

IN THE OREGON TAX COURT  
REGULAR DIVISION  
MAGISTRATE DIVISION  
Court Administration

IN THE MATTER OF COURT ) **PRESIDING JUDGE’S ORDER**  
PROCEDURES TO ADDRESS THE ) **AMENDING COVID-19 PROCEDURES**  
COVID-19 PANDEMIC ) **TO INCORPORATE CJO 21-009**

Chief Justice Order (“CJO”) 21-009 imposes updated restrictions on court operations designed to ensure public access to courts while continuing to minimize health risks for court personnel and all persons using state courts. Among other restrictions and requirements, Paragraph 10.b. provides that proceedings in the Tax Court shall be conducted remotely unless (1) the Tax Court Judge permits a particular proceeding to be conducted in person, (2) adequate facilities are available, (3) staffing levels permit, and (4) all participants, including judicial officers, comply with face covering requirements, social distancing requirements, and other safety requirements. This Order incorporates CJO 21-009, as well as CJO 20-045 relating to protective face coverings.

This Order supersedes the Tax Court’s orders dated July 9, 2020 and November 23, 2020.

Pursuant to CJO 20-045 and CJO 21-009, the court hereby orders as follows:

**1. Definitions**

This Order adopts the definitions in CJO 21-009 and CJO 20-045.

- a. “Court facility” means the common areas open to the public, the courtroom, auxiliary courtroom, mediation center and conference rooms on the third and fourth floors of the Robertson Building, 1241 State Street, Salem.
- b. “In-person” proceedings include those in which any person not employed by the court is present in the courtroom. For example, an in-person proceeding includes a proceeding in which one party participates by remote means but another party is present in the courtroom, or a proceeding in which each party appears in person but one or more witnesses participate by remote means.
- c. “Judicial officer” means a Magistrate or the Tax Court Judge.
- d. “May,” in reference to actions by a judicial officer, does not limit the judicial officer’s authority to request or direct other actions consistent with CJO 20-045 and CJO 21-009.
- e. “Proceeding” is defined in CJO 21-009, namely, a trial, hearing, or other court proceeding. A case management conference is a proceeding.

- f. “Protective face covering” is defined in CJO 20-045, namely, a covering of the nose and mouth to protect against spreading the COVID-19 virus, as recommended by the Centers for Disease Control and Prevention (CDC) and the Oregon Health Authority.

## **2. Authorization of In-Person Proceedings; Delegation**

- a. For the duration of this Order, litigants should expect that in-person proceedings will continue to be the exception. The court must be satisfied that substantial, objective reasons support (1) proceeding in person and (2) doing so while this Order is in effect.
- b. **Proceedings scheduled more than 30 days in advance**
  - i. Because the duration of this Order is unknown, a judicial officer may, in the judicial officer’s discretion and in consultation with the Tax Court Administrator, schedule a proceeding to occur in person in anticipation that restrictions on in-person proceedings may be relaxed or eliminated before the scheduled date. The Tax Court Judge hereby delegates authority to each Magistrate and to the Tax Court Administrator to do so.
  - ii. Within 30 days of the date set for an in-person proceeding, each judicial officer will again consult with the Tax Court Administrator. The Tax Court Administrator will review the reasons for and against proceeding in person while this Order is in effect. The Tax Court Administrator will present his recommendation to the Tax Court Judge. No proceeding may be held in person without approval of the Tax Court Judge.
- c. **Proceedings scheduled within 30 days**
  - i. A judicial officer may schedule a proceeding to occur in person within 30 days but will promptly consult with the Tax Court Administrator and seek approval of the Tax Court Judge as provided in Paragraph 2.b.ii.
- d. Notwithstanding the Tax Court Judge’s approval of an in-person proceeding, each judicial officer retains discretion to conduct the proceeding by remote means or to defer the proceeding.

