OREGON TAX COURT RULES

Regular Division

January 1, 2022

Oregon Tax Court
1163 State Street
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Website: https://www.courts.oregon.gov/courts/tax

TABLE OF RULES

PREFACE

The Oregon Tax Court consists of two divisions: the Regular Division and the Magistrate Division. Appeals from decisions of the Magistrate Division are to the Regular Division. Regular Division trials are *de novo* and are conducted without a jury. Although proceedings in the Magistrate Division are informal, proceedings in the Regular Division are formal because they must "conform, as far as practical to the rules of equity practice and procedure in this state." ORS 305.425. Unless otherwise provided by statute or rule, if the plaintiff in a case before the tax court is the taxpayer, the Department of Revenue will begin the case as the sole defendant. *See* ORS 305.501. Other parties may be joined to the case or intervene in the case, but only with permission from the court.

The Oregon Rules of Civil Procedure (ORCP) are not applicable to the Tax Court (*see* ORCP 1), but many Tax Court Rules (TCR) reflect provisions of the ORCP (*see* TCR 81). To the extent that the wording of a TCR is the same as that of an ORCP, cases interpreting the ORCP may be looked to as authority for interpreting the TCR. In addition, the Uniform Trial Court Rules (UTCR) are not applicable to the Tax Court (*see* UTCR 1.010), but many TCR reflect provisions of the UTCR.

All of the rules should be cited as "Tax Court Rule" (TCR). The TCR should be cited by rule, section, subsection, paragraph, and subparagraph. For example, Rule 7, section D, subsection (3), paragraph (a), subparagraph (i), would be cited as TCR 7 D(3)(a)(i). An attempt has been made to correlate TCR numbers with ORCP numbers.

The Regular Division will not accept or file communications in excess of 10 pages that are transmitted to the court by facsimile. The Regular Division will not accept electronic mail regarding pending matters.

Suggestions for improvements in the rules are welcome.

RULES OF THE OREGON TAX COURT
REGULAR DIVISION

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

A Regular Division Appeals. Appeals to the Regular Division are either:

(1) From a decision of the Magistrate Division; or

(2) From the grant or denial of a motion for a protective order of the Magistrate Division as provided by ORS 305.430(4); or

(3) By special designation. ORS 305.501(1).

Certain actions may originate in the Regular Division as provided for in TCR 7.

B Appeals from the Magistrate Division.

B(1) Appeals from a Decision of the Magistrate Division. Upon receipt of a complaint accompanied by a fee as provided in TCR 1 E, the tax court clerk will file the complaint in the Regular Division. A copy of the magistrate's written decision and any dispositive order is to be included with the complaint.

B(2) Appeals from the Grant or Denial of a Motion for a Protective Order. The grant or denial of a motion for a protective order by a magistrate of the Tax Court may be appealed to the Regular Division of the Tax Court by written petition. *See* TCR-MD 18 B. The protective order petition must be accompanied by a fee as provided in TCR 1 E.

B(2)(a) The protective order petition must be filed with the Regular Division of the Tax Court within 60 days of the grant or denial of the motion for a protective order. A copy of the protective order petition must be sent to the Magistrate Division. Once a protective order petition is filed, proceedings in the Magistrate Division will be suspended until the Regular Division issues its order.

B(2)(a)(i) Petitioner must serve each of the parties in the manner provided in TCR 9.

B(2)(a)(ii) In property tax cases, petitioner must also serve the Department of Revenue in the manner provided in TCR 9.

B(2)(b) An opposing party must respond to the protective order petition within 20 days from the date of service of the petition.

B(2)(c) The court may require oral argument before issuing an order on the protective order petition.

B(2)(d) The court will issue an order either granting or denying the protective order petition within 90 days from the filing of the petition, unless the tax court determines in its discretion that it requires additional time. ORS 305.430.

B(2)(e) Upon an order on the protective order petition from which no appeal is taken, or upon remand from the Supreme Court, the case will be returned to the Magistrate Division for further determination.

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

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

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

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

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

C(1)(d) Local budget law complaints. ORS 294.461.

C(2) Special Designation by Court Order. Upon the written petition of a party or on the court's own motion, an appeal pending in the Magistrate Division may be specially designated by court order for hearing in the Regular Division. ORS 305.501(1). A separate petition must be filed for each appeal a party wants considered for special designation. When a case has been specially designated, no additional fee is required. The court will transfer the file to the Regular Division where a new case number will be assigned.

C(2)(a) A petition for special designation must be filed by submitting a paper copy of the petition to the Regular Division and filing the petition in the pending Magistrate Division appeal. Once a petition is filed, proceedings in the Magistrate Division will be suspended until the Regular Division issues its order. A party filing a petition for special designation is subject to the rules regarding legal representation in Regular Division cases found in TCR 1 F.

C(2)(b) Service Requirements for Petitions of Special Designation and Responses. Petitions for Special Designation must be served on the parties prescribed in this subsection. Except as otherwise provided in this rule service must be in the manner provided in TCR 9.

C(2)(b)(i) For purposes of this rule, petitions for special designation must be served on the Department of Revenue by mailing a copy of the petition via certified or registered mail to the office of the Director of the Department of Revenue. Petitions for special designation must

be served on a county assessor by mailing a copy of the petition via certified or registered mail to the office of the county assessor for the relevant county. No other means of service will be effective, unless otherwise authorized by the Department of Revenue or the county assessor.

C(2)(b)(ii) In property tax cases where the petitioner is taxpayer and a county or county assessor is a defendant, petitioner must serve the petition for special designation on both county counsel for the relevant county and the Department of Revenue.

C(2)(b)(iii) In property tax cases where the petitioner is taxpayer and the Department of Revenue is a defendant but no county or county assessor is a defendant, petitioner must serve the petition on the Department of Revenue.

C(2)(b)(iv) In property tax cases where the petitioner is a county or county assessor, petitioner must, through county counsel, serve the petition on taxpayer and on the Department of Revenue.

C(2)(b)(v) In property tax cases where petitioner is the Department of Revenue, petitioner must serve the petition on taxpayer and, if a county or county assessor is a party to the case in the Magistrate Division, on the county assessor for the relevant county.

C(2)(b)(vi) In all cases other than cases involving property tax, if taxpayer is the petitioner, petitioner must serve the petition on the Department of Revenue. If petitioner is the Department of Revenue, petitioner must serve the petition on taxpayer.

C(2)(c) An opposing party must respond to the petition within 20 days from the date of service of the petition. The response of the opposing party must be filed by submitting a paper copy of the response to the Regular Division and electronically filing the response in the pending Magistrate Division appeal. The response must be served on all parties to the Magistrate Division Case. If the Department of Revenue is not a party to the Magistrate Division case but would, by virtue of ORS 305.501(1), become a party in the Regular Division if the petition were to be granted, any response must also be served on the Oregon Attorney General. A response to a petition for special designation must be served in the manner provided in TCR 9.

C(2)(d) The court will issue an order either granting or denying the petition within 30 days of filing the petition.

C(2)(e) Unless the court specifies otherwise, if the petition for special designation is granted, the time for filing any responsive pleading that was suspended while the petition was pending shall be 30 days after entry of the order granting the petition. The court will hold a case management conference to discuss procedural matters, including the intervention of other parties.

C(2)(f) If the petition for special designation is denied, proceedings in the Magistrate Division will resume at the point where the proceedings were suspended.

C(3) Special Designation Petition.

C(3)(a) Except upon agreement by all parties, a petition may not be filed:

C(3)(a)(i) In a case where a mediation is pending; or

C(3)(a)(ii) Within 60 days of a scheduled trial.

C(3)(b) The petition must include one or more of the following statements:

C(3)(b)(i) A statement that a mediation is not pending.

C(3)(b)(ii) A statement that a trial is not scheduled in the Magistrate Division within 60 days of the petition's filing date.

C(3)(c) The absence of such statement(s) may be the basis for immediate denial of the petition.

C(4) Substitution of the Department of Revenue as a Party in Property Tax Cases.

C(4)(a)(i) When a property tax case involving a county or county assessor has been specially designated, the Department of Revenue will automatically be substituted for the county or county assessor as a party to the case. *See* ORS 305.501. This substitution will be reflected in the caption of the order of the court granting special designation. The court will serve a copy of any such order on the Attorney General and on the parties to the Magistrate Division case.

C(4)(a)(ii) If a county or county assessor wishes to remain a party to a case governed by TCR 1 C(4)(a)(i), the county or county assessor must file a Motion to Intervene. A motion to intervene under this rule may be filed simultaneously with a petition for special designation or at any time after the filing of the petition. A motion to intervene by a county or county assessor under this rule will be granted as of right unless opposed by the Department of Revenue.

C(5) Prepayment in Certain Specially Designated Cases. If the court grants a petition for special designation in a case involving a deficiency of taxes imposed upon or measured by net income, the tax assessed and all penalties and interest due, must be paid to the Department of Revenue within the time specified by the court. *See* ORS 305.419.

D Correspondence Subsequent to Filing. If the document was submitted for filing by means other than electronic filing, the tax court clerk will notify the parties of the filing date[1] and the case number assigned. Otherwise, the parties will be informed as specified in TCR 9. The case number must be placed on all subsequent documents filed in the case and on all correspondence concerning it. All subsequent correspondence addressed to the court by any party should indicate that copies have been mailed or delivered to the attorney for the adverse party, or if the party appears *in propria persona* only, then to the party. Except when correspondence is hand delivered to the court, where possible the same method of mail or

[1] Conventional filings (*see* TCR 9) that are manifestly intended to be filed in a specific suit are date-stamped and filed when actually received by the tax court clerk. However, when the limitation of time for filing is pertinent, a complaint will be "deemed" filed as provided in ORS 305.418.

delivery used for corresponding with the court should also be used for mailing or delivery to the adverse party or to attorneys for the adverse party.

E Fee. Unless exempt by law, the plaintiff must pay a fee as provided by ORS 305.490 and ORS 21.135. That fee must be tendered at the time of the filing of the complaint or petition. The current fee is $281.[2]

The plaintiff may, by application, request the court to consider deferral or waiver of the fee, as provided under ORS 21.685. The plaintiff must make such application to the court at the time of filing the complaint.

F Representation.

F(1) Generally. Pursuant to ORS 9.320, the parties to any proceeding in the Regular Division must either appear in person or be represented by an active member of the Oregon State Bar. Entities including, but not limited to, corporations, partnerships, limited liability companies, and unincorporated associations, must appear through an attorney unless a specific statutory exception applies. A limited liability company or other entity that is designated as an entity separate from its owner for purposes of all taxes at issue in the case will be disregarded as an entity separate from its owner for purposes of the representation requirement. *See, e.g.,* ORS 63.810. A person appearing in the capacity of a tax matters partner under ORS 305.242(2) or as a shareholder representing an S corporation under ORS 305.494 must appear through an attorney in any proceeding in the Regular Division unless a specific statutory exception applies. For purposes of this subsection, "any proceeding in the Regular Division" includes filing a petition for special designation, but does not include filing a response to a petition for special designation. A response to a petition for special designation may be filed by a representative who has appeared in the Magistrate Division proceedings.

F(2) Representing a Partnership or an S Corporation: Income Tax Matters.

F(2)(a) Partnership. Pursuant to ORS 305.242, with respect to only those matters involving taxes on or measured by net income, partners in a partnership may be represented by the designated tax matters partner. OAR 150-0180 and OAR 150-305-0182 contain the rules the court will follow as to the form of designation. A designation must be filed with the complaint or initial pleading.

F(2)(b) S Corporations. Pursuant to ORS 305.494, an S corporation (as defined in section 1361 of the Internal Revenue Code as amended and in effect on December 31, 2014) and shareholders in an S corporation may be represented by a shareholder in the same manner as if the S corporation were a partnership and the shareholder were a partner. Therefore, with respect to only those matters involving taxes on or measured by net income, a representative shareholder

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[2] The Oregon Legislature may modify fees between publication dates of the Tax Court Rules. Interested persons should go to the website of the Oregon Tax Court (https://www.courts.oregon.gov/courts/tax) to confirm the current amount for fees.

may be designated by the corporation and other shareholders. OAR 150-0170 contains the rules the court will follow as to the form of designation. A designation must be filed with the complaint or initial pleading.

F(3) Representing an S Corporation or Other Entities: Property and Other Tax Matters. In cases relating to property taxes and matters other than those related to a tax on or measured by net income, representation of an S corporation, partnership, limited liability company or other entity must be by a licensed attorney pursuant to the provisions of ORS 9.320.

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

H Complaint Deemed Filed When Mailed or Sent by Private Express Carrier; Satisfactory Evidence.

H(1) Under ORS 305.418(2)(a), when the court receives a complaint, the court will deem the complaint "filed" on the following date:

H(1)(a) If the plaintiff deposits the complaint in the United States mail and the United States Postal Service (USPS) affixes a post-office cancellation mark on the envelope, the court will deem the complaint filed on the date of the post-office cancellation mark.

H(1)(b) If the plaintiff deposits the complaint in the United States mail and the plaintiff provides the court satisfactory evidence from the USPS of the date of mailing, the court will deem the complaint filed on the date of mailing.

H(1)(c) If the plaintiff dispatches the complaint via a private express carrier and the plaintiff provides the court satisfactory evidence from the private express carrier of the date of dispatch, the court will deem the complaint filed on the date of dispatch.

H(2) Under ORS 305.418(2)(b), when the court does not receive a complaint that the plaintiff claims to have filed, the court will deem the complaint "filed" on the date of mailing or dispatch if the plaintiff does all of the following:

H(2)(a) Provides the court satisfactory evidence that the complaint was mailed or dispatched to the court's correct address. A receipt for USPS registered mail, USPS certified mail, or for a similar service from a private express carrier generally is satisfactory evidence that the complaint was sent to the address listed on the receipt.

H(2)(b) Provides the court satisfactory evidence of the date of mailing or dispatch; and

H(2)(c) Files a duplicate complaint within 90 days after the date the plaintiff claims to have mailed or dispatched the original complaint.

For purposes of TCR 1, "satisfactory evidence" of the date of mailing or dispatch may include, but is not limited to, USPS or private express carrier receipts, shipment notifications, tracking history, or other documentary evidence from the USPS or the private express carrier. The court will deem the date of filing to be the date on which the evidence shows the sender took all steps needed to send the complaint by USPS or the private express carrier.

RULE 2
FORM OF ACTION

One Form of Action. There will be one form of action known as a civil action. All procedural distinctions between actions at law and suits in equity are hereby abolished, except for those distinctions specifically provided for by these rules, by statute, or by the constitution of this state.

RULE 3
MEDIA COVERAGE OF COURT PROCEEDINGS

The judge of the Tax Court will, to the extent applicable in this court, apply UTCR 3.180.

RULE 4
JURISDICTION

The Tax Court, having jurisdiction of the subject matter under ORS 305.410, has jurisdiction over a party in any of the following circumstances:

A Taxes or Assessments. In any action for the collection of taxes or assessments levied, assessed, or otherwise imposed by a taxing authority of this state.

B Special Jurisdiction Statutes. In any action which may be brought under statutes or rules of this state that specifically confer grounds for personal jurisdiction over the defendant.

C Other Actions. In any action where prosecution of the action against a defendant in this state is not inconsistent with the constitution of the state or the constitution of the United States.

D Joinder of Claims in the Same Action. In any action brought in reliance upon jurisdictional grounds stated above, there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this rule, or other rule or statute, for personal jurisdiction over the defendant as to the claim or cause to be joined.

E Defendant Defined. For purposes of this rule, "defendant" includes any party subject to the jurisdiction of the court.

RULE 5
JURISDICTION (*IN REM*)

This court, having jurisdiction of the subject matter, may exercise jurisdiction *in rem* on the grounds stated in this section:

A When the subject of the action is real or personal property in this state and the party has, or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the party from any interest or lien therein. This section also will apply when any such party is unknown.

B When the action is to foreclose, redeem from, or satisfy a claim or lien upon real property within this state.

RULE 6
PERSONAL JURISDICTION WITHOUT SERVICE OF SUMMONS

If this court has jurisdiction of the subject matter, it may, without a summons having been served upon a party, exercise jurisdiction over a party with respect to: (a) any counterclaim asserted against that party in an action which the party has commenced in this state and (b) any party who appears in the action and waives the defense of lack of jurisdiction over the person, any defect in the summons or process, or the service of either as provided in TCR 21 G. Where jurisdiction is exercised under TCR 5, a defendant may appear in an action and defend on the merits, without being subject to personal jurisdiction by virtue of this rule.

RULE 7
SERVICE OF COMPLAINTS; SUMMONS GENERALLY

A Service of Initial Pleadings; Service Generally and in Particular Actions; When Summons Required; Petitions for Determinations of Constitutional Limit on Property Taxes; Definitions.

A(1) Service by the Court in Certain Circumstances. Oregon law requires the court to serve certain parties in circumstances described in this section A(1). In those circumstances, the provisions of this section A(1) apply in lieu of any contrary provisions elsewhere in TCR 7. In all cases, except those in which the Department of Revenue is a plaintiff or petitioner, the court will serve a copy of the complaint or petition on the Department of Revenue, and the court will do so by filing a copy with the director. *See* ORS 305.560(1)(b). When the action involves any local tax as specified in ORS 305.620(1), the court will serve all parties in the manner prescribed in ORS 305.620(8). When the court serves a party, the court will mail a copy of its transmittal letter to each other party. For purposes of this rule, the date of service by the court is the third day *after* the date of transmission as shown on the transmittal letter of the court.

A(2) Service by Mail. Oregon law generally allows parties to effect service by mail. *See* ORS 305.415. For the date service by mail is computed, see TCR 7(D)(2)(e)(ii).

A(3) Appeals from Magistrate Decisions. An appeal from a magistrate decision commences when the appealing party files a complaint with the Regular Division and pays any required filing fee. The nonappealing party must appear or defend within 30 days of being served with a copy of the complaint. For purposes of this rule, the date of service of the complaint is the date that a copy of the complaint was mailed to the nonappealing party. The complaint, and when required, a summons, must be served on the nonappealing party as follows:

A(3)(a) When the appealing party is the taxpayer, the court will serve the complaint on the Department of Revenue. No summons is required for service on the Department of Revenue. The taxpayer must serve a copy of the complaint and summons on each party other than the Department of Revenue by registered or certified mail, or by any other method permitted under TCR 7 D and must provide proof of service of the complaint and summons in accordance with TCR 7 F.

A(3)(b) When the appealing party is not the taxpayer, the appealing party must serve a copy of the complaint and summons on the taxpayer by registered or certified mail, or by any other method permitted under TCR 7 D. The appealing party must provide proof of service of the complaint and summons in accordance with TCR 7 F.

A(4) Petitions for Determination of Constitutional Limit on Property Taxes. The use of a summons is not required for petitions to the Regular Division of the Tax Court for determinations under Article XI, section 11(b) or 11(d). *See* ORS 305.583(3)(a); ORS 305.585(2). In such cases, the date of service for purposes of these rules will be the date of the court's transmittal letter accompanying the copy of the petition sent to the government unit. For petitions under ORS 305.589, "service" is by publication of notice and the date of service is the 10th day after completion of publication. In all cases, the respondent must appear or defend within 30 days of the date of service.

A(5) Service Requirements for Petitions for Writ of Mandamus. Pursuant to ORS 34.130, a writ of mandamus must be served in accordance with the requirements of ORCP 9 B.

A(6) Service Requirements in Declaratory Judgment Actions.

A(6)(a) When the party seeking a declaratory judgment is the taxpayer and the defendant is the Department of Revenue, any other state agency or department, or any political subdivision of this state, the court will serve the defendant, or defendants. No summons is required. The taxpayer must serve a copy of the complaint and summons on each party other than the Department of Revenue, any other state agency or department, or any political subdivision of this state, by registered or certified mail, or by any other method permitted under TCR 7 D and must provide proof of service of the complaint and summons in accordance with TCR 7 F.

A(6)(b) When the party seeking a declaratory judgment is the Department of Revenue, any other state agency or department, or any political subdivision of this state, the plaintiff must serve the complaint on the defendant by registered or certified mail, or by any other method permitted under TCR 7 D. The plaintiff must also serve a summons on the defendant. The appealing party

must provide proof of service in accordance with TCR 7 F.

A(6)(c) In all cases the defendant must appear and defend within 30 days from the date defendant was served with a copy of the complaint.

A(7) Service Requirements for Local Budget Law Complaints. The court will serve local budget law complaints in the manner prescribed by ORS 294.461.

A(8) Definitions. In all cases where summons are required, the following definitions will apply:

A(8)(a) "Plaintiff" will include any party issuing summons.

A(8)(b) "Defendant" will include any party upon whom service of summons is sought.

A(8)(c) "True copy" of a summons and complaint means an exact and complete copy of the original summons and complaint.

