed 10 pages.

D Sanctions. The court may exclude any evidence received after the time of exchange, sanction any party who withholds information, or use any other measure the court considers appropriate.

RULE 13
MOTIONS FOR SUMMARY JUDGMENT

A. When Motion for Summary Judgment May Be Filed. A motion for summary judgment may not be filed after a trial has been set without leave of the magistrate.

⁵ The exchange of exhibits is not to be accomplished through the electronic filing system.

B. Regular Division Rules Apply. The court may apply TCR 47 to motions for summary judgment, to the extent relevant.

RULE 14 CONDUCT AND DECORUM

The proceedings and participants are at all times subject to the direction and authority of the court. All persons are to treat the court and each other with respect and courtesy. The magistrate is addressed as “Your Honor,” “Magistrate,” or “Judge.”

RULE 15 RECORDING

A Court Recordings. Proceedings before the court are not formally recorded by the court, either electronically or stenographically. ORS 305.430.

A(1) Requesting Recordings. If the court decides to record a proceeding, the recording may be disclosed after the court receives a written request and payment of the applicable fees.

A(2) Protected Recordings. The court will protect from disclosure any recording or any part of a recording that state or federal law prohibits the court from disclosing; state law exempts from disclosure; the court has sealed; or a protective order restricts one or more of the parties from disclosing. Any recording made at the request of the court will be destroyed 30 days after a judgment is filed or the matter is appealed to the Regular Division.

B Party Recordings. Any party may record proceedings. If a party decides to record a proceeding, either stenographically or electronically, that party must give written notice no later than 10 days before the proceeding to the court and all other parties and must provide a copy of the recording to the court within 14 days of receiving the recording.

RULE 16 ALLOWANCE AND AWARD OF COSTS AND DISBURSEMENTS

A Definition of 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; the statutory fees for witnesses; the necessary expense of copying of any public record, book, or document used as evidence in the trial; and any other expense specifically allowed by agreement, by these rules, by TCR 68 A(2), or by other rule or statute.

B Allowance of Costs and Disbursements. In any action, costs and disbursements may be allowed to the prevailing party, unless these rules or other rule or statute direct that in the particular case costs and disbursements will not be allowed to the prevailing party or will be allowed to some other party, or unless the court otherwise directs.

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C Procedure for Seeking Costs and Disbursements.

C(1) Request for Costs and Disbursements. A party may request costs and disbursements by filing the court’s form entitled “Statement for Costs and Disbursements.”⁶ Unless otherwise ordered by the court, the form must be filed within 14 days after any of the following events occurring on or after January 1, 2019:

- (a) a trial is held,
- (b) a plaintiff’s motion to dismiss or withdraw is served, or
- (c) an order is entered disposing of all issues (such as an order granting a motion for summary judgment or a motion to dismiss).

The court will not award costs and disbursements other than the filing fee unless the court’s form “Statement for Costs and Disbursements” is filed with appropriate proof attached.

C(2) Objections and Responses.

C(2)(a) Objections. A party may file an objection within 14 days after the date of service of a statement of costs and disbursements or as otherwise allowed by the court. The objection must be specific and timely provided to all parties.

C(2)(b) Responses. The party seeking costs and disbursements may file a response to an objection. The response must be submitted no later than 10 days after the date of service of the objection and timely provided to all parties.

C(3) Hearing. At the discretion of the court, a hearing may be held to consider issues and evidence related to the request for costs and disbursements. No other issues or evidence will be considered at the hearing.

RULE 17 DECISIONS

When a case is ready to be decided, the court takes it under advisement and issues a written decision.

RULE 18 CORRECTION; RECONSIDERATION

A Correction of Clerical Mistakes.

A(1) Definition of Clerical Mistake. The correction of clerical mistakes, includes, but is not limited to, corrections of typographical errors, arithmetic, or copying errors.

A(2) Clerical Mistake Correction; How Made. The court may correct clerical mistakes or omissions at any time on its own motion. Within a reasonable time, any party may

⁶ The form can be found on the court’s website <https://www.courts.oregon.gov/forms/Documents/TAX-StatementForCostsAndDisbursementsMagDiv.pdf>

seek to correct a clerical mistake or omission. The request must be made by filing a motion. **CAUTION – A request based on this subsection should not be considered as an alternative to appeal. See TCR-MD 19.**

B Correction of Other Errors. Within a reasonable time, any party may request relief from a decision, or judgment for reasons of mutual mistake, inadvertence, excusable neglect, or misconduct of another party. The request must be made by filing a motion. **CAUTION – A request based on this subsection should not be considered as an alternative to appeal. See TCR-MD 19.**

C Reconsideration. Following issuance of a decision, or judgment, the court will not accept motions for reconsideration or to reopen the record; therefore, the provisions of TCR 80 are inapplicable in the Magistrate Division.

RULE 19 APPEALS

A Appealable Acts. Decisions entered by the Magistrate Division may be appealed to the Regular Division. ORS 305.501(5). The grant or denial of a motion for a protective order may be appealed to the Regular Division. ORS 305.430(4).

B Method of Appeal.

B(1) Appeals of Decisions. The appealing party must, within 60 days after the date of entry of the decision, file a complaint in the Regular Division. A copy of the Magistrate Division decision must be attached to the Regular Division complaint. *See* TCR 1 B(1).

B(2) Appeals of the Grant or Denial of Protective Orders. The appealing party must, within 60 days of the grant or denial of a motion for a protective order, file a protective order petition in the Regular Division. The petition must include the required fee. *See* TCR 1 E. A copy of the petition must be submitted to the Magistrate Division. Once a protective order petition is filed, proceedings in the Magistrate Division will be suspended until the Regular Division issues an order. *See* TCR 1 B(2).

RULE 20 JUDGMENTS

A Judgment of Dismissal. If no Statement for Costs and Disbursements has been filed the court may issue a judgment of dismissal in response to a plaintiff's motion to dismiss or withdraw made pursuant to TCR-MD 7 E or TCR 54.

B Judgment of Stipulation. The court may issue a judgment of stipulation when the parties file a signed stipulated agreement or make an oral stipulated agreement during a court proceeding. The court's judgment of stipulation will not include an award for costs and disbursements unless stated in the signed stipulated agreement or included in the parties' oral stipulated agreement.

C Judgment from Decision. The court will enter a judgment consistent with the decision unless an appeal is filed with the Regular Division no later than 60 days after the date of entry of the court's decision.

D Appeal. A judgment issued by the Magistrate Division is not appealable.

RULE 21 ENFORCEMENT

The court may enforce any decision, order, judgment, or other statement directing a party to perform a specific act by imposing sanctions on the party refusing or neglecting to comply. Sanctions may include, but are not limited to, dismissal of the case, placing the noncompliant party in default, and sanctions for contempt as authorized by statute.

RULE 22 MEDIA COVERAGE OF COURT PROCEEDINGS

The Magistrate Division will follow TCR 3, applying UTCR 3.180.

RULE 23 SEGREGATION AND PROTECTION OF PERSONAL INFORMATION

The Magistrate Division will follow TCR 35.

The foregoing Rules of Procedure of the Oregon Tax Court, Magistrate Division, are hereby promulgated effective beginning January 2, 2019.