## **3. Procedures Before an In-Person Proceeding**

- a. The court’s goal is to continue to meet its obligations to the public while also continuing to minimize health risks for litigants, case participants, interpreters, judicial officers, staff, members of the public who come into the court facility, and all who come in contact with any of those persons. To meet that goal, the court encourages attendees to follow applicable government directives, including any social distancing or quarantine guidelines, before an in-person proceeding. Attendees should stay home and contact the court if they have been exposed to COVID-19 in the prior 14 days or if showing COVID-19 symptoms. Persons in high-risk categories or who otherwise have concerns about appearing in person due to COVID-19-related issues should contact the court to request either a postponement or an appearance by remote means.

- b. All persons wishing to participate in person in any proceeding must be prepared to comply with social distancing requirements as defined in CJO 21-009 and as implemented in this Order. See “Procedures at Court” below.
- c. A judicial officer may, after setting a date for an in-person proceeding, contact the parties as the date approaches to discuss how these procedures will apply. A judicial officer has discretion to reschedule a proceeding or to require all or a part of the proceeding to be conducted by remote means.
- d. The court may ask parties to specify in advance the number of attendees they anticipate, including parties, representatives, witnesses and other attendees. The court may inquire whether any children will attend and their ages.
- e. To prevent the in-person passing of unquarantined paper at a proceeding:
  - i. Parties must closely observe the requirements for advance filing of exhibits in TCR-MD 12 and TCR 56;
  - ii. A judicial officer may direct parties to use safety procedures to offer or present rebuttal exhibits or demonstrative exhibits. Safety procedures may include electronic transmission or filing, including via OJD secure file transfer or other authorized mechanisms, electronic display in the courtroom, the use of gloves, or advance deposit of paper copies with appropriate quarantine procedures.
- f. The court has suspended its custom of providing drinking water during proceedings, and the public drinking fountains are unavailable. Representatives, parties and other persons planning to attend a proceeding should plan to bring their own water (preferably in bottles).
- g. Any person intending to attend a procedure who becomes ill or develops COVID-19 symptoms, including elevated temperature, is directed to contact the court immediately to request a reset or to appear remotely.

#### **4. Procedures at Court**

- a. Any person who appears at the court facility exhibiting symptoms associated with COVID-19 may be directed to leave.
- b. Each person entering the court facility is directed to use hand sanitizer or to wash hands upon arrival. Persons arriving in the lobby without a protective face covering will be admitted only after putting one on. (See below.)
- c. **Protective Face Coverings**
  - i. Except for children under two years of age or as provided below, each person is directed to wear a protective face covering while in the court facility. Instructions for proper use of a protective face covering will be posted in the lobby. Persons may use their own masks so long as they are clean and appropriate for the courtroom.

- ii. Paragraph 3 of CJO 20-045 applies to proceedings held in the courtroom. References to the “judge who is presiding” include a Magistrate who is presiding over the proceeding.
- iii. Paragraph 4 of CJO 20-045 applies to court personnel, including judicial officers, working in enclosed offices and workstations. Paragraph 1.c. of CJO 20-045 defines the courtroom as an enclosed office.
- iv. Paragraph 5 of CJO 20-045 applies to exemptions from the requirements to wear a protective face covering.
  - 1. The Tax Court Judge, any Magistrate in consultation with the Tax Court Administrator, or the Tax Court Administrator may grant legally required exemptions pursuant to paragraph 5.a. (non-employees), and the Tax Court Judge hereby designates them as so authorized for purposes of paragraphs 5.a. and 5.c. (use of other protective measures).
  - 2. The Tax Court Judge may grant exemptions pursuant to paragraph 5.b. (employees).
  - 3. Persons wishing an exemption must contact court personnel before entering the court facility.
- v. The court will provide protective face coverings and information about how to use them.
- d. Court personnel will arrange seating and may provide direction on entrance, egress, restroom use and other matters; all persons entering the court facility must comply with those directions.
- e. During recesses, attendees are expected to continue to practice social distancing and must follow these procedures for handwashing or sanitizer and donning a mask before re-entering the court facility.

This Order is effective April 1, 2021, and remains in effect for the duration of CJO 20-045 and CJO 21-009.

Now, therefore,

IT IS SO ORDERED.

Dated this 1st day of April, 2021.

Signed: 4/1/2021 08:27 AM

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Tax Court Judge Robert T. Manicke