B Issuance of Summons. Any time after an action is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summonses under section E of this rule. A summons is issued when subscribed by plaintiff or an active member of the Oregon State Bar.

C Contents of Summons.

The summons must contain:

C(1) Title. The title of the cause, including the name of this court, the type of tax involved and the names of the parties to the action.

C(2) Direction to Defendant.

C(2)(a) A direction to the defendant requiring defendant to appear and defend within the time required by paragraph (b) of this subsection and a notification to defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C(2)(b) If the summons is served by any manner other than publication, the defendant must appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to TCR 7D(5), the defendant must appear and defend within 30 days from the date stated in the summons. The date so stated in the summons will be the date of the first publication.

C(3) Subscription; Post Office Address. A subscription by the plaintiff or by an active member of the Oregon State Bar, with the addition of the post office address at which papers in the action may be served by mail.

C(4) Notice to Party Served.

C(4)(a) In General. All summons, other than a summons referred to in paragraph (b) or (c) of this subsection, must contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The "motion" or "answer" must be given to the tax court clerk within 30 days. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

C(4)(b) Service for Counterclaim. A summons to join a party to respond to a counterclaim pursuant to TCR 22 D(1) must contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal document called a "motion" or "reply." The "motion" or "reply" must be given to the tax court clerk within 30 days. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

C(4)(c) Service on Persons Liable for Attorney Fees. A summons to join a party pursuant to TCR 22 D(2) must contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS CAREFULLY!

> You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.
>
> You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal document called a "motion" or "reply." The "motion" or "reply" must be given to the tax court clerk within 30 days. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.
>
> If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

D Manner of Service.

D(1) Notice Required. Summons must be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other applicable rule or statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule and TCR 9, by the following methods: electronic service; personal service of true copies of the summons and the complaint upon defendant or an agent of defendant authorized to receive process; substituted service by leaving true copies of the summons and the complaint at a person's dwelling house or usual place of abode; office service by leaving true copies of the summons and the complaint with a person who is apparently in charge of an office; service by mail; or service by publication.

D(2) Service Methods.

D(2)(a) Electronic Service. Electronic service is required unless otherwise allowed. The rules regarding the electronic filing and service of pleadings are contained in TCR 9.

D(2)(b) Personal Service. Personal service may be made by delivery of a true copy of the summons and a true copy of the complaint to the person to be served.

D(2)(c) Substituted Service. Substituted service may be made by delivering a true copy of the summons and the complaint at the dwelling house or usual place of abode of the person to be served to any person 14 years of age or older residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff, as soon as reasonably possible, must cause to be mailed, by first-class mail, true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, substituted service will be complete upon such mailing.

D(2)(d) Office Service. If the person to be served maintains an office for the conduct of business, office service may be made by leaving true copies of the summons and the complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff, as soon as reasonably possible, must cause to be mailed, by first-class mail, true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode or defendant's place of business or such other place under the circumstances that is most reasonably calculated to apprise the defendant of the existence and pendency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, office service will be complete upon such mailing.

D(2)(e) Service by Mail.

D(2)(e)(i) Generally. When required or allowed by this rule or by statute, except as otherwise permitted, service by mail must be made by mailing true copies of the summons and the complaint to the defendant by first-class mail and by any one of the following: certified, registered, or express mail with return receipt requested. For purposes of this section, "first-class mail" does not include certified, registered, express mail with return receipt requested, or any other form of mail which may delay or hinder actual delivery of mail to the addressee.

D(2)(e)(ii) Calculation of Time. For the purpose of computing any period of time provided by these rules or statute, service by mail, except as otherwise provided, will be complete on the day the defendant, or other person authorized by appointment of law, signs a receipt for the mailing, three days after the mailing if mailed to an address within the state, or seven days after the mailing if mailed to an address outside the state, whichever first occurs.

D(3) Particular Defendants. Service may be made upon specified defendants as follows:

D(3)(a) Individuals.

D(3)(a)(i) Generally. Upon an individual defendant, by personal delivery of true copies of the summons and the complaint to such defendant or other person authorized by appointment or law to receive service of summons on behalf of such defendant, by substituted service, or by office service. Service may also be made upon an individual defendant to whom neither subparagraph (ii) nor (iii) of this paragraph applies by a mailing made in accordance with

paragraph (2)(d) of this section provided that the defendant signs a receipt for the certified, registered or express mailing, in which case service will be complete on the day on which the defendant signs a receipt for the mailing.

D(3)(a)(ii) Minors. Upon a minor under the age of 14 years, by service in the manner specified in subparagraph (i) of this paragraph upon such minor, and also upon such minor's father, mother, conservator of the minor's estate, or guardian, or, if there be none, then upon any person having the care or control of the minor or with whom such minor resides, or in whose service such minor is employed, or upon a guardian *ad litem* appointed pursuant to TCR 27 A(2).

D(3)(a)(iii) Incapacitated Persons. Upon a person who is incapacitated or financially incapable, as defined by ORS 125.005, by service in the manner specified in subparagraph (i) of this paragraph upon such person, and also upon the conservator of such person's estate or guardian, or, if there be none, upon a guardian *ad litem* appointed pursuant to TCR 27 B(2).

D(3)(a)(iv) Tenant of a Mail Agent. Upon an individual defendant who is a "tenant" of a "mail agent" within the meaning of ORS 646A.340 by delivering true copies of the summons and the complaint to any person apparently in charge of the place where the mail agent receives mail for the tenant, provided that:

(A) the plaintiff makes a diligent inquiry but cannot find the defendant; and

(B) the plaintiff, as soon as reasonably possible after delivery, causes true copies of the summons and the complaint to be mailed by first-class mail to the defendant at the address at which the mail agent receives mail for the defendant and to any other mailing address of the defendant then known to the plaintiff, together with a statement of the date, time, and place at which the plaintiff delivered the copies of the summons and the complaint.

Service will be complete on the latest date resulting from the application of subparagraph D(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the defendant signs a receipt for the mailing, in which case service is complete on the day the defendant signs the receipt.

D(3)(b) Corporations including, but not limited to, professional corporations and cooperatives. Upon a domestic or foreign corporation:

D(3)(b)(i) Primary Service Method. By personal service or office service upon a registered agent, officer, or director of the corporation; or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(b)(ii) Alternatives. If a registered agent, officer, or director cannot be found, true copies of the summons and the complaint may be served:

(A) by substituted service upon such registered agent, officer, or director;

/ / /

(B) by personal service on any clerk or agent of the corporation who may be found in the state;

(C) by mailing in the manner specified in paragraph (2)(d) of this section true copies of the summons and the complaint to the office of the registered agent or to the last registered office of the corporation, if any, as shown by the records on file in the office of the Secretary of State or, if the corporation is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation, and in any case to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

(D) upon the Secretary of State in the manner provided in ORS 60.121 and 60.731.

D(3)(c) Limited liability companies. Upon a limited liability company:

D(3)(c)(i) Primary service method. By personal service or office service upon a registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company; or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(c)(ii) Alternatives. If a registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served:

(A) by substituted service upon such registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company;

(B) by personal service on any clerk or agent of the limited liability company who may be found in the county where the action is filed;

(C) by mailing in the manner specified in paragraph (2)(d) of this section true copies of the summons and the complaint to the office of the registered agent or to the last registered office of the limited liability company, as shown by the records on file in the office of the Secretary of State or, if the limited liability company is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the limited liability company, and in any case to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

(D) upon the Secretary of State in the manner provided in ORS 63.121.

D(3)(d) Limited partnerships. Upon a domestic or foreign limited partnership:

D(3)(d)(i) Primary service method. By personal service or office service upon a registered agent or a general partner of a limited partnership; or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(d)(ii) Alternatives. If a registered agent or a general partner of a limited partnership cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served:

(A) by substituted service upon such registered agent or general partner of a limited partnership;

(B) by personal service on any clerk or agent of the limited partnership who may be found in the county where the action is filed;

(C) by mailing in the manner specified in paragraph (2)(d) of this section true copies of the summons and the complaint to the office of the registered agent or to the last registered office of the limited partnership, as shown by the records on file in the office of the Secretary of State or, if the limited partnership is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the limited partnership, and in any case to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

(D) upon the Secretary of State in the manner provided in ORS 70.040 or 70.045.

D(3)(e) General partnerships and limited liability partnerships. Upon any general partnership or limited liability partnership by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the partnership or limited liability partnership.

D(3)(f) Other unincorporated association subject to suit under a common name. Upon any other unincorporated association subject to suit under a common name by personal service upon an officer, managing agent, or agent authorized by appointment or law to receive service of summons for the unincorporated association.

D(3)(g) State. Upon the state, by personal service upon the Attorney General or by leaving true copies of the summons and the complaint at the Attorney General's office with a deputy, assistant, or clerk.

D(3)(h) Public Bodies. Upon any county, incorporated city, school district, or other public corporation, commission, board, or agency, by personal service or office service upon an officer, director, managing agent, or attorney thereof.

D(3)(i) Vessel Owners and Charterers. Upon any foreign steamship owner or steamship charterer by personal service upon a vessel master in such owner's or charterer's employment or any agent authorized by such owner or charterer to provide services to a vessel calling at a port in the State of Oregon, or a port in the State of Washington on that portion of the Columbia River forming a common boundary with Oregon.

D(4) Service in Foreign Country. When service is to be effected upon a party in a foreign country, it is also sufficient if service of true copies of the summons and the complaint is

made in the manner prescribed by law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court. However, in all cases such service must be reasonably calculated to give actual notice.

D(5) Court Order for Service by Other Method. On motion upon a showing by affidavit or declaration that service cannot be made by any method otherwise specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: publication of summons; mailing without publication to a specified post office address of the defendant by first-class mail and by any of the following: certified, registered, or express mail with return receipt requested; or posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

D(5)(a) Where Published. An order for publication must direct publication be made in a newspaper of general circulation most likely to give notice to the person to be served. Such publication must be four times in successive calendar weeks.

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

E By Whom Served; Compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor, except as provided in ORS 180.260, an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. However, service pursuant to subparagraph D(2)(d)(i) of this rule may be made by an attorney for any party. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons must be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation must be part of disbursements and will be recovered as provided in TCR 68.

F Return; Proof of Service.

F(1) Return of Summons. The summons must be promptly returned to the tax court clerk with proof of service or mailing, or that the defendant cannot be found. The summons may be returned by first-class mail.

F(2) Proof of Service. Proof of service of summons or mailing may be made as follows:

F(2)(a) Service Other Than Publication. Service other than publication must be proved by:

F(2)(a)(i) Certificate of Service When Summons Not Served by Sheriff or Deputy. If the summons is not served by a sheriff or a sheriff's deputy, the certificate of the server must indicate: the time, place, and manner of service; that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise; and that the server knew that the person, firm, or corporation served is the identical one named in the action. If the defendant is not personally served, the server must state in the certificate when, where, and with whom true copies of the summons and the complaint were left or describe in detail the manner and circumstances of service. If true copies of the summons and the complaint were mailed, the certificate may be made by the person completing the mailing or the attorney for any party and must state the circumstances of mailing and the return receipt must be attached.

F(2)(a)(ii) Certificate of Service by Sheriff or Deputy. If the summons is served by a sheriff or a sheriff's deputy, the sheriff's or deputy's certificate of service must indicate the time, place, and manner of service, and if defendant is not personally served, when, where, and with whom true copies of the summons and the complaint were left or describe in detail the manner and circumstances of service. If true copies of the summons and the complaint were mailed, the certificate must state the circumstances of mailing and the return receipt must be attached.

F(2)(b) Publication. Service by publication must be proved by an affidavit or declaration in substantially the following form:

Affidavit of Publication

STATE OF OREGON)
)
County of_____)

I,_____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the_____, a newspaper of general circulation published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this___day of_____, 20_.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

/ / /

Declaration of Publication

STATE OF OREGON)
)
County of_____)

I,_____, say that I am the_____(here set forth the title or job description of the person making the declaration), of the_____, a newspaper of general circulation published at_____in the aforesaid county and state; that I know from my personal knowledge that the_____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

I hereby declare that the above statement is true to the best of my knowledge and belief, and the I understand it is made for use as evidence in court and is subject to penalty of perjury.

_____ ___ day of_____, 20_.

F(2)(c) Making and Certifying Affidavit. The affidavit of service may be made and certified before a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, any state or territory of the United States, or the District of Columbia, and the official seal, if any, of such person must be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of the official seal, if any, of such person, will be *prima facie* evidence of authority to make and certify such affidavit.

F(2)(d) Form of Certificate, Affidavit, or Declaration. A certificate, affidavit, or declaration containing proof of service may be made upon the summons or as a separate document attached to the summons.

F(3) Written Admission. In any case, proof may be made by written admission of the defendant.

F(4) Failure to Make Proof; Validity of Service. If summons has been properly served, failure to make or file a proper proof of service will not affect the validity of the service.

G Disregard of Error; Actual Notice. Failure to comply with provisions of this rule relating to the form of summons, issuance of summons, or who may serve summons will not affect the validity of service of summons or the existence of jurisdiction over the person if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons, affidavit, declaration, or certificate of service of summons. The court will disregard any error in the content of summons that does not materially prejudice the substantive rights of the party against whom summons was issued. If service is made in any manner complying with subsection D(1) of this rule, the court will also disregard any error in the service of summons that does not violate the due process rights of the party against whom summons was issued.

RULE 8
PROCESS

A Process. All process authorized to be issued by this court or any officer thereof will run in the name of the State of Oregon and be signed by the officer issuing the same, and if such process is issued by the tax court clerk, the seal of office of such clerk will be affixed to such process. Summonses and subpoenas are not process and are covered by TCR 7 and TCR 55, respectively.

B Where County Is a Party. Process in an action where any county is a party must be served on the county clerk or the person exercising the duties of that office or, if the office is vacant, upon the chairperson of the governing body of the county or, in the absence of the chairperson, any member thereof.

C Service or Execution. Any civil process may be served or executed on Sunday or any other legal holiday. No limitation or prohibition stated in ORS 1.060 will apply to such service or execution of any civil process on a Sunday or other legal holiday.

D Proof of Service or Execution. Proof of service or execution of process must be made as provided in TCR 7 F.

RULE 9
SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS; ELECTRONIC AND CONVENTIONAL

A Electronic Filing; Incorporation of UTCR 21. The provisions of UTCR 21 shall apply in the Tax Court except to the extent they conflict with other provisions of the Tax Court Rules.

A(1) References to the Oregon Rules of Civil Procedure. Reference in UTCR 21 to the Oregon Rules of Civil Procedure are to be interpreted as referring to the corresponding Tax Court Rule, if any. *Compare* ORCP 7 (Summons), *with* TCR 7 (Service of Complaints; Summons Generally).

A(2) Court Policy. For purposes of UTCR 21.140, incorporated by TCR 9 A, it is the Tax Court's policy not to return or refuse complaints filed conventionally that were required to be filed electronically. This policy does not extend to other documents required to be filed electronically. Sanctions for failure to follow UTCR 21 will be imposed only for persistent failure to comply.

B Conventional Filing. Unless otherwise required to electronically file or serve documents, the following rules apply.

B(1) Service. Except as otherwise provided in these rules, every order; every pleading subsequent to the original complaint; every written motion other than one which may be heard *ex parte*; and every written request, petition, notice, appearance, demand, offer of judgment, designation of record on appeal, and similar document must be served upon each of the parties.

No service need be made on parties in default for failure to appear except those pleadings asserting new or additional claims for relief against them must be served upon them in the manner provided for service of summons in TCR 7.

B(2) Service; How Made. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service must be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party must be made by delivering a copy to such attorney or party or by mailing it to such attorney's or party's last known address or, if the party is represented by an attorney, by facsimile communication or electronic mail as provided in sections B(6) or B(8) of this rule. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. A party who has appeared without providing an appropriate address for service may be served by filing a copy of the pleading or other documents with the court. Service by mail is complete upon mailing except for subpoenas. *See* ORS 305.415. Service of any notice or other document to bring a party into contempt may only be upon such party personally.

B(3) Filing; Proof of Service. Except as provided by section B(4) of this rule, all documents required to be served upon a party by section B(1) of this rule must be filed with the court within a reasonable time after service. Except as otherwise provided in TCR 7 and TCR 8, proof of service of all papers required or permitted to be served may be by written acknowledgment of service, by affidavit or declaration of the person making service, or by certificate of an attorney. Such proof of service may be made upon the documents served or as a separate document attached to the documents. Where service is made by facsimile communication or electronic mail, proof of service must be made by affidavit or declaration of the person making service, or by certificate of an attorney or sheriff. Attached to such affidavit, declaration, or certificate must be the printed confirmation of receipt of the message generated by the transmitting machine, if facsimile communication is used. If service is made by electronic mail under section B(8) of this rule, the person making service must certify that he or she received confirmation that the message was received, either by return electronic mail, automatically generated message, facsimile communication, or orally.

B(4) When Filing Not Required. Notice of depositions, requests made pursuant to TCR 43, and answers and responses thereto shall not be filed with the court. This rule will not preclude their use as exhibits or as evidence on a motion or at trial.

B(5) Filing With the Court Defined. Pleadings and other documents are filed with the court when the court endorses or stamps upon such pleading or document the time of day, the day of the month, the month, and the year. The court is not required to receive for filing any document unless the name of the court, the title of the cause and the document, the names of the parties, and the name of the attorney for the party requesting filing, if there be one, are legibly printed on the front of the document, and the contents thereof are legible. Additional requirements for filing an appeal are set forth in TCR 1.

B(6) Service by Telephonic Facsimile Communication Device. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service may be made upon the attorney by means of a telephonic facsimile communication device if the attorney maintains such a device at the attorney's office and the device is operating at the time service is made. Service in this manner will be equivalent to service by mail for purposes of TCR 10 B.

B(7) Filing by Facsimile Communication. The court will not accept or file communications in excess of 10 pages submitted to the court by facsimile. Under no circumstances will documents requiring a fee be accepted or filed if they are submitted to the court by facsimile communication.

B(8) Service by Electronic Mail. Service by electronic mail is prohibited unless attorneys agree in writing to the electronic mail service. This agreement must provide the names and electronic mail addresses of all attorneys and the attorneys' designees, if any, to be served. Any attorney may withdraw his or her agreement at any time, upon proper notice via electronic mail and any one of the other methods authorized by this rule. Service is effective under this method when the sender has received confirmation that the attachment has been received by the designated recipient. Confirmation of receipt does not include an automatically generated message that the recipient is out of the office or otherwise unavailable.

B(9) Filing by Electronic Mail. The court will not accept or file communications regarding pending matters that are transmitted to the court by means of electronic mail.

B(10) Binding Documents; Use of Staples Prohibited.

B(10)(a) Pleadings and documents submitted to the court for filing that are not electronically filed must be bound by paperclip or binder clip and must not contain staples.

B(10)(b) If a document to be filed includes one or more attachments, including but not limited to a documentary exhibit, an affidavit, or a declaration, then:

B(10)(b)(i) The document and each attachment must be separately bound by paperclip or binder clip; and

B(10)(b)(ii) The attachment or attachments must be bound in one packet to the document being filed by paperclip or binder clip.

B(10)(c) Subsection B(10)(b)(i) does not apply to an attachment to a motion to strike filed under TCR 21 E or an attachment to a motion for leave to amend a pleading filed under TCR 23 D(2). An attachment of either type must be bound in one packet to the document being filed by paperclip or binder clip.

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RULE 10
TIME

A Computation.

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

A(2) If the period so computed relates to serving a public officer or filing a document at a public office, and if the last day will be excluded in computing the period of time within which service is to be made or the document is to be filed, in which event the period runs until the close of office hours on the next day the office is open for business.

A(3) When a party intends to file by mail a document or other thing and the document or other thing is due on a date that all local United States Postal Service facilities unexpectedly are closed in whole or in part, the party filing the brief or other thing will have until the next day that United States Postal Service facilities are open to file the document or other thing.

A(4) When the period of time prescribed or allowed (without regard to section B of this rule) is less than seven days, intermediate Saturdays and legal holidays, including Sundays, will be excluded in the computation.

A(5) As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and ORS 187.020.

B Additional Time After Service by Mail, Electronic Filing System, E-Mail, or Facsimile Communication. Except for service of summons or the initial filing of an appeal, whenever a party has the right to or is required to do some act within a prescribed period after the service of a notice or other document upon that party and the notice or document is served by mail, electronic filing system, e-mail, or facsimile communication, three days will be added to the prescribed period.

RULE 11
APPEARANCE BY ATTORNEYS LICENSED IN OTHER JURISDICTIONS

A Requirements. An attorney authorized to practice law before the highest court of record in any state or country ("out-of-state attorney") may appear on behalf of a party in the Tax Court even though that attorney is not licensed to practice law in this state, if the attorney satisfies all the following requirements:

A(1) Show that the attorney is an attorney in good standing in another state or country.

A(2) Certify that the attorney is not subject to pending disciplinary proceedings in any other jurisdiction or provide a description of the nature and status of any pending disciplinary proceedings.

A(3) Associate with an active member in good standing of the Oregon State Bar ("local attorney") who must participate meaningfully in the matter.

A(4) Certify that the attorney will: comply with applicable statutes, law, and procedural rules of the State of Oregon; be familiar with and comply with the disciplinary rules of the Oregon State Bar; and submit to the jurisdiction of the Oregon courts and the Oregon State Bar with respect to acts and omissions occurring during the out-of-state attorney's admission under this rule.

A(5) If the attorney will engage in the private practice of law in this state, provide a certificate of insurance covering the attorney's activities in this state and providing professional liability insurance substantially equivalent to the Oregon State Bar Professional Liability Fund plan.

A(6) Agree, as a continuing obligation under this rule, to notify the court promptly of any changes in the out-of-state attorney's insurance or status.

A(7) If application will be for an appearance before a court, pay any fees required by subsection (F) below for appearance under this rule.

B Application; Oregon State Bar; Motion. The information required by subsection (A) of this rule must be presented as follows:

If application will be for an appearance before a court, to the Oregon State Bar (Bar) in a form established by the Bar. The Bar may accomplish the submission of information by requiring a certificate with attachments or other means administratively convenient to the Bar. Upon receipt of all information necessary under subsection (A) of this section and receipt of the fee required by subsection (F) below, the Bar will acknowledge receipt in a form determined by the Bar. In making the acknowledgment, the Bar may attach copies or comment on any submitted material the Bar finds may be appropriate for a court to consider with an application under this section. The local attorney must then submit the Bar's acknowledgment with any information the Bar includes to the court by motion signed by the local attorney requesting the court to grant application under this section. The court may rely on the acknowledgment of the Bar as a basis to conclude that all information required to be submitted and fees required to be paid for granting an application under this section have been submitted and paid. Bar records on materials it receives under this section will be available to a court on request for two years or such longer period as the Bar considers administratively convenient.

C Court Order Granting the Application. The court will grant the application by order if the application satisfies the requirements of this rule, unless the court determines for

good cause shown that granting the application would not be in the best interest of the court or of the parties. At any time and upon good cause shown, the court may revoke the out-of-state attorney's permission to appear in the matter.

D Local Attorney's Obligation to Provide Notice of the Order. Each time a court grants an application under this rule or revokes an out-of-state attorney's permission to appear in a matter, the local attorney must provide a notice to the Bar of such occurrence in a manner and within the time determined by the Bar.

E Scope of Authorization; Renewal. When a court grants an application for approval to appear under this rule, the authorization allows that individual attorney to appear in all proceedings for a single case that occur within a year after the application is granted. Applications will not be granted for firms. There must be separate application and approval for any of the following: appearance by another out-of-state attorney representing the same or any other party; representation by the same out-of-state attorney in this state on another matter; any appearance that occurs later than that one-year period. The Bar may establish such abbreviated procedures and requirements as the Bar finds administratively convenient to limit unnecessary submission of duplicate information by an attorney who has already had application granted to appear in one proceeding and is seeking to appear in other proceedings or to renew an application at the end of a current one-year grant for a case.

F Appearance Fee. Except as otherwise provided in this rule, for each application under this rule to appear before a court, the applicant must pay to the Bar a fee of $500 at the time of submission of information under subsection (B) of this section, including when application is sought to renew an application at the end of a current one-year grant for a case. The fee will not be refundable.

G Use of Electronic Means by the Bar. Subject to the following, the Bar may use electronic means to accomplish acts required or authorized under this section.

The Bar must provide acknowledgment under section B of this rule for court purposes by electronic means only upon approval of the State Court Administrator.

H Appearance Fee Exception. An applicant is not required to pay the fee established by subsection (F) of this section if the applicant establishes to the satisfaction of the Bar that the applicant is employed by a government body and will be representing that government body in an official capacity in the proceeding that will be the subject of the application.

RULE 12
PLEADINGS LIBERALLY CONSTRUED; DISREGARD OF ERROR

A Liberal Construction. All pleadings will be liberally construed with a view of substantial justice between the parties.

B Disregard of Error or Defect Not Affecting Substantial Right. The court will, in every stage of an action, disregard any error, defect, or omission in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

RULE 13
KINDS OF PLEADINGS ALLOWED; FORMER PLEADINGS ABOLISHED

A Pleadings. The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses. Pleadings must not be combined with or attached to briefs or memoranda. Pleadings must be submitted to the court singly and in required format.

B Pleadings Allowed. There will be a complaint and an answer. An answer may include a counterclaim against a plaintiff, including a party joined under TCR 22 D, and a cross-claim against a defendant, including a party joined under TCR 22 D. A pleading against any person joined under TCR 22 C is a third-party complaint. There will be a reply to a counterclaim denominated as such and a reply to assert any affirmative allegations in avoidance of any defenses asserted in an answer. There will be no other pleading unless the court orders otherwise.

C Pleadings Abolished. Demurrers and pleas must not be used.

RULE 14
MOTIONS

A Motions; In Writing; Grounds. An application for an order is a motion. Every motion, unless made during trial, must be in writing, must state with particularity the grounds therefor, and must set forth the relief or order sought.

B Form. The rules applicable to captions, signing, and other matters of form of pleadings, including TCR 17 A, apply to all motions and other papers provided for by these rules.

C Conferring on Motions under TCR 36 through TCR 46 (Discovery).

C(1) The court will deny any motion pursuant to TCR 36 through TCR 46 unless counsel for the moving party, before filing the motion, makes a good faith effort to confer with the other parties concerning the issues in dispute.

C(2) Counsel for the moving party must include in the motion a certificate of compliance with this rule.

D Written Statement of Points and Authorities and Proposed Form of Order Required to Accompany Motion; Setting Out Particulars; Attaching Copy of Pleading.

D(1) Every written motion must be accompanied by a memorandum of law or a statement of points and authorities, explaining how any relevant authorities support the contentions of the moving party. Except for dispositive motions, every written motion must also be accompanied, on a separate page, by a proposed form of order.

D(2) If a pleading is moved against in more than two particulars under TCR 21 D or TCR 21 E (motions to strike or make more definite and certain), there must be attached to the motion a copy of the pages of the pleading moved against with the parts of the pleading to be stricken shown in parentheses and the parts to be made more definite and certain underlined.

E Opposing Party's Response. In matters other than motions for summary judgment (governed by TCR 47) an opposing party may file a written memorandum of authorities in response to the matters raised in any motion not later than 10 days from the date of service of the motion.

F Oral Argument On Motions.

F(1) Request for Oral Argument. Any party to an action may request oral argument on a motion made pursuant to this rule. Such request will be granted only if the court, in its discretion, determines that oral argument will aid the court in reaching a decision on the motion. The court may also request oral argument on a motion made pursuant to this rule *sua sponte*.

F(2) Contents of Request. Any party requesting oral argument must specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names and telephone numbers of all parties served with the motion or response.

RULE 15
TIME FOR FILING PLEADINGS OR MOTIONS

A Time for Filing Motions and Pleadings. A motion or answer to the complaint or third-party complaint and the reply to a counterclaim or answer to a cross-claim of a party summoned under the provisions of TCR 22 D must be filed with the clerk by the time required by TCR 7 to appear and defend. Any other motion or responsive pleading must be filed not later than 10 days after service of the pleading moved against or to which the responsive pleading is directed.

B Pleading After Motion.

B(1) If the court denies a motion, any responsive pleading required must be filed within 10 days after service of the order, unless the order otherwise directs.

B(2) If the court grants a motion and an amended pleading is allowed or required, such pleading must be filed within 10 days after service of the order, unless the order otherwise directs.

C Responding to Amended Pleading. A party must respond to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise directs.

D Enlarging Time to Plead or Do Other Act. The court may, in its discretion and upon such terms as may be just, allow an answer or reply to be made or allow any other pleading or motion after the time limited by the procedural rules or, by an order, enlarge such time.

RULE 16
FORM OF PLEADINGS

A Captions; Names of Parties. Every pleading must contain a caption setting forth the name of the court, the title of the action, the type of tax involved, the case number of the cause, and a designation in accordance with TCR 13 B. In the complaint the title of the action must include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

B Pseudonyms. Each party must be identified by the party's name except that a party may seek a court order permitting use of a pseudonym when otherwise permitted by law.

C Concise and Direct Statement; Paragraphs, Separate Statement of Claims or Defenses. Every pleading must consist of plain and concise statements in paragraphs consecutively numbered throughout the pleading with Arabic numerals, the contents of which must be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Each separate claim or defense must be separately stated. Within each claim alternative theories of recovery must be identified as separate counts.

D Consistency in Pleading Alternative Statements. Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based upon legal grounds, equitable grounds, or upon both legal and equitable grounds. All statements must be made subject to the obligation set forth in TCR 17.

E Particularity in Pleadings, Memoranda, Court Proceedings Regarding Department Rules. In any proceeding involving property taxation, any party relying upon a department rule promulgated under ORS 308.205 must address such reliance in its pleadings and writings no later than the pre-trial memoranda. Any rule relied upon must in all cases be brought to the attention of the court and the opposing party at the beginning of the trial.

F Adoption by Reference. Statements in a pleading may be adopted by reference in a different part of the same pleading.

G Style. The form set forth below should be followed:

IN THE OREGON TAX COURT
REGULAR DIVISION
(Type of Tax; *e.g.*, Income, Property, Timber Severance, etc.)

PLAINTIFF'S NAME(S),	)	
	)	
Plaintiff(s),	)	Case No.
	)	
v.	)	
	)	
DEFENDANT'S NAME(S),	)	
	)	(TYPE OF PLEADING
Defendant(s).	)	*e.g.*, Complaint, Motion, etc.)

Any document submitted for filing should be typewritten, double-spaced, and in a manner that, if printed, would be on 8 1/2" X 11" paper. Lines of each page of a pleading must be numbered. The attorney must place his or her name, address, Oregon State Bar number, and office telephone number on any pleading presented for filing. The title and page number of each page filed should be set out on the last line or lower edge of each page.

RULE 17
SIGNING OF PLEADINGS, MOTIONS, AND OTHER DOCUMENTS; SANCTIONS

A Signing by Party or Attorney; Certificate. Every pleading, motion, and other document of a party represented by an attorney must be signed by at least one attorney of record who is an active member of the Oregon State Bar. A party who is not represented by an attorney must sign the pleading, motion, or other document and state the address and telephone number of the party. Pleadings need not be verified or accompanied by affidavit or declaration.

B Pleadings, Motions, and Other Papers Not Signed. If a pleading, motion, or other paper is not signed, it will be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

C Certifications to Court.

C(1) An attorney or party who signs, files or otherwise submits an argument in support of a pleading, motion, or other document makes the certifications to the court identified in subsections (2) to (5) of this section, and further certifies that the certifications are based on the person's reasonable knowledge, information, and belief, formed after the making of such inquiry as is reasonable under the circumstances.

C(2) A party or attorney certifies that the pleading, motion, or other document is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

C(3) An attorney certifies that the claims, defenses, and other legal positions taken in the pleading, motion, or other document are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

C(4) A party or attorney certifies that the allegations and other factual assertions in the pleading, motion, or other document are supported by evidence. Any allegation or other factual assertion that the party or attorney does not wish to certify to be supported by evidence must be specifically identified. The attorney or party certifies that the attorney or party reasonably believes that an allegation or other factual assertion so identified will be supported by evidence after further investigation and discovery.

C(5) The party or attorney certifies that any denials of factual assertion are supported by evidence. Any denial of factual assertion that the party or attorney does not wish to certify to be supported by evidence must be specifically identified. The attorney or party certifies that the attorney or party believes that a denial of a factual assertion so identified is reasonably based on a lack of information or belief.

D Sanctions.

D(1) The court may impose sanctions against a person or party who is found to have made a false certification under section C of this rule or who is found to be responsible for a false certification under section C of this rule. A sanction may be imposed under this section only after notice and an opportunity to be heard are provided to the party or attorney. A law firm is jointly liable for any sanction imposed against a partner, associate, or employee of the firm, unless the court determines that joint liability would be unjust under the circumstances.

D(2) Sanctions may be imposed under this section upon motion of a party or upon the court's own motion. If the court seeks to impose sanctions on its own motion, the court will direct the party or attorney to appear before the court and show cause why the sanctions should not be imposed. The court may not issue an order to appear and show cause under this subsection at any time after the filing of a voluntary dismissal, compromise, or settlement of the action with respect to the party or attorney against whom sanctions are sought to be imposed.

D(3) A motion by a party to the proceeding for imposition of sanctions under this section must be made separately from other motions and pleadings and must describe with specificity the alleged false certification. A motion for imposition of sanctions based on a false certification under subsection C(4) of this rule may not be filed until 120 days after the filing of a complaint if the alleged false certification is an allegation or other factual assertion in a complaint filed within 60 days of the running of the statute of limitations for a claim made in the complaint. Sanctions may not be imposed against a party until at least 21 days after the party is served with the motion in the manner provided by TCR 9. Notwithstanding any other provision of this section, the court may not impose sanctions against a party if, within 21 days after the motion is served on the party, the party amends or otherwise withdraws the pleading, motion, document, or argument in a manner that corrects the false certification specified in the motion. If the party does not amend or otherwise withdraw the pleading, motion, document, or argument but thereafter prevails on

the motion, the court may order the moving party to pay to the prevailing party reasonable attorney fees incurred by the prevailing party by reason of the motion for sanctions.

D(4) Sanctions under this section must be limited to amounts sufficient to reimburse the moving party for attorney fees and other expenses incurred by reason of the false certification, including reasonable attorney fees and expenses incurred by reason of the motion for sanctions, and, upon clear and convincing evidence of wanton misconduct, amounts sufficient to deter future false certification by the party or attorney and by other parties and attorneys. The sanction may include monetary penalties payable to the court. The sanction must include an order requiring payment of reasonable attorney fees and expenses incurred by the moving party by reason of the false certification.

D(5) An order imposing sanctions under this section must specifically describe the false certification and the grounds for determining that the certification was false. The order must explain the grounds for the imposition of the specific sanction that is ordered.

E Rule Not Applicable to Discovery. This rule does not apply to any motion, pleading or conduct that is subject to sanction under TCR 46.

RULE 18
CLAIMS FOR RELIEF

A Pleadings; Generally. A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, must contain;

A(1) Plain and Concise Statement. A plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition.

A(2) Claim for Relief. A demand of the relief which the party claims; if recovery of money or damages is demanded, the amount thereof must be stated; relief in the alternative or of several different types may be demanded.

B Pleading Real Market Value. If the real market value of property is in issue, a party seeking a change of the value shown on the assessment records must plead the dollar amount of the real market value claimed by that party for each tax year at issue.

C Income Tax Cases. In all income tax cases where the plaintiff is the taxpayer, the complaint must allege that the assessed tax, penalty, and interest have been paid, and the requested relief should be for a refund.

C(1) Income Tax Status Contested. If a party disputes that the matter is an income tax case, the assessed tax, penalty, and interest must be paid within 30 days after the court enters an order so finding.

C(2) Special Designation. If a petition for special designation is filed, the assessed tax, penalty, and interest must be paid within 30 days after the court enters an order specially designating the case to the Regular Division.

C(3) Undue Hardship Claim. If the tax, penalty, and interest have not been paid because payment would be an undue hardship, the plaintiff may seek to have the assessment set aside by motion. In such cases, the following procedures will apply:

C(3)(a) The plaintiff may seek to have the assessment set aside in the complaint or in a motion filed within the time period described in subsections C(1) and C(2). Motions filed without a complaint must be accompanied by an affidavit setting forth the specific facts and circumstances which establish undue hardship. Complaints alleging undue hardship must be accompanied by (1) a motion for stay of payment and (2) an affidavit as described above. *See* ORS 305.419.

C(3)(b) The defendant may file objections to the motion for stay of payment within 30 days following service of the motion. If the defendant objects to the motion and the court cannot determine from the plaintiff's affidavit whether payment of the tax, penalty, and interest would be an undue hardship, the court may require the plaintiff to submit further proof of hardship in writing or the court may schedule a hearing for that purpose. All hardship hearings will be conducted by telephone and recorded, unless the court determines that the circumstances require the parties to appear personally.

C(3)(c) If the court finds undue hardship, an order will be entered staying payment of all or a portion of the assessed tax, penalty, and interest pending final judgment in the case. Defendant must file a response to the complaint within 10 days following the date of the order staying payment.

C(3)(d) If the court finds no undue hardship, the court will issue an order granting the plaintiff up to 30 days from the date of the order to pay the tax, penalty, and interest. Failure of the plaintiff to pay the tax, penalty, and interest within the time allowed by the court will be cause for dismissal of the complaint. Defendant must file a response to the complaint within 10 days following the date that plaintiff pays the tax, penalty, and interest in full.

C(4) Failure to Timely File Undue Hardship Claim. If the plaintiff fails to timely file an affidavit alleging undue hardship under C(3), the court will not dismiss the appeal for that failure until a notice is issued to plaintiff so stating. Upon receipt of the notice, the plaintiff must file an affidavit alleging undue hardship within 30 days. Absent contrary evidence, the court will presume receipt of the notice three days after transmission to the plaintiff.

RULE 19
RESPONSIVE PLEADINGS

A Defenses; Form of Denials. A party must state in short and plain terms the party's defenses to each claim asserted and must admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the

truth of an allegation, the party must so state, and this has the effect of a denial. Denials must fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader must admit so much of the allegation as is true and material and must deny only the remainder. Unless the pleader intends in good faith to controvert all of the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all of the allegations except such designated allegations or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all of the allegations of the preceding pleading, the pleader may do so by general denial of all allegations of the preceding pleading subject to the obligations set forth in TCR 17.

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

C Effect of Failure to Deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted are taken as denied.

RULE 20
SPECIAL PLEADING RULES

A Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence must be made specifically and with particularity, and when so made the party pleading the performance or occurrence must on the trial establish the facts showing such performance or occurrence.

B Judgment or Other Determination of Court or Officer; How Pleaded. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is controverted, the party pleading is bound to establish on the trial the facts conferring jurisdiction.

C Private Statute; How Pleaded. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage, and the court will thereupon take judicial notice thereof.

D Corporate Existence of City or County and of Ordinances or Comprehensive Plans Generally; How Pleaded.

D(1) In pleading the corporate existence of any city, it will be sufficient to state in the pleading that the city is existing and duly incorporated and organized under the laws of the state of its incorporation. In pleading the existence of any county, it will be sufficient to state in the pleading that the county is existing and was formed under the laws of the state in which it is located.

D(2) In pleading an ordinance, comprehensive plan, enactment of any county or incorporated city, or a right derived therefrom in any court, it will be sufficient to refer to the ordinance, comprehensive plan, or enactment by its title, if any, otherwise by its commonly accepted name or number and the date of its passage or the date of its approval when approval is necessary to render it effective, and the court will thereupon take judicial notice thereof. As used in this subsection, "comprehensive plan" has the meaning given that term by ORS 197.015.

E Official Document or Act. In pleading an official document or official act, it is sufficient to allege that the document was issued or the act was done in compliance with law.

F Recitals and Negative Pregnant. No allegations in pleading will be held insufficient on the grounds that they are pled by way of recital rather than alleged directly. No denial will be treated as an admission on the ground that it contains a negative pregnant.

G Fictitious Parties. When a party is ignorant of the name of an opposing party and so alleges in a pleading, the opposing party may be designated by any name, and when such party's true name is discovered, the process and all pleadings and proceedings in the action may be amended by substituting the true name.

H Designation of Unknown Heirs in Actions Relating to Property. When the heirs of any deceased person are proper party defendants to any action relating to property in this state, and the names and residences of such heirs are unknown, they may be proceeded against under the name and title of the "unknown heirs" of the deceased.

I Property Tax Cases. In any proceeding involving property taxation, each party will address its reliance, if any, on a department rule promulgated under ORS 308.205. *See* TCR 16 D.

RULE 21
DEFENSES AND OBJECTIONS; HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON THE PLEADINGS

A How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a complaint, counterclaim, cross-claim, or third-party claim, must be asserted in the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion to dismiss: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) that there is another action pending between the same parties for the same cause, (4) that plaintiff has not the legal capacity to sue, (5) insufficiency of summons or process or insufficiency of service of summons or process, (6) that the party asserting the claim is not the real party in interest, (7) failure to join a party under TCR 29, (8) failure to state ultimate facts sufficient to constitute a claim, and (9) that the pleading shows that the action has

not been commenced within the time limited by statute. A motion to dismiss making any of these defenses must be made before pleading if a further pleading is permitted. The grounds upon which any of the enumerated defenses are based must be stated specifically and with particularity in the responsive pleading or motion. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If, on a motion to dismiss asserting defenses (1) through (7), the facts constituting such defenses do not appear on the face of the pleading and matters outside the pleading, including affidavits, declarations, and other evidence, are presented to the court, all parties will be given a reasonable opportunity to present affidavits, declarations, and other evidence, and the court may determine the existence or nonexistence of the facts supporting such defense or may defer such determination until further discovery or until trial on the merits. If the court grants a motion to dismiss, the court may enter judgment in favor of the moving party or grant leave to file an amended complaint. If the court grants the motion to dismiss on the basis of defense (3), the court may enter judgment in favor of the moving party, stay the proceeding, or defer entry of judgment.

B Motion for Judgment on the Pleadings. After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings.

C Preliminary Hearings. The defenses specifically denominated (1) through (9) in section A of this rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings mentioned in section B of this rule will be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

D Motion to Make More Definite and Certain. Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules upon motion by a party within 10 days after service of the pleading, or upon the court's own initiative at any time, the court may require the pleading to be made definite and certain by amendment when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge, defense, or reply is not apparent. If the motion is granted and the order of the court is not obeyed within 10 days after service of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

E Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 10 days after the service of the pleading upon such party or upon the court's own initiative at any time, the court may order stricken: (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; or (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading.

F Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule, except a motion to dismiss for lack of jurisdiction over the person or insufficiency of summons or process or insufficiency of service of summons or process, but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party may not thereafter make a motion based on the defense

or objection so omitted, except a motion as provided in subsection G(3) of this rule on any of the grounds there stated. A party may make one motion to dismiss for lack of jurisdiction over the person or insufficiency of summons or process or insufficiency of service of summons or process without consolidation of defenses required by this section.

G Waiver or Preservation of Certain Defenses.

G(1) A defense of lack of jurisdiction over the person, that there is another action pending between the same parties for the same cause, insufficiency of summons or process, or insufficiency of service of summons or process is waived under either of the following circumstances: (a) if the defense is omitted from a motion in the circumstances described in section F of this rule, or (b) if the defense is neither made by motion under this rule nor included in a responsive pleading. The defenses referred to in this subsection may not be raised by amendment.

G(2) A defense that a plaintiff has not the legal capacity to sue, that the party asserting the claim is not the real party in interest, or that the action has not been commenced within the time limited by statute is waived if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof. Leave of court to amend a pleading to assert the defenses referred to in this subsection will only be granted upon a showing by the party seeking to amend that such party did not know and reasonably could not have known of the existence of the defense or that other circumstances make denial of leave to amend unjust.

G(3) A defense of failure to state ultimate facts constituting a claim, a defense of failure to join a party indispensable under TCR 29, and an objection of failure to state a legal defense to a claim or insufficiency of new matter in a reply to avoid a defense, may be made in any pleading permitted or ordered under TCR 13 B or by motion for judgment on the pleadings, or at the trial on the merits. The objection or defense, if made at trial, will be disposed of as provided in TCR 23 B in light of any evidence that may have been received.

G(4) If it appears by motion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court will dismiss the action. If either or both parties are uncertain about jurisdiction and file the same claim or claims in another court, the Tax Court may, within its discretion, hold the case in abeyance until the claims filed in the other court are finally determined.

RULE 22
COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD-PARTY CLAIMS

NOTICE: ORS 305.501(5)(a) provides that any party dissatisfied with the decision of a magistrate may appeal that decision by filing a complaint in the Regular Division within sixty days of the magistrate's decision. ORS 305.501(5)(d) provides that such appeal "is the sole and exclusive remedy for review of a written decision of a magistrate." Nothing in these rules may supersede or conflict with that which is provided for by statute. Accordingly, this court has held that the statutes governing this court do not contemplate "counterclaims," and if a party wishes to appeal the decision of a magistrate in whole or in part, that claim must be made in a complaint.

See Village at Main Street Phase II LLC v. Dept. of Rev., 22 OTR 52 (2015), *vacated on other grounds*, 360 Or 738, 387 P3d 374 (2016); *Work v. Dept. of Rev.*, 22 OTR 396 (2017). Litigants considering filing such claims are encouraged to review these cases. This notice may be applicable to other sections of these rules where "counterclaims" or similar claims are discussed, such as TCR 6, 7, 13, 15, 18, 19, 21, 47, 53, 54, 67, and 69 (list is not exclusive).

A Counterclaims.

*(See **NOTICE** above regarding availability of counterclaims in this court.)*

A(1) Each defendant may set forth as many counterclaims, both legal and equitable, as such defendant may have against a plaintiff.

A(2) A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

B Cross-Claim Against Codefendant.

B(1) In any action where two or more parties are joined as defendants, any defendant may in such defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be had in the action and must be: (a) one arising out of the occurrence or transaction set forth in the complaint; or (b) related to any property that is the subject matter of the action brought by plaintiff.

B(2) A cross-claim may include a claim that the defendant against whom it is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

B(3) An answer containing a cross-claim must be served upon the parties who have appeared.

C Third-Party Practice.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain agreement of parties who have appeared and leave of court. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, must assert any defenses to the third-party plaintiff's claim as provided in TCR 21 and counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in sections A and B of this rule. The third-party defendant may assert against the plaintiff any defenses which the third-

party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon must assert the third-party defendant's defenses as provided in TCR 21 and the third-party defendant's counterclaims and cross-claims as provided in this rule. Any party may move to strike the third-party claim or for its severance or separate trial. A third-party may proceed under this section against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

C(2) A plaintiff against whom a counterclaim has been asserted may cause a third-party to be brought in under circumstances which would entitle a defendant to do so under subsection C(1) of this section.

D Joinder of Additional Parties.

D(1) Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of TCR 28 and TCR 29.

D(2) In any action against a party joined under this section of this rule, the party joined will be treated as a defendant for purposes of service of summons and time to answer under TCR 7.

E Separate Trial. Upon motion of any party or on the court's own initiative, the court may order a separate trial of any counterclaim, cross-claim, or third-party claim so alleged if to do so would: (1) be more convenient; (2) avoid prejudice; or (3) be more economical and expedite the matter.

RULE 23
AMENDED AND SUPPLEMENTAL PLEADINGS

A Amendments. A pleading may be amended by a party once as a matter of course any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the pleading only by leave of court or by written consent of the adverse party, and leave will be freely given when justice so requires. Whenever an amended pleading is filed, it must be served upon all parties who are not in default, but as to all parties who are in default or against whom a default previously has been entered, judgment may be rendered in accordance with the prayer of the original pleading served upon them, and neither the amended pleading nor the process thereon need be served upon such parties in default unless the amended pleading asks for additional relief against the parties in default.

B Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause

them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended when the merits of the action will be served thereby and the objecting party fails to establish that it would prejudice such party in maintaining an action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

C Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, such party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining any defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party brought in by amendment.

D(1) How Amendment Made. When any pleading is amended before trial, mere clerical errors excepted, it must be done by filing a new pleading, to be called the amended pleading, or by interlineation, deletion, or otherwise. Such amended pleading must be complete in itself, without reference to the original or any preceding amended one.

D(2) Motion for Leave to Amend.

D(2)(a) Except as provided in subsection D(2)(b), whenever a motion for leave to amend a pleading is submitted to the court, it must include, as an attached exhibit to the affidavit, the entire text of the proposed amended pleading. The text of the pleading must be formatted as required by this rule. Any material to be added to the pleading by the requested amendment must be inserted and set out in bold and underlined and any material to be deleted must be bracketed and italicized.

D(2)(b) If the motion to amend is for a pleading that was composed using preprinted forms that have been completed by filling in the blanks, the moving party may comply with this rule by making a copy of the filed pleading and inserting brackets around the material to be deleted and by interlineating and underlining the material to be inserted in the proposed amended pleading.

E Service of Amended Complaints. In any case before the Regular Division where the plaintiff is the taxpayer and the Department of Revenue appears as defendant, the court will serve any amended complaint on all defendants. In all other cases plaintiff must serve any amended complaint on all parties.

F Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading

sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it will so order, specifying the time therefor.

RULE 24
JOINDER OF CLAIMS

A Permissive Joinder. A plaintiff may join in a complaint, either as independent or as alternate claims, as many claims, legal or equitable, as the plaintiff has against an opposing party.

B Separate Statement. The claims joined must be separately stated and must not require different places of trial.

RULE 25
EFFECT OF PROCEEDING AFTER MOTION OR AMENDMENT

A Amendment or Pleading Over After Motion; Nonwaiver of Defenses or Objections. When a motion to dismiss or a motion to strike an entire pleading or a motion for a judgment on the pleadings under TCR 21 is allowed, the court may, upon such terms as may be proper, allow the party to amend the pleading. In all cases where part of a pleading is ordered stricken, the pleading must be amended in accordance with TCR 23 D. By amending a pleading pursuant to this section, the party amending such pleading will not thereby be deemed to have waived the right to challenge the correctness of the court's ruling.

B Amendment of Pleading; Objections to Amended Pleading Not Waived. If a pleading is amended, whether pursuant to section A or B of TCR 23 or section A of this rule or pursuant to other rule or statute, a party who has filed and received a court's ruling on any motion directed to the preceding pleading does not waive any defenses or objections asserted in such motion by failing to reassert them against the amended pleading.

C Denial of Motion; Nonwaiver by Filing Responsive Pleading. If any objection or defense is raised by motion, and the motion is denied, the party filing the motion does not waive the objection or defense by filing a responsive pleading or by failing to reassert the objection or defense in the responsive pleading or by otherwise proceeding with the prosecution or defense of the action.

RULE 26
REAL PARTY IN INTEREST; CAPACITY OF PARTNERSHIPS AND ASSOCIATIONS

A Real Party in Interest. Every action must be prosecuted in the name of the real party in interest. An executor, administrator, guardian, conservator, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that party's own name without joining the party for whose benefit the action is brought. When a statute of this state so provides, an action for the use or benefit of another must be brought in the name of the state. No action will be dismissed on the

ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, joinder, or substitution of, the real party in interest. Such ratification, joinder, or substitution will have the same effect as if the action had been commenced in the name of the real party in interest.

If a statute specifies that a person or entity must be a named party, that party must be deemed to be a "real party in interest." *See, e.g., Mult. Co. v. Dept. of Rev.*, 8 OTR 422 (1980).

B Partnerships and Associations. Any partnership or other unincorporated association, whether organized for profit or not, may sue in any name which it has assumed and be sued in any name which it has assumed or by which it is known. Any member of the partnership or other unincorporated association may be joined as a party in an action against the partnership or unincorporated association.

RULE 27
MINOR OR INCAPACITATED PARTIES

A Appearance of Minor Parties by Guardian or Conservator. When a minor, who has a conservator of such minor's estate or a guardian, is a party to any action, such minor must appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian *ad litem* appointed by the court in which the action is brought. If the minor does not have a conservator of such minor's estate or a guardian, the minor must appear by a guardian *ad litem* appointed by the court. The court will appoint some suitable person to act as guardian *ad litem*:

A(1) When the minor is plaintiff, upon application of the minor, if the minor is 14 years of age or older, or upon application of a relative or friend of the minor if the minor is under 14 years of age.

A(2) When the minor is defendant, upon application of the minor, if the minor is 14 years of age or older, filed within the period of time specified by these rules or other rule or statute for appearance and answer after service of summons, or if the minor fails so to apply or is under 14 years of age, upon application of any other party or of a relative or friend of the minor.

B Appearance of Incapacitated Person by Conservator or Guardian. When a person who is incapacitated or financially incapable, as defined in ORS 125.005, who has a conservator of such person's estate or a guardian, is a party to any action, the incapacitated person must appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian *ad litem* appointed by the court in which the action is brought. If the incapacitated person does not have a conservator of such person's estate or a guardian, the incapacitated person must appear by a guardian *ad litem* appointed by the court. The court will appoint some suitable person to act as guardian *ad litem*:

B(1) When the incapacitated person is plaintiff, upon application of a relative or friend of the incapacitated person.

B(2) When the incapacitated person is defendant, upon application of a relative or friend of the incapacitated person filed within the period of time specified by these rules or other rule or statute for appearance and answer after service of summons, or if the application is not so filed, upon application of any party other than the incapacitated person.

RULE 28
JOINDER OF PARTIES

A Permissive Joinder as Plaintiffs. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.

A(1) Joinder of Defendants in Cases where Taxpayer is Plaintiff. Unless otherwise provided by statute or in these rules, in any case where the plaintiff is taxpayer, the sole defendant will be the Department of Revenue unless:

(a) The plaintiff moves for leave to join additional defendants and that motion is granted; or

(b) A party other than the Department of Revenue with an interest in the case moves for leave to intervene and that motion is granted.

A(2) Joinder of Defendants in Cases where a Party Other than Taxpayer is Plaintiff. In any case where the plaintiff is not the taxpayer, any and all parties may be joined as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

A(3) Additional Principles Governing Treatment of Plaintiffs and Defendants. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

B Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to unnecessary expense by the inclusion of a party against whom that party asserts no claim and who asserts no claim against that party. The court may order separate trials or make other orders to prevent delay or prejudice.

RULE 29
JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

A Persons to be Joined if Feasible. A person who is subject to service of process must be joined as a party in the action if (1) in that person's absence complete relief cannot be accorded among those already parties, or (2) that person claims an interest relating to the subject of the action and is so situated that the disposition in that person's absence may (a) as a practical

matter impair or impede the person's ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest. If such person has not been so joined, the court will order that such person be made a party. If a person should join as a plaintiff but refuses to do so, such person will be made a defendant, the reason being stated in the complaint.

B Determination by Court Whenever Joinder Not Feasible. If a person as described in subsections A(1) and (2) of this rule cannot be made a party, the court will determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; and fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

RULE 30
MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder and Nonjoinder of Parties. Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

RULE 31
[RESERVED FOR EXPANSION]

RULE 32
CLASS ACTIONS

A Requirement for Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

A(1) The class is so numerous that joinder of all members is impracticable;

A(2) There are questions of law or fact common to the class;

A(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

A(4) The representative parties will fairly and adequately protect the interests of the class; and

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A(5) In an action for damages, the representative parties have complied with the prelitigation notice provisions of section H of this rule.

B Class Action Maintainable. An action may be maintained as a class action if the prerequisites of section A of this rule are satisfied and, in addition, the court finds that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to this finding include:

B(1) The extent to which the prosecution of separate actions by or against individual members of the class creates a risk of:

B(1)(a) Inconsistent or varying adjudications with respect to members of the class which would establish incompatible standards of conduct for the party opposing the class; or

B(1)(b) Adjudications with respect to members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

B(2) The extent to which the relief sought would take the form of injunctive relief or corresponding declaratory relief with respect to the class as a whole;

B(3) The extent to which questions of law or fact common to the members of the class predominate over any questions affecting only individual members;

B(4) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

B(5) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

B(6) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;

B(7) The difficulties likely to be encountered in the management of a class action that will be eliminated or significantly reduced if the controversy is adjudicated by other available means; and

B(8) Whether or not the claims of individual class members are insufficient in the amounts or interests involved, in view of the complexities of the issues and the expenses of the litigation, to afford significant relief to the members of the class.

C Determination by Order Whether Class Action to Be Maintained.

C(1) As soon as practicable after the commencement of an action brought as a class action, the court will determine by order whether and with respect to what claims or issues it is to be so maintained and will find the facts specially and state separately its conclusions thereon.

An order under this section may be conditional, and may be altered or amended before the decision on the merits.

C(2) Where a party has relied upon a statute or law which another party seeks to have declared invalid, or where a party has in good faith relied upon any legislative, judicial, or administrative interpretation or regulation which would necessarily have to be voided or held inapplicable if another party is to prevail in the class action, the court may postpone a determination under subsection (1) of this section until the court has made a determination as to the validity or applicability of the statute, law, interpretation, or regulation.

D Dismissal or Compromise of Class Actions; Court Approval Required; When Notice Required. Any action filed as a class action in which there has been no ruling under subsection C(1) of this rule and any action ordered maintained as a class action may not be voluntarily dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise must be given to some or all members of the class in such manner as the court directs, except that if the dismissal is to be without prejudice or with prejudice against the class representative only, then such dismissal may be ordered without notice if there is a showing that no compensation in any form has passed directly or indirectly from the party opposing the class to the class representative or to the class representative's attorney and that no promise of such compensation has been made. If the statute of limitations has run or may run against the claim of any class member, the court may require appropriate notice.

E Court Authority Over Conduct of Class Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders which may be altered or amended as may be desirable:

E(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument, including precertification determination of a motion made by any party pursuant to TCR 21 or TCR 47 if the court concludes that such determination will promote the fair and efficient adjudication of the controversy and will not cause undue delay;

E(2) Requiring, for the protection of class members or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all class members of any step in the action, of the proposed extent of the judgment; of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses or otherwise to come into the action, or to be excluded from the class;

E(3) Imposing conditions on the representative parties, class members, or intervenors;

E(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons and that the action proceed accordingly; and

E(5) Dealing with similar procedural matters.

F Notice and Exclusion.

F(1) When ordering that an action be maintained as a class action under this rule, the court will direct that notice be given to some or all members of the class under subsection E(2) of this rule, will determine when and how this notice should be given, and will determine whether, when, how, and under what conditions putative members may elect to be excluded from the class. The matters pertinent to these determinations ordinarily include: (a) the nature of the controversy and the relief sought; (b) the extent and nature of any member's injury or liability; **(c)** the interest of the party opposing the class in securing a final resolution of the matters in controversy; (d) the inefficiency or impracticality of separately maintained actions to resolve the controversy; (e) the cost of notifying the members of the class; and (f) the possible prejudice to members to whom notice is not directed. When appropriate, exclusion may be conditioned on a prohibition against institution or maintenance of a separate action on some or all of the matters in controversy in the class action or a prohibition against use in a separately maintained action of any judgment rendered in favor of the class from which exclusion is sought.

F(2)(i) Prior to the final entry of a judgment against a defendant, the court will request members of the class to submit a statement in a form prescribed by the court requesting affirmative relief which may also, where appropriate, require information regarding the nature of the loss, injury, claim, transactional relationship, or damage.

F(2)(ii) The form of the statement must be designed to meet the ends of justice. In determining the language and form of the documents to be sent to class members under subsection F(2)(i) or (iii), the court will consider at least: (a) the nature of the acts of the defendant; (b) the amount of knowledge a class member would have about the extent of such member's damages; (c) the nature of the class including the probable degree of sophistication of its members and any special needs created by class members' disabilities; (d) whether it is appropriate for the statement to be prepared in alternative formats, such as large type, Braille, or in languages in addition to English; and (e) the availability of relevant information from sources other than the individual class members.

F(2)(iii) When the names and addresses of the class members can reasonably be determined from the defendant's business records and individual monetary recoveries are capable of calculation without the need for individualized adjudications, the court, instead of requiring the statement referred to in subsection F(2)(i), may direct the defendant to send each class member notice of (a) the amount of the monetary recovery that has been calculated for that person and (b) that person's right to request exclusion from the class. All class members who do not request exclusion within the time specified by the court will be deemed to have requested affirmative relief in the calculated amount.

F(2)(iv) The amount of damages assessed against the defendant must not exceed the total amount of damages determined to be allowable by the court for each individual class member who has filed a statement required by the court, assessable court costs, and an award of attorney fees, if any, as determined by the court.

F(2)(v) If the parties agree and the court approves, any of the procedures set forth in subsection F(2)(iv) may be waived in a particular case.

F(3) If a class member fails to file the statement required by the court under subsection F(2)(i) or if a class member requests exclusion under subsection F(2)(iii) within the time specified by the court, that person's claim will be dismissed without prejudice to the right to maintain an individual, but not a class, action for such claim.

F(4) Nothing in subsections F(2) or F(3) is intended to allow the court to award any monetary recovery that is not claimed either because a class member failed to file the statement required by the court under subsection F(2)(i), or because a class member requested exclusion under subsection F(2)(iii) within the time specified by the court.

F(5) Plaintiffs will bear costs of any notice ordered prior to a determination of liability. The court may, however, order that defendant bear all or a specified part of the costs of any notice included with a regular mailing by defendant to its current customers or employees. The court may hold a hearing to determine how the costs of such notice will be apportioned.

F(6) No duty of compliance with due process notice requirements is imposed on a defendant by reason of the defendant including notice with a regular mailing by the defendant to current customers or employees of the defendant under this section.

F(7) As used in this section, "customer" includes a person, including but not limited to a student, who has purchased services or goods from a defendant.

G Commencement or Maintenance of Class Actions Regarding Particular Issues; Subclasses. When appropriate an action may be brought or ordered maintained as a class action with respect to particular claims or issues or by or against multiple classes or subclasses. Each subclass must separately satisfy all requirements of this rule except for subsection A(1).

H Notice and Demand Required Prior to Commencement of Action for Damages.

H(1) Thirty days or more prior to the commencement of an action for damages pursuant to the provisions of sections A and B of this rule, the potential plaintiffs' class representative must:

H(1)(a) Notify the potential defendant of the particular alleged cause of action; and

H(1)(b) Demand that such person correct or rectify the alleged wrong.

H(2) Such notice must be in writing and must be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, such person's principal place of business within this state, or, in the case of a corporation or limited partnership not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership, and to any address the use of which the class representative

knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

I Limitation on Maintenance of Class Actions for Damages. No action for damages may be maintained under the provisions of sections A and B of this rule upon a showing by a defendant that all of the following exist:

I(1) All potential class members similarly situated have been identified, or a reasonable effort to identify such other people has been made;

I(2) All potential class members so identified have been notified that upon their request the defendant will make the appropriate compensation, correction, or remedy of the alleged wrong;

I(3) Such compensation, correction, or remedy has been, or, in a reasonable time, will be, given; and

I(4) Such person has ceased from engaging in, or if immediate cessation is impossible or unreasonably expensive under the circumstances, such person will, within a reasonable time, cease to engage in such methods, acts, or practices alleged to be violative of the rights of potential class members.

J Application of Sections H and I of This Rule to Actions for Equitable Relief; Amendment of Complaints for Equitable Relief to Request Damages Permitted. An action for equitable relief brought under sections A and B of this rule may be commenced without compliance with the provisions of section H of this rule. Not less than 30 days after the commencement of an action for equitable relief, and after compliance with the provisions of section H of this rule, the class representative's complaint may be amended without leave of court to include a request for damages. The provisions of section I of this rule will be applicable if the complaint for injunctive relief is amended to request damages.

K Coordination of Pending Class Actions Sharing Common Question of Law or Fact. Where applicable, the court will participate in or govern its proceedings based on the provisions of ORCP 32 K.

L Form of Judgment. The judgment in an action ordered maintained as a class action, whether or not favorable to the class, will specify or describe those found to be members of the class or who, as a condition of exclusion, have agreed to be bound by the judgment. If a money judgment is entered in favor of a class, it will, when possible, identify by name each member of the class and the amount to be recovered thereby.

M Attorney Fees, Costs, Disbursements, and Litigation Expenses.

M(1)(a) Attorney fees for representing a class are subject to control of the court.

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M(1)(b) If under an applicable provision of law a defendant or defendant class is entitled to attorney fees, costs, or disbursements from a plaintiff class, only representative parties and those members of the class who have appeared individually are liable for those amounts. If a plaintiff is entitled to attorney fees, costs, or disbursements from a defendant class, the court may apportion the fees, costs, or disbursements among the members of the class.

M(1)(c) If the prevailing class recovers a judgment that can be divided for the purpose, the court may order reasonable attorney fees and litigation expenses of the class to be paid from the recovery.

M(1)(d) The court may order the adverse party to pay to the prevailing class its reasonable attorney fees and litigation expenses if permitted by law in similar cases not involving a class.

M(1)(e) In determining the amount of attorney fees for a prevailing class the court will consider the following factors:

M(1)(e)(i) The time and effort expended by the attorney in the litigation, including the nature, extent, and quality of the services rendered;

M(1)(e)(ii) Results achieved and benefits conferred upon the class;

M(1)(e)(iii) The magnitude, complexity, and uniqueness of the litigation;

M(1)(e)(iv) The contingent nature of success; and

M(1)(e)(v) Appropriate criteria in Rule 1.5 of the Oregon Rules of Professional Conduct (ORPC).

M(2) Before a hearing under section C of this rule or at any other time the court directs, the representative parties and the attorney for the representative parties must file with the court, jointly or separately:

M(2)(a) A statement showing any amount paid or promised them by any person for the services rendered or to be rendered in connection with the action or for the costs and expenses of the litigation and the source of all of the amounts;

M(2)(b) A copy of any written agreement, or a summary of any oral agreement, between the representative parties and their attorney concerning financial arrangement or fees; and

M(2)(c) A copy of any written agreement, or a summary of any oral agreement, by the representative parties or the attorney to share these amounts with any person other than a member, regular associate, or an attorney regularly of counsel with the law firm of the representative parties' attorney. This statement must be supplemented promptly if additional arrangements are made.

N Statute of Limitations. The statute of limitations is tolled for all class members upon the commencement of an action asserting a class action. The statute of limitations resumes running against a member of a class:

N(1) Upon filing of an election of exclusion by such class member;

N(2) Upon entry of an order of certification, or of an amendment thereof, eliminating the class member from the class;

N(3) Except as to representative parties, upon entry of an order under section C of this rule refusing to certify the class as a class action; and

N(4) Upon dismissal of the action without an adjudication on the merits.

RULE 33
INTERVENTION

A Definition. Intervention takes place when a third person is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complaint, by uniting with the defendant in resisting the claims of the plaintiff, or by demanding something adversely to both the plaintiff and defendant.

B Intervention of Right. At any time before trial, any person will be permitted to intervene in an action when a statute of this state, these rules, or the common law, confers an unconditional right to intervene.

C Permissive Intervention. At any time before trial, any person who has an interest in the matter in litigation may, by leave of court, intervene. In exercising its discretion, the court will consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

D Procedure. Except as provided in section E below, a person desiring to intervene must serve a motion to intervene upon the parties as provided in TCR 9. The motion must state the grounds therefor and must be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the court allows the intervention, parties must, within 10 days, file those responsive pleadings which are permitted or required by these rules for such pleading.

E Service on Interested Persons. If any intervenor wishes to serve persons who have not appeared but have an interest in the action, the intervenor must make service on such persons by mailing true copies of the complaint to them by registered or certified mail and must file an affidavit of such mailing with the court.

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RULE 34
SUBSTITUTION OF PARTIES

A Nonabatement of Action by Death, Disability, or Transfer. No action will abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

B Death of a Party; Continued Proceedings. In case of the death of a party, the court will, on motion, allow the action to be continued;

B(1) By such party's personal representative or successors in interest at any time within one year after such party's death; or

B(2) Against such party's personal representative or successors in interest unless the personal representative or successors in interest mail or deliver notice including the information required by ORS 115.003(3) to the claimant or to the claimant's attorney if the claimant is known to be represented, and the claimant or his attorney fails to move the court to substitute the personal representative or successors in interest within 30 days of mailing or delivery.

C Disability of a Party; Continued Proceedings. In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against the party's guardian or conservator or successors in interest.

D Death of a Party; Surviving Parties. In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death must be shown upon the record by a written statement of a party signed in conformance with TCR 17, and the action will proceed in favor of or against the surviving parties.

E Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

F Public Officers; Death or Separation From Office.

F(1) When a public officer is a party to an action in such officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and such officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties will be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order will not affect the substitution.

F(2) When a public officer sues or is sued in such officer's official capacity, such officer may be described as a party by official title rather than by name; but the court may require such officer's name to be added.

G Procedure. The motion for substitution may be made by any party, or by the successors in interest or representatives of the deceased party or the party with a disability, or the successors in interests of the transferor and must be served on the parties as provided in TCR 9 and upon persons not parties in the manner provided in TCR 7 for the service of a summons.

RULE 35
SEGREGATION AND PROTECTION OF PERSONAL INFORMATION

A Purpose. This rule establishes:

A(1) Procedures for a person to identify and segregate protected personal information and to request the information be kept from inspection by the general public.

A(2) A process for the court, on granting a request under this rule, to segregate and protect personal information from nonprotected information in the case file.

B Exclusivity. This rule is not the exclusive means for the court to protect personal information in case files from public inspection.

C "Protected Personal Information" Defined. For purposes of this rule, "protected personal information" is information that:

C(1) Identifies a person beyond that person's name (*e.g.*, Social Security number, maiden name, driver license number, birth date and location) or identifies a person's financial activities (*e.g.*, credit card number, credit report, bank account number or location); and

C(2) The court is permitted to maintain as confidential and not subject to public inspection as provided in the Oregon Public Records Law (OPRL, 192.311 to 192.338).

D Procedure for Party.

D(1) A person or entity required to file a document in the court that contains protected personal information may submit that information on a separate document together with a motion that describes the information and requests that the Tax Court keep the separate document segregated from the court file. The moving party must serve a copy of the motion on all other parties to the appeal, review, or other proceeding. During the pendency of the motion, the separate document will not be available for public inspection.

D(2) A person or entity who has filed a document in the Tax Court that contains protected personal information may submit a motion to replace the document with a document that redacts the protected personal information and requests that the Tax Court keep the original document segregated from the court file. The moving party must submit the proposed redacted document with the motion. The moving party must serve a copy of the motion and the proposed redacted document on all other parties to the appeal, review, or other proceeding. During the pendency of the motion, the document containing protected personal information will not be available for public inspection.

E Court Response. If the court grants the motion, the court will issue an order to that effect and segregate the document containing the protected personal information from the court file unless a question arises about the court's legal authority to keep the specific information from public inspection. The motion and order will remain in the court file. Any request for public inspection of such a document containing protected personal information must be made in writing, filed with the court, and served on all other parties to the proceeding.

F Time Limits, Court Authority to Refuse Request Based on Resources. This rule sets no time limit for the court to segregate information from existing court records when requested under this rule. The court has a reasonable time given its ordinary workload and resources available. Notwithstanding other parts of this rule, the court is not required to segregate information from existing court records based on a request under this rule if the workload created would adversely affect the resources available for the court to perform its ordinary duties.

RULE 36
GENERAL PROVISIONS GOVERNING DISCOVERY

A Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission.

B Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

B(1) In General. For all forms of discovery, parties may inquire regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

B(2) [Reserved For Expansion]

B(3) Trial Preparation Materials. A party may obtain discovery of documents and tangible things otherwise discoverable under subsection B(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court will protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that party. Upon request, a person who is not a party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person or party requesting the statement may move for a court order. The provisions of TCR 46 A(4) apply to the award of expenses incurred in relation to the motion. For purposes of this subsection, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

C Court Order Limiting Extent of Disclosure. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition, after being sealed, be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or (9) that to prevent hardship the party requesting discovery pay to the other party reasonable expenses incurred in attending the deposition or otherwise responding to the request for discovery.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of TCR 46 A(4) apply to the award of expenses incurred in relation to the motion.

RULE 37
PERPETUATION OF TESTIMONY OR EVIDENCE BEFORE ACTION OR PENDING APPEAL

A Before Action.

A(1) Petition. A person who desires to perpetuate testimony or to obtain discovery to perpetuate evidence under TCR 43 regarding any matter within the jurisdiction of this court may file a petition for such in this court. The petition must be entitled in the name of the petitioner and must show: (a) that the petitioner, or the petitioner's personal representatives, heirs, beneficiaries, successors, or assigns are likely to be a party to an action cognizable in this court and are presently unable to bring such an action or defend it, or that the petitioner has an interest in real property or some easement or franchise therein, about which controversy may arise, which would be the subject of such action; (b) the subject matter of the expected action and

petitioner's interest therein and a copy, attached to the petition, of any written instrument the validity or construction of which may be called into question or which is connected with the subject matter of the expected action; (c) the facts which petitioner desires to establish by the proposed testimony or other discovery and petitioner's reasons for desiring to perpetuate; (d) the names or a description of the persons petitioner expects will be adverse parties and their addresses so far as one is known; and (e) the names and addresses of the parties to be examined or from whom discovery is sought and the substance of the testimony or other discovery which petitioner expects to elicit and obtain from each. The petition must name persons to be examined and ask for an order authorizing the petitioner to take their depositions for the purpose of perpetuating their testimony, or must name persons in the petition from whom discovery is sought and must ask for an order allowing discovery under TCR 43 from such persons for the purpose of preserving evidence.

A(2) Notice and Service. The petitioner must thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein, for the order described in the petition. The notice must be served either within or without the state in the manner provided for service of summons in TCR 7, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and will appoint, for persons not served with summons in the manner provided in TCR 7, an attorney who will represent them and whose services will be paid for by petitioner in an amount fixed by the court, and, in case they are not otherwise represented, will cross-examine the deponent. Testimony and evidence perpetuated under this rule will be admissible against expected adverse parties not served with notice only in accordance with the applicable rules of evidence. If any expected adverse party is a minor or incompetent, the provisions of TCR 27 apply.

A(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony or other discovery to perpetuate evidence may prevent a failure or delay of justice, it will make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions will be taken upon oral examination or written questions; or will make an order designating or describing the persons from whom discovery may be sought under TCR 43 specifying the objects of such discovery. Discovery may then be had in accordance with these rules.

B Pending Appeal. If an appeal has been taken from a judgment of this court or before the taking of an appeal, if the time therefor has not expired, the court may allow the taking of the depositions of witnesses to perpetuate their testimony or may allow discovery under TCR 43 for use in the event of further proceedings in this court. In such case, the party who desires to perpetuate the testimony or obtain the discovery may make a motion upon the same notice and service thereof as if the action was pending in this court. The motion must show: (1) the names and addresses of the persons to be examined or from whom other discovery is sought and the substance of the testimony or other discovery which the party expects to elicit from each; and (2) the reasons for perpetuating their testimony or seeking such other discovery. If the court finds that the perpetuation of the testimony or other discovery is proper to avoid a failure or delay of justice, it may make an order as provided in subsection (3) of section A of this rule and

thereupon discovery may be had and used in the same manner and under the same conditions as are prescribed in these rules for discovery in actions pending in this court.

C Perpetuation by Action. This rule does not limit the power of the court to entertain an action to perpetuate testimony.

D Filing of Depositions. Depositions taken under this rule must be filed with the court.

RULE 38
PERSONS WHO MAY ADMINISTER OATHS FOR DEPOSITIONS; FOREIGN DEPOSITIONS

A Within Oregon. Within this state, depositions must be preceded by an oath or affirmation administered to the deponent by an officer authorized to administer oaths by the laws of this state or by a person specially appointed by the court. A person so appointed has the power to administer oaths for the purpose of the depositions.

B Outside the State. Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person appointed or commissioned by the Tax Court, and such a person must have the power by virtue of such person's appointment or commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter rogatory will be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the state, territory, or country)." Evidence obtained in a foreign country in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

C Foreign Depositions and Subpoenas.

C(1) Definitions. For the purpose of this rule:

C(1)(a) "Foreign subpoena" means a subpoena issued under authority of a court of record of any state other than Oregon.

C(1)(b) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

C(2) Issuance of Subpoena. This area is governed by ORCP 38 C. A party or attorney seeking discovery in this state pursuant to a foreign subpoena must proceed in the manner proscribed by that rule.

C(3) Uniformity of application and Construction. Notwithstanding subsection C(2) of this rule, to the extent absolutely necessary to ensure uniformity of the law among those states that have similar rules or statutes the clerk of this court will issue subpoenas in the same manner and subject to the same conditions and prerequisites as would a county clerk of court under ORCP 38 C.

RULE 39
DEPOSITIONS UPON ORAL EXAMINATION

A When Deposition May Be Taken. After the service of summons or the appearance of the defendant in any action, or in a special proceeding at any time after a question of fact has arisen, any party may take the testimony of any person, including a party, by deposition upon oral examination. "Service of summons" will be deemed to include the clerk filing a copy of the complaint with the Director of the Department of Revenue. Leave of court, with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of the period of time specified in TCR 7 to appear and answer after service of summons on any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) a special notice is given as provided in subsection C(2) of this rule. The attendance of a witness may be compelled by subpoena as provided in TCR 55.

B Order for Deposition or Production of Prisoner. The deposition of a person confined in a prison or jail may only be taken by leave of court. The deposition must be taken on such terms as the court prescribes, and the court may order that the deposition be taken at the place of confinement or, when the prisoner is confined in this state, may order temporary removal and production of the prisoner for purposes of the deposition.

C Notice of Examination.

C(1) General Requirements. A party desiring to take the deposition of any person upon oral examination must give reasonable notice in writing to every other party to the action. The notice must state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify such person or the particular class or group to which such person belongs. If a subpoena *duces tecum* is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena must be attached to or included in the notice.

C(2) Special Notice. Leave of court is not required for the taking of a deposition by plaintiff if the notice (a) states that the person to be examined is about to go out of the state, or is bound on a voyage to sea, and will be unavailable for examination unless the deposition is taken before the expiration of the period of time specified in TCR 7 to appear and answer after service

of summons on any defendant, and (b) sets forth facts to support the statement. The plaintiff's attorney must sign the notice, and such signature constitutes a certification by the attorney that to the best of such attorney's knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when served with notice under this subsection, the party was unable through the exercise of diligence to obtain counsel to represent such party at the taking of the deposition, the deposition may not be used against such party.

C(3) Shorter or Longer Time. The court may for cause shown enlarge or shorten the time for taking the deposition.

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

C(5) Production of Documents and Things. The notice to a party deponent may be accompanied by a request made in compliance with TCR 43 for the production of documents and tangible things at the taking of the deposition. The procedure of TCR 43 will apply to the request.

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

C(7) Deposition by Telephone. The court may, upon motion, order that testimony at a deposition be taken by telephone or other remote means, in which event the order will designate the conditions of taking testimony, the manner of recording the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy.

D Examination; Record; Oath; Objections.

D(1) Examination; Cross-Examination; Oath. Examination and cross examination of deponents may proceed as permitted at trial. The person described in TCR 38 must put the deponent on oath.

D(2) Record of Examination. The testimony of the deponent must be recorded either stenographically or as provided in subsection C(4) of this rule. If testimony is recorded pursuant to subsection C(4) of this rule, the party taking the deposition must retain the original recording without alteration, unless the recording is filed with the court pursuant to subsection G(2) of this rule, until final disposition of the action. Upon request of a party or deponent and payment of the reasonable charges therefor, the testimony must be transcribed.

D(3) Objections. All objections made at the time of the examination must be noted on the record. A party or deponent must state objections concisely and in a nonargumentative and nonsuggestive manner. Evidence may be taken subject to the objection, except that a party may instruct a deponent not to answer a question, and a deponent may decline to answer a question, only:

D(3)(a) when necessary to present or preserve a motion under section E of this rule;

D(3)(b) to enforce a limitation on examination ordered by the court; or

D(3)(c) to preserve a privilege or constitutional or statutory right.

D(4) Written Questions as Alternative. In lieu of participating in an oral examination, parties may serve written questions on the party taking the deposition who must propound them to the deponent on the record.

E Motion for Court Assistance; Expenses.

E(1) Motion for Court Assistance. At any time during the taking of a deposition, upon motion and a showing by a party or a deponent that the deposition is being conducted or hindered in bad faith, or in a manner not consistent with these rules, or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or any party, the court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope or manner of the taking of the deposition as provided in section C of TCR 36. The motion must be presented to the court in which the action is pending, except that nonparty deponents may present the motion to the court in which the action is pending or the court at the place of examination. If the order terminates the examination, it will be resumed thereafter only on order of the court in which the action is pending. Upon demand of the moving party or deponent, the parties must suspend the taking of the deposition for the time necessary to make a motion under this subsection.

E(2) Allowance of Expenses. Subsection A(4) of TCR 46 will apply to the award of expenses incurred in relation to a motion under this section.

F Submission to Witness; Changes; Statement.

F(1) Necessity of Submission to Witness for Examination. When the testimony is taken by stenographic means, or is recorded by other than stenographic means as provided in subsection C(4) of this rule, and if any party or the witness so requests at the time the deposition

is taken, the recording or transcription must be submitted to the witness for examination, changes, if any, and statement of correctness. With leave of court such request may be made by a party or witness at any time before trial.

F(2) Procedure After Examination. Any changes which the witness desires to make must be entered upon the transcription or stated in a writing to accompany the recording by the party taking the deposition, together with a statement of the reasons given by the witness for making them. Notice of such changes and reasons must promptly be served upon all parties by the party taking the deposition. The witness must then state in writing that the transcription or recording is correct subject to the changes, if any, made by the witness, unless the parties waive the statement or the witness is physically unable to make such statement or cannot be found. If the statement is not made by the witness within 30 days, or within a lesser time upon court order, after the deposition is submitted to the witness, the party taking the deposition must state on the transcription or in a writing to accompany the recording the fact of waiver, or the physical incapacity or absence of the witness, or the fact of refusal of the witness to make the statement, together with the reasons, if any, given therefor; and the deposition may then be used as fully as though the statement had been made unless, on a motion to suppress under TCR 41 D, the court finds that the reasons given for the refusal to make the statement require rejection of the deposition in whole or in part.

F(3) No Request for Examination. If no examination by the witness is requested, no statement by the witness as to the correctness of the transcription or recording is required.

G Certification; Filing; Exhibits; Copies.

G(1) Certification. When a deposition is stenographically taken, the stenographic reporter must certify, under oath, on the transcript that the witness was sworn in the reporter's presence and that the transcript is a true record of the testimony given by the witness. When a deposition is recorded by other than stenographic means as provided in subsection C(4) of this rule, and thereafter transcribed, the person transcribing it must certify, under oath, on the transcript that such person heard the witness sworn on the recording and that the transcript is a correct transcription of the recording. When a recording or a nonstenographic deposition or a transcription of such recording or nonstenographic deposition is to be used at any proceeding in the action or is filed with the court, the party taking the deposition, or such party's attorney, must certify under oath that the recording, either filed or furnished to the person making the transcription, is a true, complete, and accurate recording of the deposition of the witness and that the recording has not been altered.

G(2) Filing. If requested by any party, the transcript or the recording of the deposition must be filed with the court. When a deposition is stenographically taken, the stenographic reporter or, in the case of a deposition taken pursuant to subsection C(4) of this rule, the party taking the deposition must enclose it in a sealed envelope, directed to the clerk of the court and deliver or forward it accordingly by mail or other usual channel of conveyance. If a recording of a deposition has been filed with the court, it may be transcribed upon request of any party under such terms and conditions as the court may direct.

G(3) Exhibits. Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party. Whenever the person producing materials desires to retain the originals, such person may substitute copies of the originals or afford each party an opportunity to make copies thereof. In the event the original materials are retained by the person producing them, they must be marked for identification and the person producing them must afford each party the subsequent opportunity to compare any copy with the original. The person producing the materials will also be required to retain the original materials for subsequent use in any proceeding in the same action. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

G(4) Copies. Upon payment of reasonable charges therefor, the stenographic reporter or, in the case of a deposition taken pursuant to subsection C(4) of this rule, the party taking the deposition must furnish a copy of the deposition to any party or to the deponent.

H Payment of Expenses upon Failure to Appear.

H(1) Failure of Party to Attend. If the party giving the notice of the taking of the deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court in which the action is pending may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by such other party and the attorney for such other party in so attending, including reasonable attorney fees.

H(2) Failure of Witness to Attend. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the attending party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by such other party and the attorney for such other party in so attending, including reasonable attorney fees.

I Perpetuation of Testimony After Commencement of Action.

I(1) After commencement of any action, any party wishing to perpetuate the testimony of a witness for the purpose of trial or hearing may do so by serving a perpetuation deposition notice.

I(2) The notice is subject to subsections C(1) through (7) of this rule and must additionally state:

I(2)(a) A brief description of the subject areas of testimony of the witness; and

I(2)(b) The manner of recording the deposition.

I(3) Prior to the time set for the deposition, any other party may object to the perpetuation deposition. Such objection will be governed by the standards of TCR 36 C. At any hearing on such an objection, the burden will be on the party seeking perpetuation to show that: (a) the witness may be unavailable as defined in ORS 40.465(1)(d) or (e) or ORS 45.250(2)(a) through (c); (b) it would be an undue hardship on the witness to appear at the trial or hearing; or (c) other good cause exists for allowing the perpetuation. If no objection is filed, or if perpetuation is allowed, the testimony taken will be admissible at any subsequent trial or hearing in the action, subject to the Oregon Evidence Code.

I(4) Any perpetuation deposition must be taken not less than seven days before the trial or hearing on not less than 14 days' notice. However, the court in which the action is pending may allow a shorter period for a perpetuation deposition before or during trial upon a showing of good cause.

I(5) To the extent that a discovery deposition is allowed by law, any party may conduct a discovery deposition of the witness prior to the perpetuation deposition.

I(6) The perpetuation examination will proceed as set forth in section D of this rule. All objections to any testimony or evidence taken at the deposition must be made at the time and noted upon the record. The court will rule on any objections before the testimony is offered. Any objections not made at the deposition will be deemed waived.

RULE 40
DEPOSITIONS UPON WRITTEN QUESTIONS

A Serving Questions; Notice. Upon stipulation of the parties or leave of court for good cause shown, and after commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in TCR 55. The deposition of a person confined in prison may be taken only as provided in TCR 39 B.

A party desiring to take a deposition upon written questions must serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify such person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of TCR 39 C(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

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B Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served must be delivered by the party taking the deposition to the officer designated in the notice, who must proceed promptly, in the manner provided by TCR 39 D, TCR 39 F and TCR 39 G, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

RULE 41
EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS

A As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

B As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer administering the oath is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

C As to Taking of Deposition.

C(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

C(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

C(3) Objections to the form of written questions submitted under TCR 40 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 20 days after service of the last questions authorized.

D As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with under TCR 39 and TCR 40 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

RULE 42
[RESERVED FOR EXPANSION]

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RULE 43
PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

A Scope. Any party may serve on any other party a request: (1) to produce and permit the party making the request, or someone acting on behalf of the party making the request, to inspect and copy any designated documents (including electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices or software into reasonably usable form) or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of TCR 36 B and which are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of TCR 36 B.

To facilitate the making of copies of documents, the holder of the documents must either (1) make photocopies for the party requesting copies of the documents and charge such party the reasonable costs of such copies or (2) permit the party requesting the copies to take possession of the documents temporarily to make the copies. Any party seeking a court order to obtain data pursuant to this section, disclosure of which data was refused by the other party based on a statutory provision (*e.g.*, ORS 192.314, ORS 308.290(7), ORS 314.835, and ORS 314.840), must file a written brief with the court in support of the legality of the request. The other party must file an answering brief within 15 days. Oral argument will be allowed on the request of either party or on the request of the court.

B Procedure.

B(1) A party may serve a request on the plaintiff after commencement of the action and on any other party with or after service of the summons on that party. The request must identify any items requested for inspection, copying, or related acts by individual item or by category described with reasonable particularity, designate any land or other property upon which entry is requested, and must specify a reasonable place and manner for the inspection, copying, entry, and related acts.

B(2) A request must not require a defendant to produce or allow inspection, copying, entry, or other related acts before the expiration of 45 days after service of summons, unless the court specifies a shorter time. Otherwise, within 30 days after service of a request in accordance with subsection B(1) of this rule, or such other time as the court may order or the parties may agree upon in writing, a party must serve a response that includes the following:

B(2)(a) A statement that, except as specifically objected to, any requested item within the party's possession or custody is provided, or will be provided or made available within the time allowed and at the place and in the manner specified in the request, which items must be organized and labeled to correspond with the categories in the request;

B(2)(b) As to any requested item not in the party's possession or custody, a statement that reasonable effort has been made to obtain it, unless specifically objected to, or that no such item is within the party's control;

B(2)(c) As to any land or other property, a statement that entry will be permitted as requested unless specifically objected to; and

B(2)(d) Any objection to a request or a part thereof and the reason for each objection.

B(3) Any objection not stated in accordance with subsection B(2) of this rule is waived. Any objection to only a part of a request must clearly state the part objected to. An objection does not relieve the requested party of the duty to comply with any request or part thereof not specifically objected to.

B(4) A party served in accordance with subsection B(1) of this rule is under a continuing duty during the pendency of the action to produce promptly any item responsive to the request and not objected to which comes into the party's possession, custody, or control.

B(5) A party who moves for an order under TCR 46 A(2) regarding any objection or other failure to respond or to permit inspection, copying, entry, or related acts as requested, must do so within a reasonable time.

C Writing Called For Need Not Be Offered. Though a writing called for by one party is produced by the other, and is inspected by the party calling for it, the party requesting production is not obliged to offer it in evidence.

D Persons not Parties. A person not a party to the action may be compelled to produce books, papers, documents, or tangible things and to submit to an inspection thereof as provided in TCR 55. This rule does not preclude an independent action against a person not a party for permission to enter upon land.

E Electronically Stored Information. A request for electronically stored information may specify the form in which the information is to be produced by the responding party but, if no such specification is made, the responding party must produce the information in either the form in which it is ordinarily maintained or in a reasonably usable form.

RULE 44
[RESERVED FOR EXPANSION]

RULE 45
REQUESTS FOR ADMISSION

A Requests for Admission. After commencement of an action, a party may serve upon any other party a request for the admission by the latter of the truth of relevant matters within the scope of TCR 36 B specified in the request, including facts or opinions of fact, or the application of law to fact, or of the genuineness of any relevant documents or physical objects described in

or exhibited with the request. Copies of documents must be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested must be separately set forth. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request for admissions must be preceded by the following statement printed in capital letters of the type size in which the request is printed: "FAILURE TO SERVE A WRITTEN ANSWER OR OBJECTION WITHIN THE TIME ALLOWED BY TCR 45 B WILL RESULT IN ADMISSION OF THE FOLLOWING REQUESTS."

B Response. The matter is admitted unless, within 30 days after service of the request or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter and signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant will not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon such defendant. If objection is made, the reasons therefor must be stated. The answer must specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial must fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party must specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that reasonable inquiry has been made and that the information known or readily obtainable by the answering party is insufficient to enable the answering party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of TCR 46 C, deny the matter or set forth reasons why the party cannot admit or deny it.

C Motion to Determine Sufficiency. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it will order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial. The provisions of TCR 46 A(4) apply to the award of expenses incurred in relation to the motion.

D Effect of Admission. Any matter admitted pursuant to this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice such party in maintaining such party's case or such party's defense on the merits. Any admission made by a party pursuant to this rule is for the purpose of the pending action only and neither constitutes an admission by such party for any other purpose nor may be used against such party in any other action.

E Form of Response. The request for admissions must be so arranged that a blank space must be provided after each separately numbered request. The space must be reasonably calculated to enable the answering party to insert the admissions, denials, or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials, or objections and refer to them in the space provided in the request.

F Number. A party may serve more than one set of requested admissions upon an adverse party, but the total number of requests must not exceed 30, unless the court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another request, and however the requests may be grouped, combined, or arranged.

RULE 46
FAILURE TO MAKE DISCOVERY; SANCTIONS

A Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

A(1) Appropriate Court. An application for an order to a party or to a deponent who is not a party, must be made to this court. On matters relating to a deponent's failure to answer questions at a deposition taken in another state, the application must be made to a judge of a court having jurisdiction of such matters in the state where the deposition is being taken.

A(2) Motion. If a deponent fails to answer a question propounded or submitted under TCR 39 or TCR 40, if a corporation or other entity fails to make a designation under TCR 39 C(6) or TCR 40 A, or if a party in response to a request for inspection submitted under TCR 43 fails to permit inspection as requested, the discovering party may move for an order compelling discovery in accordance with the request. Any motion made under this subsection must set out at the beginning of the motion the items that the moving party seeks to discover. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to TCR 36 C.

A(3) Evasive or Incomplete Answer. For purposes of this section, an evasive or incomplete answer is to be treated as a failure to answer.

A(4) Award of Expenses of Motion. If the motion is granted, the court may, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court may, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

B Failure to Comply with Order.

B(1) Sanctions by Court for Failure to Answer in Deposition. If a deponent fails to be sworn or to answer a question after being directed to do so by the court the failure may be considered a contempt of court.

B(2) Sanctions by Court. If a party or an officer, director, or managing agent or a person designated under TCR 39 C(6) or TCR 40 A to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section A of this rule, the court may make such orders in regard to the failure as are just, including among others, the following:

B(2)(a) An order that the matters regarding which the order was made or any other designated facts must be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

B(2)(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting the disobedient party from introducing designated matters in evidence;

B(2)(c) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party;

B(2)(d) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey an order.

B(3) Payment of Expenses. In lieu of any order listed in subsection (2) of this section or in addition thereto, the court will require the party failing to obey the order or the attorney advising such party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

C Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter, as requested under TCR 45, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay the

party requesting the admissions the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court will make the order unless it finds that (1) the request was held objectionable pursuant to TCR 45 B or TCR 45 C, (2) the admission sought was of no substantial importance, (3) the party failing to admit had reasonable ground to believe that such party might prevail on the matter, or (4) there was other good reason for the failure to admit.

D Failure of Party to Attend at Own Deposition or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under TCR 39 C(6) or TCR 40 A to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition of that party or person, after being served with a proper notice or (2) to comply with or serve objections to a request for production and inspection submitted under TCR 43, after proper service of the request, the court on motion may make such orders in regard to the failure as are just, including among others it may take any action authorized under paragraphs (a), (b), and (c) of subsection B(2) of this rule. In lieu of any order or in addition thereto, the court will require the party failing to act or the attorney advising such party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by TCR 36 C.

RULE 47
SUMMARY JUDGMENT

A For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move, with or without supporting affidavits or declarations, for a summary judgment in that party's favor upon all or any part thereof.

B For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move, with or without supporting affidavits or declarations, for a summary judgment in that party's favor as to all or any part thereof.

C Motion and Proceedings Thereon. The motion and all supporting documents must be served and filed at least 60 days before the date set for trial. The adverse party will have 20 days in which to serve and file opposing affidavits or declarations and supporting documents. The moving party will have 10 days to reply. The court will have discretion to modify these stated times. The court will grant the motion if the pleadings, depositions, affidavits, declarations, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law. No genuine issue as to a material fact exists if, based upon the record before the court viewed in a manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party

on the matter that is the subject of the motion for summary judgment. The adverse party has the burden of producing evidence on any issue raised in the motions as to which the adverse party would have the burden of persuasion at trial. The adverse party may satisfy the burden of producing evidence with an affidavit or declaration under section E of this rule.

D Form of Affidavits and Declarations; Defense Required. Except as provided by section E of this rule, supporting and opposing affidavits or declarations must be made on personal knowledge, must set forth such facts as would be admissible in evidence, and must show affirmatively that the affiant or declarant is competent to testify to the matters stated therein. Sworn or certified copies of all documents or parts thereof referred to in an affidavit or declaration must be attached thereto or served therewith. The court may permit affidavits or declarations to be supplemented or opposed by depositions or further affidavits or declarations. When a motion for summary judgment is made and supported as provided in this rule an adverse party may not rest upon the mere allegations or denials of that party's pleading, but the adverse party's response, by affidavits or declarations or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue as to any material fact for trial. If the adverse party does not so respond, the court will grant the motion if appropriate.

E Affidavit or Declaration of Attorney When Expert Opinion Required. Motions under this rule are not designed to be used as discovery devices to obtain the names of potential expert witnesses or to obtain their facts or opinions. If a party, in opposing a motion for summary judgment, is required to provide the opinion of an expert to establish a genuine issue of material fact, an affidavit or declaration of the party's attorney stating that an unnamed qualified expert has been retained who is available and willing to testify to admissible facts or opinions creating a question of fact, will be deemed sufficient to controvert the allegations of the moving party and an adequate basis for the court to deny the motion. The affidavit or declaration must be made in good faith based on admissible facts or opinions obtained from a qualified expert who has actually been retained by the attorney who is available and willing to testify and who has actually rendered an opinion or provided facts which, if revealed by affidavit or declaration, would be a sufficient basis for denying the motion for summary judgment.

F When Affidavits or Declarations Are Unavailable. Should it appear from the affidavits or declarations of a party opposing the motion that such party cannot, for reasons stated, present by affidavit or declaration facts essential to justify the opposition of that party, the court may deny the motion or may order a continuance to permit affidavits or declarations to be obtained or depositions to be taken or discovery to be had, or may make such other order as is just.

G Affidavits or Declarations Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits or declarations presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court will forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits or declarations caused the other party to incur, including reasonable attorney fees, and any offending party or attorney may be subject to sanctions for contempt.

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H Multiple Parties or Claims; Final Judgment. In any action involving multiple parties or multiple claims, a summary judgment which is not entered in compliance with TCR 67 B will not constitute a final judgment.

RULE 48
PARTIES APPEARING AMICUS CURIAE ON CROSS-MOTIONS FOR SUMMARY JUDGMENT AND OTHER PROCEEDINGS

A Amicus Curiae Applications Generally. An individual or an organization may appear amicus curiae only by permission from the court on a written application setting forth the interest of the individual or organization in the case. The application must state whether the applicant intends to present a private interest of its own or to present a position as to the correct rule of law that does not affect a private interest of its own. The application must not contain argument on the resolution of the case.

B Submission; Fee; Form of Application; Service. The application must be submitted by an active member of the Oregon State Bar. A filing fee is not required. The form of the application must comply with TCR 16. The individual or organization seeking to appear *amicus curiae* must serve a copy of the application on all parties to the proceeding.

C Amicus Briefs; Form of Briefs. The application must be accompanied by the brief sought to be filed. The form of an *amicus* brief must be subject to the same rules as those governing briefs of parties.[3] If, consistently with this rule, a brief is submitted with the application, then:

C(1) Application Granted. If the court grants the application, the date of filing for the brief relates back to the date of filing for the application; or

C(2) Application Denied. If the court denies the application, the court will strike the brief.

D Time for Filing Amicus Briefs on Cross-Motions for Summary Judgment. Unless the court grants leave otherwise for good cause shown, an *amicus* brief on cross-motions for judgment will be due seven days after the date the brief is due of the party with whom *amicus curiae* is aligned or, if *amicus curiae* is not aligned with any party, seven days after the date the opening brief is due. Responses to the *amicus* brief will be due 21 days after the due date for the *amicus* brief. If a party obtains an extension of time to file a brief and the *amicus curiae* is aligned with that party, the time for filing the *amicus* brief is automatically extended to seven days following the extended due date.

E *Amicus* Briefs in Matters Scheduled for Trial. *Amicus* briefs will generally be allowed only on cross-motions for summary judgment. On matters to be tried, the court will consider applications for *amicus curiae*.

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[3] *See* TCR 61 concerning requirements for briefs.

F Oral Argument. *Amicus curiae* will not be allowed to orally argue the case, unless the court specifically authorizes or directs oral argument.[4]

RULE 49
[RESERVED FOR EXPANSION]

RULE 50
[RESERVED FOR EXPANSION]

RULE 51
ISSUES

Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds: (1) of law; and (2) of fact. Both issues of law and fact will be tried by the court.

RULE 52
CASE MANAGEMENT CONFERENCE; SETTING AND POSTPONEMENT OF CASE

A Case Management Conference. A case management conference will typically be held in every case at issue. Conferences may be held by telephone or in chambers as the court directs. Case management conferences will not be recorded except by direction of the court. The purposes of the conference will be as follows:

A(1) To consider the status of the pleadings and discovery and to set a date for completion of discovery.

A(2) To consider the areas of agreement or disagreement with a view to narrowing the issues and avoiding unnecessary proof.

A(3) To consider the number of witnesses and exhibits anticipated, the location of the trial, and other related matters.

A(4) To agree upon and set the trial date and, in property tax cases, to set the date for exchange of appraisals.

A(5) To consider any other matters appropriate in the circumstances of the case.

A(6) In cases involving state-appraised or county-appraised industrial property or centrally assessed property, both sides should be prepared to discuss participation by or notification of affected government entities.

B Discovery Conference. In an appropriate case, the court may order the parties to participate in a discovery conference conducted by the court. Although informal, a discovery

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[4] *See* TCR 14 F concerning oral argument.

conference is recorded by the court reporter. All aspects of discovery are discussed, including the kinds and location of documents, confidentiality of information, the kinds of information needed, and the identity of individuals able to locate and/or discuss the information. After the conclusion of the conference, the court will issue an order establishing guidelines for the parties to follow and a schedule for completion of discovery.

C Pretrial Conference. The court may, in its discretion, order a pretrial conference to be held. Counsel, the appraisers, and such other witnesses or parties as the court may direct must be present. The purpose of a pretrial conference will be to promote efficiency in the trial by eliminating unnecessary proof, considering the order and procedures of the trial, and considering such other matters as the court may deem appropriate. The court may also order the parties to disclose the names and qualifications of any expert witnesses expected to be called at the trial and to identify the subject matter on which each expert is expected to testify.

D Postponement of Case.

D(1) When a case is set for trial, it will be tried or dismissed, unless good cause is shown for a postponement. At its discretion, the Tax Court judge may grant a postponement, with or without terms, including requiring any party whose conduct made the postponement necessary to pay expenses incurred by an opposing party.

D(2) If a motion is made for postponement on the grounds of absence of evidence, the court may require the moving party to submit an affidavit stating the evidence which the moving party expects to obtain. If the adverse party admits that such evidence would be given and that it be considered as actually given at trial, or offered and overruled as improper, the trial will not be postponed. However, the court may postpone the trial if, after the adverse party makes the admission described in this section, the moving party can show that such affidavit does not constitute an adequate substitute for the absent evidence. The court, when it allows the motion, may impose such conditions or terms upon the moving party as may be just.

RULE 53
CONSOLIDATION; SEPARATE TRIALS

A Joint Hearing or Trial; Consolidation of Actions. Upon motion of any party, when more than one action involving a common question of law or fact is pending before the court, the court may order a joint hearing or trial of any or all of the matters in issue in such actions; the court may order all such actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. In property tax cases, each year constitutes a separate action. Cases involving more than one year may be consolidated for trial if the facts and evidence are substantially the same and can be separately established as to each year without confusion.

B Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or issues.

C Filings for Consolidated Cases. Cases that are consolidated are consolidated for purposes of hearing or trial only. A party filing any pleading, memorandum, or other document applicable to more than one case must file the document in each case using existing case numbers and captions unless otherwise ordered by the court. If such a document is not electronically filed, the filing party must provide the tax court clerk with sufficient copies.

C(1) A court order under this rule may permit designation of a lead case and require that parties file documents using only the case number and caption of the lead case.

C(2) Unless otherwise ordered by the court, a party filing a document applicable to only one case must file singly in that case.

RULE 54
DISMISSAL OF ACTIONS

A Voluntary Dismissal; Effect Thereof.

A(1) By Plaintiff; By Stipulation. Subject to the provisions of TCR 32 D and of any statute of this state, a plaintiff may dismiss an action in its entirety or as to one or more defendants without order of court: (a) by filing a notice of dismissal with the court and serving such notice on all other parties not in default not less than five days prior to the day of trial if no counterclaim has been pleaded or (b) by filing a stipulation of dismissal signed by all adverse parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action against the same parties on or including the same claim unless the court directs that the dismissal will be without prejudice. Upon notice of dismissal or stipulation under this subsection, a party must submit a form of judgment and the court will enter a judgment of dismissal complying with Rule 70 A(1).

A(2) By Order of Court. Except as provided in subsection (1) of this section, an action will not be dismissed at the plaintiff's instance save upon judgment of dismissal ordered by the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the defendant may proceed with the counterclaim. Unless otherwise specified in the judgment of dismissal, a dismissal under this subsection is without prejudice.

A(3) Costs and Disbursements. When an action is dismissed under this section, the judgment may include any costs and disbursements, including attorney fees, provided by rule or statute. Unless the circumstances indicate otherwise, the dismissed party will be considered the prevailing party.

B Involuntary Dismissal.

B(1) Failure to Comply With Rule or Order. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for a judgment of

dismissal of an action or of any claim against such defendant, or the court may, on its own motion, dismiss the case.

B(2) Insufficiency of Evidence. After the plaintiff in an action tried has completed the presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a judgment of dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment of dismissal against the plaintiff or may decline to render any judgment until the close of all the evidence.

B(3) Dismissal for Want of Prosecution; Notice. At the direction of the judge, the clerk of the court will mail notice to the attorneys of record or, if a party does not have an attorney of record, the copy will be mailed to the party in each pending case in which no action has been taken for six months immediately prior to the mailing of such notice that a judgment of dismissal will be entered in each such case by the court for want of prosecution, unless, on or before a specified date, application, either oral or written, is made to the court and good cause shown why it should be continued as a pending case. If such application is not made or good cause shown, the court will enter a judgment of dismissal in each such case. Nothing contained in this subsection will prevent the dismissal by the court at any time, for want of prosecution of any action upon motion of any party thereto.

B(4) Effect of Judgment of Dismissal. Unless the court in its judgment of dismissal otherwise specifies, a dismissal under this section operates as an adjudication without prejudice.

C Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

D Costs of Previously Dismissed Action.

D(1) If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of any unpaid judgment for costs and disbursements against plaintiff in the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

D(2) If a party who previously asserted a claim, counterclaim, cross-claim or third-party claim that was dismissed with prejudice subsequently files the same claim, counterclaim, cross-claim, or third-party claim against the same party, the court will enter a judgment dismissing the claim, counterclaim, cross-claim or third-party claim and may enter a judgment requiring the payment of reasonable attorney fees incurred by the party in obtaining the dismissal.

RULE 55
SUBPOENA

A Defined; Form. A subpoena is a writ or order directed to a person and may require the attendance of the person at a particular time and place to testify as a witness on behalf of a

particular party therein mentioned or may require the person to produce books, papers, documents, or tangible things and permit inspection thereof at a particular time and place. A subpoena requiring attendance to testify as a witness requires that the witness remain until the testimony is closed unless sooner discharged but, at the end of each day's attendance, a witness may demand of the party, or the party's attorney, the payment of legal witness fees for the next following day and, if not then paid, the witness is not obliged to remain longer in attendance. Every subpoena must state the name of the court, the case name, and the case number.

B For Production of Books, Papers, Documents, or Tangible Things and to Permit Inspection. A subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things in the possession, custody or control of that person at the time and place specified therein. A command to produce books, papers, documents, or tangible things and permit inspection thereof may be joined with a command to appear at trial or hearing or at deposition or, before trial, may be issued separately. A person commanded to produce and permit inspection and copying of designated books, papers, documents**,** or tangible things but not commanded to also appear for deposition, hearing**,** or trial may, within 14 days after service of the subpoena or before the time specified for compliance if that time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena will not be entitled to inspect and copy the materials except pursuant to an order of the court in whose name the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move for an order at any time to compel production. In any case, where a subpoena commands production of books, papers, documents**,** or tangible things the court, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive or condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

C Purpose; Issuance.

C(1) Purpose.

C(1)(a) Civil Actions. A subpoena may be issued to require attendance before the court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending therein or, if separate from a subpoena commanding the attendance of a person, to produce books, papers, documents, or tangible things and to permit inspection thereof.

C(1)(b) Foreign Depositions. A subpoena may be issued to require attendance before any person authorized to take the testimony of a witness in this state under TCR 38 C, or before any officer empowered by the laws of the United States to take testimony.

C(1)(c) Other Uses. A subpoena may be issued to require attendance out of court in cases not provided for in paragraph C(1)(a) or C(1)(b) of this rule, before a judge or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state.

C(2) By Whom Issued.

C(2)(a) By the Clerk of the Court or a Judge. A subpoena may be issued in blank by the clerk of the court or by a judge of the court.

C(2)(a)(i) Requirements for Subpoenas Issued in Blank. Upon request of a party or attorney, any subpoena issued by a clerk of the court may be issued in blank and delivered to the party or attorney requesting it, who must before service include on the subpoena the name of the person commanded to appear; or the books, papers, documents, or tangible things to be produced or inspected; and the particular time and location for the attendance of the person or the production or the inspection, as applicable.

C(2)(b) By the Clerk of the Court for Foreign Depositions. A subpoena for a foreign deposition may be issued as specified in TCR 38 C(2).

C(2)(c) By a Judge or Other Officer. A subpoena to require attendance out of court in cases not provided for in paragraph C(1)(a) or C(1)(b) of this rule may be issued by the judge or other officer before whom the attendance is required.

C(2)(d) By an Attorney. A subpoena may be issued by an attorney of record of the party to the action on whose behalf the witness is required to appear, subscribed by the attorney.

D Service; Service by Mail; Proof of Service.

D(1) Service. A subpoena may be served by the party or any other person 18 years of age or older. The service must be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and for one day's attendance. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. A subpoena for the taking of a deposition, served upon an organization as provided in TCR 39 C(6), must be served in the same manner as provided for service of summons in TCR 7 D(3)(b)(i), TCR 7 D(3)(d), TCR 7 D(3)(e), or TCR 7 D(3)(f). A copy of each subpoena commanding production of books, papers, documents**,** or tangible things and inspection thereof before trial that is not accompanied by a command to appear at trial or hearing or at deposition, must be served on each party at least 7 days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period. In addition, a subpoena must not require production less than 14 days from the date of service upon the person required to produce and permit inspection, unless the court orders a shorter period.

[D(2) Reserved for Expansion]

D(3) Service by Mail. Under the following circumstances, service of a subpoena to a witness by mail will be of the same legal force and effect as personal service otherwise authorized by this section:

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D(3)(a) The attorney certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness and the witness indicated a willingness to appear at trial if subpoenaed;

D(3)(b) The attorney, or the attorney's agent, made arrangements for payment to the witness of fees and mileage satisfactory to the witness; and

D(3)(c) The subpoena was mailed to the witness more than 10 days before trial by certified mail or some other form of mail that provides a receipt for the mail that is signed by the recipient and the attorney received a return receipt signed by the witness more than 3 days prior to trial.

D(4) Service by Mail of Subpoena Not Accompanied by Command to Appear. Service of a subpoena by mail may be used for a subpoena commanding production of books, papers, documents, or tangible things, not accompanied by a command to appear at trial or hearing or at deposition.

D(5) Proof of Service. Proof of service of a subpoena is made in the same manner as proof of service of a summons except that the server need not certify that the server is not a party in the action; an attorney for a party in the action; or an officer, director**,** or employee of a party in the action.

E Subpoena for Hearing or Trial; Prisoners. If the witness is confined in a prison or jail in this state, a subpoena may be served on that person only upon leave of court and attendance of the witness may be compelled only upon the terms that the court prescribes. The court may order temporary removal and production of the prisoner for the purpose of giving testimony or may order that testimony only be taken upon deposition at the place of confinement. The subpoena and court order must be served upon the custodian of the prisoner.

F Subpoena for Taking Depositions or Requiring Production of Books, Papers, Documents, or Tangible Things; Place of Production and Examination.

F(1) Subpoena for Taking Deposition. Proof of service of a notice to take a deposition as provided in TCR 39 C and TCR 40 A, or of notice of subpoena to command production of books, papers, documents, or tangible things before trial as provided in subsection D(1) of this rule, or a certificate that notice will be served if the subpoena can be served, constitutes a sufficient authorization for the issuance by a clerk of court of subpoenas for the persons named or described therein.

F(2) Place of Examination. A resident of this state who is not a party to the action may be required by subpoena to attend an examination or to produce books, papers, documents, or tangible things only in the county wherein the person resides, is employed or transacts business in person, or at any other convenient place that is fixed by an order of the court. A nonresident of this state who is not a party to the action may be required by subpoena to attend or to produce books, papers, documents, or tangible things only in the county wherein the person is served with a subpoena, or at any other convenient place that is fixed by an order of the court.

F(3) Production Without Examination or Deposition. A party who issues a subpoena may command the person to whom it is issued, other than a hospital, to produce books, papers, documents, or tangible things by mail or otherwise, at a time and place specified in the subpoena, without commanding inspection of the originals or a deposition. In such instances, the person to whom the subpoena is directed complies if the person produces copies of the specified items in the specified manner and certifies that the copies are true copies of all of the items responsive to the subpoena or, if any items are not included, why they are not.

G Disobedience of Subpoena; Refusal to be Sworn or to Answer as a Witness. Disobedience to a subpoena or a refusal to be sworn or to answer as a witness may be punished as contempt by the court. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be sworn or to answer as a witness, that party's complaint, answer, or reply may be stricken.

RULE 56
EXHIBITS; VIEW OF PROPERTY

A Marking Exhibits.

A(1) Before the commencement of the trial, parties must mark all exhibits in the following manner:

A(1)(a) Plaintiff's exhibits must be marked numerically, contain the case number, and each page of the exhibit must be numbered sequentially from 1 through the end of the exhibit.

A(1)(b) Defendant's exhibits must be marked alphabetically, contain the case number, and each page of the exhibit must be numbered sequentially from 1 through the end of the exhibit.

A(1)(c) Intervenor's exhibits must be marked numerically with a capital "I" in front of each number, contain the case number, and each page of the exhibit must be numbered sequentially from 1 through the end of the exhibit.

A(1)(d) In cases involving multiple parties or large numbers of exhibits, the parties must agree on the assignment of the numbers. If the parties cannot reach agreement, or if for any reason the numbering system cannot accommodate the parties, then the court may direct the parties to use any other numbering system it deems appropriate in the circumstances.

A(1)(e) Parties must tab each exhibit by number or letter so that it may be easily referenced.

A(2) Upon request, tax court personnel will provide a party with appropriate stamps, label, or tags for exhibit marking.

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A(3) The parties must submit to the court at the time of exchange of exhibits a typewritten list of the exhibits, describing each exhibit and indicating the number or letter for each.

B Exchange of Exhibits.

B(1) Exchange Generally. To avoid confusion and delay, each party must provide opposing parties with copies of all documents that will be offered as evidence in support of that party's case-in-chief. "Documents" includes all writings, photographs, maps, and other similar materials. If the document is a book, journal, or other published material commonly available, only that portion particularly relevant need be exchanged. Computer produced documents must be accompanied by a written explanation of the printout formatting, disclosing underlying assumptions.

B(2) Exchange in Valuation Cases.

B(2)(a) In valuation cases, for purposes of TCR 56 B(1) "documents" includes appraisal reports, field notes, work papers, computer files, and all other documents relied upon by the appraiser, whether or not such documents are introduced into evidence.

B(2)(b) If an appraiser testifying in a valuation case relies upon the use of a computer database in forming an opinion on the value of property at issue in that case, the appraiser must disclose the use of that database to the opposing party at or before the time for exchanging appraisal reports and associated documents. A party making use of such database does not, however, have to provide access to that database to an opposing party if access to that database is either freely available to the general public or readily available for commercial purchase or subscription. In all other instances the portions of a database that the appraiser relied upon in forming an opinion as to value must be exchanged pursuant to TCR 56 B(2) or, if that is not practicable, must be made available for inspection by the opposing party pursuant to TCR 56 B(3)(a).

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

B(3) Exceptions.

B(3)(a) Bulky or voluminous materials such as extensive catalogues, libraries, or files must be made available for inspection and selective copying;

B(3) (b) Exhibits prepared for illustrative purposes do not need to be exchanged if the information contained therein has been provided to the opposing parties in other documents;

B(3) (c) Documents submitted as rebuttal evidence only do not need to be exchanged.

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B(4) Time of Exchange; Filing of Courtesy Copies.

B(4)(a) In valuation cases, documents relied upon by the appraiser must be provided to the other parties no later than 30 days before trial unless an alternative date is set by the court. At the time of the exchange, each party shall provide the court with a courtesy copy of any appraisal report that it intends to offer as evidence in support of its case-in-chief, in addition to the list of all exchanged documents pursuant to subsection A(3) of this rule.

B(4)(b) In all cases, all documents described in subsection B(1)of this rule, and not exchanged pursuant to subsection B(4)(a), must be provided to the other parties not less than five business days prior to trial. At the time of the exchange, each party shall provide the court with a courtesy copy of the documents and the list pursuant to subsection A(3) of this rule.

B(4)(c) All documents exchanged, and all courtesy copies, must comply with the labeling requirements of section A of this rule. Submission of documents to the court at the time of exchange does not constitute their admission into evidence or otherwise affect their admissibility at trial. The court will treat courtesy copies of documents in the same manner as exhibits for purposes of applying section D of this rule.

B(5) Sanctions. Failure to comply with this rule may result in exclusion of documents and any testimony relating thereto.

C Handling Exhibits. Exhibits which have been marked must be retained by the parties until they have been offered as evidence. After an exhibit has been offered as evidence by counsel and the witness has concluded testimony concerning such exhibit, counsel must cause the exhibit to be handed to the judge. For convenience however, at trial a copy of an exhibit may be handed to the judge prior to or during testimony concerning the exhibit.

D Custody of Exhibits. Any original record of the court or any exhibit offered as evidence must not be taken from the custody of the court except by written order of the court or to transmit the original records and exhibits to the Oregon Supreme Court upon an appeal of a case. After final disposition of the case, a notice will be sent to the parties of record that unless they withdraw their respective exhibits within 30 days the exhibits will be disposed of by the court.

Copies of any documents on file with the court, except confidential documents sealed by court order, may be obtained from the tax court clerk. The fees therefor will be charged in accordance with ORS 305.493.

E View of Property. Requests for a view of the property, made in advance of trial, will be honored at the court's discretion. The party requesting such a view will be responsible for arranging necessary transportation.

RULE 57
CONDUCT AND ETHICS; DECORUM IN PROCEEDINGS

A Attorney as Witness. If an attorney offers herself or himself as a witness and testifies

on behalf of her or his client, except as to formal matters, such attorney must leave the trial of the cause to other counsel unless an exception is permitted by ORPC 3.7.

B Argument and Examination by More Than One Attorney. No more than one attorney for each party may examine a witness or argue questions of fact or law on objections or motions unless the court directs otherwise.

C Conduct and Ethics. Counsel must conduct themselves in accord with the Oregon Rules of Professional Conduct as amended from time to time.

D Decorum in Proceedings.

D(1) Proper Apparel.

D(1)(a) All persons attending court must dress so as not to detract from the dignity of court. Members of the public not dressed in accordance with this rule may be removed from the courtroom.

D(1)(b) When appearing in court, all attorneys and court officials must wear appropriate attire.

D(1)(c) A person may wear a religiously-required head covering unless the court orders otherwise.

D(2) Manner of Address. During trial, the litigants and litigants' attorneys must not address adult witnesses or opposing parties by their first names.

D(3) Advice to Clients and Witnesses of Courtroom Formalities. Attorneys must advise their clients and witnesses of the formalities of the court and must encourage their cooperation. Unrepresented parties must similarly advise their witnesses and encourage their cooperation.

D(4) Proper Behavior of Parties and Counsel Before Court.

Parties and counsel must:

D(4)(a) Stand while addressing the court;

D(4)(b) Unless otherwise instructed by the court, counsel and parties appearing *pro se* are free to move about the courtroom to facilitate the identification and use of exhibits and demonstrative evidence. Counsel must keep in mind that the proceedings are recorded by microphone which may limit movement; and

D(4)(c) Refrain from visibly or audibly reacting to the testimony of a witness, except when examining that witness, in a manner which communicates to the witness or is otherwise disruptive.

Conduct of the proceedings and participants must at all times be subject to the direction and control of the court.

D(5) Persons Permitted Within Bar of Court. During a trial or the presentation of any matter to the court, only counsel, the parties, or a representative of the parties may sit at counsel table. In addition, each party may have one "technical adviser" (*e.g.*, appraiser, accountant, etc.) sit at counsel table unless the court directs otherwise. Only persons permitted at counsel table, court personnel, and witnesses, when called to testify, are permitted within the bar of the courtroom. Others, including family members of parties, are not permitted within the bar of the courtroom unless otherwise permitted.

D(6) Procedure for Swearing Witnesses. The swearing of witnesses will be conducted as a serious ceremony and not as a mere formality.

D(7) Resignation or Substitution of Attorneys. An application to resign, a notice of termination, or a notice of substitution made pursuant to ORS 9.380 containing the name, address, telephone number, email address, and facsimile transmission number, if any, of the new attorney, if one is being substituted, and of the party. It must be served on that party and the opposing party's attorney. If no attorney has appeared for the opposing party, the notice must be served on the opposing party. A notice of withdrawal, termination, or substitution of attorney must be promptly filed.

RULE 58
TRIAL PROCEDURE

A Opening Statements. When the case is called for trial, the parties may make opening statements. Opening statements must be concise statements of the issues to be tried and the parties' positions, without argument. In any proceeding involving property taxation, each party will address its reliance, if any, on a department rule promulgated under ORS 308.205. *See* TCR 16 D.

B Presentation of Evidence. Plaintiff will present its evidence first. After plaintiff rests, defendant will present its evidence, including any rebuttal of plaintiff's case-in-chief. After defendant rests, plaintiff may present any rebuttal evidence. The taking of any evidence after plaintiff's rebuttal (i.e., surrebuttal) will be solely within the discretion of the court. If there are multiple parties, the court will direct the order for presentation of evidence.

C Closing Arguments. When the evidence is concluded, plaintiff will commence and conclude the arguments to the court. The plaintiff may waive the opening argument, and if defendant then argues the case to the court, plaintiff will have the right to reply to the argument of defendant, but not otherwise. If the parties agree, closing arguments may be made in writing. The dates for submission will be set by the court.

D Addition to or Correction of Transcript.

D(1) A party desiring to correct or add to the transcript must file a motion in the Tax Court within 15 days after filing of the transcript and mail a copy of the motion to the tax court

clerk. When multiple portions of the oral record have been designated as part of the record on appeal or if more than one court reporter or transcriptionist is preparing the transcript, the transcript is not deemed filed until the last portion of the transcript due on appeal is filed.

D(2) The tax court clerk will hold the appeal in abeyance pending the Tax Court's disposition of the motion and the occurrence of one of the events specified in paragraph D(5)(b) or (c) of this rule.

D(3) After the filing of a timely motion to correct or add to the transcript, the Tax Court will have authority to grant an extension of time for making the corrections or additions to the transcript.

D(4)(a) If the Tax Court allows a motion to correct the transcript, after the filing of the corrected transcript, the moving party must request that the Tax Court enter an order settling the transcript. The appeal will remain in abeyance until receipt by the tax court clerk of a copy of the order settling the transcript as provided in paragraph D(5)(b) of this rule.

D(4)(b) If the Tax Court allows a motion to add to the transcript, the appeal will remain in abeyance for a period of 15 days after the filing of the additional transcript. If a motion to correct the additional transcript is filed timely, the appeal will continue in abeyance pending disposition of the motion to correct and receipt of an order settling the transcript as provided in paragraph D(5)(b) of this rule.

D(4)(c) If the Tax Court denies the motion, the appeal will be reactivated as provided in paragraph D(5)(c) of this rule.

D(5)(a) If no motion to correct or add to the transcript is filed, the transcript will be deemed settled 15 days after it is filed, and the period for filing the appellant's brief will begin the next day.

D(5)(b) If a motion to correct or add to the transcript is filed and allowed, the period for filing the appellant's opening brief will begin the day after entry by the tax court clerk for the order settling the transcript.

D(5)(c) If a motion to correct or add to the transcript is filed and denied, the period for filing the appellant's opening brief will begin the day after entry of the order by the tax court clerk.

RULE 59
TELEPHONE COMMUNICATIONS AND TESTIMONY

A Telephone Communications. Any scheduled court event, *e.g.*, case management conference, motion argument, or trial, which is to be conducted by telephone, will be initiated by the court, except as provided in section B. All participants must be personally at their telephone to respond without voice mail or other intervening or interrupting arrangements.

B Telephone Testimony. Upon motion of any party and for good cause shown, the

court may order that testimony may be taken by telephone. Such motion must be filed and certified copies served on all parties at least 30 days before the trial or hearing, unless the moving party shows good cause for allowing telephone testimony with less than 30 days' notice.

The court will allow telephone testimony upon a showing of good cause unless the court determines that witness credibility and demeanor, the issues, the exhibits, lack of facilities, or other circumstances exist that make it necessary that the witness or party personally appear.

A party filing a motion for telephone testimony must pay all costs of the telephone testimony, no part of which may be recovered as costs and disbursements. If a witness is to be examined by telephone with regard to documents, copies of such documents must be furnished to the witness, the court, and all parties at least 10 days prior to such examination.

In determining what constitutes good cause to take testimony by telephone, the court may consider: (1) the age, infirmity, mental, or physical condition of the witness; (2) the fact that the moving party has been unable to secure attendance of the witness by process or other reasonable means; (3) whether a personal appearance would be an undue hardship; or (4) any other circumstances that constitute good cause.

For purposes of this rule, "telephone testimony" means testimony given by telephone or by any other two-way electronic communication device.

RULE 60
MOTION FOR DISMISSAL AT TRIAL

Any party may move for a dismissal at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for dismissal at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for dismissal which is not granted is not a waiver of trial even though all parties to the action have moved for dismissal. A motion for dismissal must state the specific grounds therefor. The judgment of the court granting a motion for dismissal will be with prejudice. If a motion for dismissal is made by the party against whom the claim is asserted, the court may, at its discretion, give a judgment of dismissal without prejudice under TCR 54 rather than with prejudice.

RULE 61
BRIEFS AND MEMORANDUMS

A Briefs. Briefs must be typewritten, double-spaced, and in a manner that, if printed, would be on 8 ½" X 11" paper. Each brief of more than five pages or which includes more than five citations must contain, in order, the following:

A(1) Title page showing the title of this court, the case number and title, the title of the brief (*e.g.*, plaintiff's opening brief, defendant's answering brief, plaintiff's reply brief), and the names of counsel;

A(2) A table of contents with page references;

A(3) An alphabetically arranged list of all citations with page reference as to page or pages of the brief on which each citation is cited.

The briefs must set forth a concise statement of the case, the nature of the controversy, the type of tax involved, and the basic issue or issues to be decided. Each party must set forth its points and authorities and argument relating to each issue. Case citations must include reference to the particular page or pages of the report where the proposition of law is discussed. Federal cases should be cited by reference to official reports and unofficial reports. (If available, United States Tax Cases (CCH) and the federal court which decided the case should be indicated parenthetically by appropriate abbreviations.) Cases from other jurisdictions should be cited by reference to both official and unofficial reports where available. The argument on each issue must follow the points and authorities on that issue and must speak solely to that issue.

B Briefs and Memorandums. Trial memoranda, if any, must be filed with the tax court clerk, and copies must be delivered concurrently to the court and to opposing parties no later than noon the day before the trial takes place.[1] All other memorandums and briefs may be filed only as authorized by statute, these rules, a schedule agreed upon in a case management conference, or by leave of the court. In any proceeding involving property taxation, each party will address its reliance, if any, on a department rule promulgated under ORS 308.205. *See* TCR 16 D.

RULE 62
DECISION OF COURT

All decisions of the court in the Regular Division must be made in writing. Accordingly, when cases are ready to be decided, they are taken under advisement pending the preparation of a written opinion by the court. Selected written opinions are published in the Oregon Tax Reports. ORS 305.450.

RULE 63
[RESERVED FOR EXPANSION]

RULE 64
[RESERVED FOR EXPANSION]

RULE 65
COMPUTATIONS

In appropriate cases, after the court has filed its opinion, it may withhold entry of its judgment to permit the parties to submit computations pursuant to the court's determination of the issues. If the court directs one party to prepare computations, such party must submit a copy of the computations to the court with a copy to the other party. The parties must attempt to agree on the computations. If the parties cannot agree on the computations, each party must serve and file the computations believed to be in accord with the court's opinion. The court may require briefs or oral arguments before deciding on the proper computations.

[1] Copies may be delivered electronically to opposing parties if they have consented to electronic service.

RULE 66
SUBMITTED CONTROVERSY

A Submission Without Action. Subject to the requirements of ORS 305.275, parties to a question in controversy, which might have been the subject of an action with such parties plaintiff and defendant, may submit the question to the determination of a court having subject matter jurisdiction.

A(1) Contents of Submission. The written submission must consist of an agreed statement of facts upon which the controversy depends, a certificate that the controversy is real and that the submission is made in good faith for the purpose of determining the rights of the parties, and a request for relief.

A(2) Who Must Sign the Submission. The submission must be signed by all parties or their attorneys as provided in TCR 17.

A(3) Effect of Submission. From the moment the submission is filed, the court will treat the controversy as if it is an action pending. The controversy will be determined on the agreed case alone, but the court may find facts by inference from the agreed facts. If the statement of facts in the case is not sufficient to enable the court to enter judgment, the submission will be dismissed or the court will allow the filing of an additional statement.

B Submission of Pending Case. An action may be submitted in a pending action at any time before trial, subject to the same requirements and attended by the same results as in a submission without action, and in addition:

B(1) Pleadings Deemed Abandoned. Submission will be an abandonment by all parties of all prior pleadings, and the case will stand on the agreed case alone; and

B(2) Provisional Remedies. The submission must provide for any provisional remedy which is to be continued or such remedy will be deemed waived.

RULE 67
JUDGMENTS

A Definitions. "Judgment" as used in these rules is the final determination of the rights of the parties in an action; judgment includes a decree and a final judgment entered pursuant to section B or E of this rule. "Order" as used in these rules is any other determination by a court or judge which is intermediate in nature.

B Judgment for Less Than All Claims or Parties in Action. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of

decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties will not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

C Demand for Judgment. Every judgment will grant the relief to which the party in whose favor it is rendered is entitled, even if such relief has not been demanded in the pleadings, except a judgment by default will not be different in kind from or exceed in amount that prayed for in the demand for judgment. However, a default judgment granting equitable remedies may differ in kind from or exceed in amount that prayed for in the demand for judgment, provided that reasonable notice and opportunity to be heard are given to any party against whom the judgment is to be entered.

D Judgment by Stipulation.

D(1) Availability of Judgment by Stipulation. At any time after commencement of an action, a judgment may be given upon stipulation that a judgment for a specified amount or for a specific relief may be entered. The stipulation must be of the party or parties against whom judgment is to be entered and the party or parties in whose favor judgment is to be entered. If the stipulation provides for attorney fees, costs, and disbursements, they may be entered as part of the judgment according to the stipulation.

D(2) Filing; Assent in Open Court. The stipulation for judgment may be in a writing signed by the parties, their attorneys, or their authorized representatives, which writing must be filed in accordance with TCR 9. The stipulation may be subjoined or appended to, and part of, a proposed form of judgment. If not in writing, the stipulation must be assented to by all parties thereto in open court.

E Judgment on Portion of Claim Exceeding Counterclaim. The court may direct entry of a final judgment as to that portion of any claim which exceeds a counterclaim asserted by the party or parties against whom the judgment is entered, if such party or parties have admitted the claim and asserted a counterclaim amounting to less than the claim.

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

A Definitions. As used in this rule:

A(1) Attorney Fees. "Attorney fees" are the reasonable value of legal services related to the prosecution or defense of an action.

A(2) Costs and Disbursements. "Costs and disbursements" are reasonable and necessary expenses incurred in the prosecution or defense of an action other than for legal services, and include the filing fee; fees of officers; the statutory fees for witnesses; the postage for summonses or notices; the necessary expense of copying of any public record, book, or

document used as evidence on the trial; recordation of any document where recordation is required to give notice of the creation, modification, or termination of an interest in real property; a reasonable sum paid a person for executing any bond, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by any other rule or statute. The court, acting in its sole discretion, may allow as costs reasonable expenses incurred by a party for interpreter services. If such costs are not awarded and the beneficiary of the interpreter services is unable to pay, then interpreter services must be paid for in the same manner as interpreters used in the circuit court. *See* ORS 45.275(4)(c). The expense of taking depositions will not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute.

B Allowance of Costs and Disbursements. In any action, costs and disbursements will be allowed to the prevailing party unless these rules or any 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. If, under a special provision of these rules or any other rule or statute, a party has a right to recover costs, such party will also have a right to recover disbursements.

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

C(1) Application of This Section to Award of Attorney Fees. If a party believes that it is entitled to an award of attorney fees, it may plead that right, but is not required to do so unless a statute requires pleading of the claim.

C(2) Procedure for Seeking Attorney Fees or Costs and Disbursements. The procedure for obtaining an award of attorney fees or costs and disbursements will be as follows:

C(2)(a) Filing and Serving Statement of Attorney Fees and Costs and Disbursements. A party seeking attorney fees or costs and disbursements must, not later than 14 days after entry of judgment pursuant to TCR 67:

C(2)(a)(i) File with the court a signed and detailed statement in the form set forth in Form 5.080 in the UTCR Appendix of Forms of the amount of attorney fees or costs and disbursements, together with proof of service, if any, in accordance with TCR 9; and

C(2)(a)(ii) Serve, in accordance with TCR 9, a copy of the statement on all parties who are not in default for failure to appear.

C(2)(b) Objections. A party may object to a statement seeking attorney fees or costs and disbursements or any part thereof by written objections to the statement. The objections must be served within 14 days after service on the objecting party of a copy of the statement. The objections must be specific and may be founded in law or in fact and must be deemed controverted without further pleading. The objecting party may present affidavits, declarations, and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any

other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.

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

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

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

C(2)(f)(i) If a hearing is requested the court, without a jury, will hear and determine all issues of law and fact raised by the objection.

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

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

C(2)(h) Findings and Conclusions. On the request of a party, the court will make special findings of fact and state its conclusions of law on the record regarding the issues material to the award or denial of attorney fees. A party must make a request pursuant to this paragraph by including a request for findings and conclusions in the title of the statement of attorney fees or costs and disbursements, objection, or response filed pursuant to paragraph (a), (b), or (c) of this subsection. In the absence of a request under this paragraph, the court may make either general or special findings of fact and may state its conclusions of law regarding attorney fees.

C(3) Judgment Concerning Attorney Fees or Costs and Disbursements.

C(3)(a) As Part of Judgment. If all issues regarding attorney fees or costs and disbursements are decided before entry of a judgment pursuant to TCR 67, the court will include any award or denial of attorney fees or costs and disbursements in that judgment.

C(3)(b) By Supplemental Judgment; Notice. If any issue regarding attorney fees or costs and disbursements is not decided before entry of a judgment pursuant to TCR 67, any award or denial of attorney fees or costs and disbursements will be made by a separate

supplemental judgment. The supplemental judgment will be filed and entered and notice will be given to the parties in the same manner as provided in TCR 70 B(1).

C(4) Avoidance of Multiple Collection of Attorney Fees and Costs and Disbursements.

C(4)(a) Separate Judgments for Separate Claims. Where separate final judgments are granted in one action for separate claims, pursuant to TCR 67 B, the court will take such steps as necessary to avoid the multiple taxation of the same attorney fees and costs and disbursements in more than one such judgment.

C(4)(b) Separate Judgments for the Same Claim. When there are separate judgments entered for one claim (where separate actions are brought for the same claim against several parties who might have been joined as parties in the same action, or where pursuant to TCR 67 B separate final judgments are entered against several parties for the same claim), attorney fees and costs and disbursements may be entered as to each such judgment in a supplemental judgment as provided in this rule, but satisfaction of one such judgment will bar recovery of attorney fees or costs and disbursements included in all other judgments.

RULE 69
DEFAULT ORDERS AND JUDGMENTS

A Entry of Default. When a party against whom a judgment for affirmative relief is sought has been served with summons pursuant to TCR 7 or is otherwise subject to the jurisdiction of the court and has failed to plead or otherwise defend as provided in these rules, the party seeking affirmative relief may apply for an order of default. If the party against whom an order of default is sought has filed an appearance in the action, or has provided written notice of intent to file an appearance to the party seeking an order of default, then the party against whom an order of default is sought must be served with written notice of the application for an order of default at least 10 days, unless shortened by the court, prior to entry of the order of default. These facts, along with the fact that the party against whom the order of default is sought has failed to plead or otherwise defend as provided in these rules, must be made to appear by affidavit, declaration, or otherwise, and upon such a showing, the court will enter the order of default.

B Entry of Default Judgment.

B(1) Judgment for Sum Certain. The court, upon written application of the party seeking judgment, will enter judgment when:

B(1)(a) The claim of a party seeking judgment is for the recovery of a sum certain or for a sum which can by computation be made certain;

B(1)(b) The party against whom judgment is sought has been defaulted for failure to appear;

B(1)(c) The party against whom judgment is sought is not a minor or a person who is incapacitated or financially incapable, as defined by ORS 125.005, and such fact is shown by affidavit;

B(1)(d) The party seeking judgment submits an affidavit or declaration of the amount due;

B(1)(e) An affidavit or declaration pursuant to subsection B(3) of this rule has been submitted; and

B(1)(f) Summons was personally served within the State of Oregon upon the party, or an agent, officer, director, or partner of a party, against whom judgment is sought pursuant to TCR 7 D(3)(a)(i), TCR 7 D(3)(b)(i), TCR 7 D(3)(e) or TCR 7 D(3)(f).

B(2) All Other Cases. In all other cases, the party seeking a judgment by default must apply to the court therefor, but no judgment by default will be entered against a minor or an incapacitated person as defined by ORS 125.005 unless the minor or incapacitated person has a general guardian or is represented in the action by another representative as provided in TCR 27. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or make an order of reference as it deems necessary and proper. The court may determine the truth of any matter upon affidavits or declarations.

B(3) Amount of Judgment. The judgment entered will be for the amount due as shown by the affidavit or declaration and may include costs, disbursements, and attorney fees entered pursuant to TCR 68.

B(4) Nonmilitary Affidavit or Declaration Required. No judgment by default will be entered until the filing of an affidavit or declaration on behalf of the plaintiff, showing that the defendant is or is not a person in the military service or stating that plaintiff is unable to determine whether the defendant is in the military service as required by section 201(b)(1) of the Servicemembers Civil Relief Act, 50 App USC § 521, as amended, except upon order of the court in accordance with that Act.

C Failure to Appear for Trial. When a party who has filed an appearance fails to appear for trial, the court may, in its discretion, proceed to trial and judgment without further notice to the nonappearing party.

D Setting Aside Default. For good cause shown, the court may set aside an order of default and, if a judgment by default has been entered, may likewise set it aside in accordance with TCR 71 B and TCR 71 C.

E Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases, a judgment by default is subject to the provisions of TCR 67 B.

RULE 70
FORM AND ENTRY OF JUDGMENT

A Form. Every judgment must be in writing plainly titled as a judgment and set forth in a separate document. A default or stipulated judgment may have appended or subjoined thereto such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in support of the entry thereof.

A(1) Content. No particular form of words is required, but every judgment must:

A(1)(a) Specify the tax year at issue; the number of the opinion and order appealed from; and the date of the judge's opinion or order.

A(1)(b) Specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action.

A(1)(c) Be signed by the judge rendering such judgment.

A(1)(d) In property tax cases, specify the name of the county in which the property is located and the property's account number.

Notwithstanding the foregoing, a judgment of dismissal under TCR 54 A(1) need only be signed by the judge.

A(2) Money Judgment.

A(2)(a) Contents. Money judgments are judgments that require the payment of money, including judgments for the payment of costs or attorney fees. The requirements of this subsection are not jurisdictional for purposes of appellate review. Money judgments must include all of the following:

A(2)(a)(i) The name and address of each judgment creditor and the name, address, and phone number of each creditor's attorney, if any.

A(2)(a)(ii) The name of the judgment debtor and, if known, the address, year of birth, the final four digits of the Social Security number and the final four digits of the driver license number for each judgment debtor, the state of issuance for each judgment debtor's driver's license, and the name of each judgment debtor's attorney.

A(2)(a)(iii) The name of any person or public body known to the judgment creditor, other than the judgment creditor's attorney, who is entitled to any portion of a payment made on the judgment.

A(2)(a)(iv) The amount of the judgment.

A(2)(a)(v) The interest owed to the date of the judgment, either as a specific amount or as accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

A(2)(a)(vi) Post-judgment interest accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

A(2)(a)(vii) For judgments that accrue on a periodic basis, any accrued arrearages, required further payments per period, and accrual dates.

A(2)(a)(viii) If the judgment awards costs and disbursements or attorney fees, that they are awarded and any specific amounts awarded. This subparagraph does not require inclusion of specific amounts where such will be determined later under TCR 68 C.

A(2)(b) Form. To comply with the requirements of paragraph A(2)(a) of this rule, the requirements in that paragraph must be presented in a manner that complies with all of the following:

A(2)(b)(i) The requirements must be presented in a separate, discrete section immediately above the judge's signature if the judgment contains more provisions than just the requirements of paragraph A(2)(a) of this rule.

A(2)(b)(ii) The separate section must be clearly labeled at its beginning as a money judgment.

A(2)(b)(iii) The separate section must contain no other provisions except what is specifically required by this rule for judgments and, if applicable, by ORS 24.290 for the payment of money.

A(2)(b)(iv) The requirements under paragraph A(2)(a) of this rule must be presented in the same order as set forth in that paragraph.

A(3) Proposed Judgment. If the proposed judgment does not comply with the requirements in subsections A(1) and (2) of this rule, it will not be signed by the judge. If the judge signs the judgment, it will be entered in the register whether or not it complies with the requirements in subsections A(1) and (2) of this rule.

B Entry of Judgments.

B(1) Filing; Entry; Notice. All judgments will be filed and will be entered in the court records by the tax court clerk. The clerk will, on the date judgment is entered, mail a copy of the judgment, showing its date of filing, to the attorneys of record, if any, of each party who is not in default for failure to appear. If a party who is not in default for failure to appear does not have an attorney of record, the copy will be mailed to the party. The tax court clerk also will make a

note in the court records of the mailing. In the entry of all judgments, the clerk will be subject to the direction of the court. Entry of judgment will not be delayed for taxation of costs, disbursements, and attorney fees under TCR 68.

B(2) Judgment Effective upon Entry. Notwithstanding ORS 3.070 or any other rule or statute, for purposes of these rules, a judgment is effective only when entered as provided in this rule.

C Submission of forms of judgment. After the opinion is filed (and TCR 65 fulfilled, where applicable), the prevailing party must submit a form of judgment bill to the court and serve a copy on each opposing party. Except for default judgments or dismissals on the court's own motion, each opposing party will have 10 days from the date of service within which to object to the form of judgment submitted (which 10-day period may be waived).

RULE 71
RELIEF FROM JUDGMENT OR ORDER

A Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own motion or on the motion of any party and after such notice to all parties who have appeared, if any, as the court orders. During the pendency of an appeal, a judgment may be corrected as provided in subsection (2) of section B of this rule.

B Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Etc.

B(1) By Motion. On motion and upon such terms as are just, the court may relieve a party or such party's legal representative from a judgment for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (c) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment is void; or (e) the judgment has been satisfied, released, or discharged, a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. A motion for reasons (a), (b), and (c) must be accompanied by a pleading or motion under TCR 21 A which contains an assertion of a claim or defense. The motion must be made within a reasonable time and, for reasons (a), (b), and (c), not more than one year after receipt of notice by the moving party of the judgment. A copy of a motion filed within one year after the entry of the judgment must be served on all parties as provided in TCR 9, and all other motions filed under this rule must be served as provided in TCR 7. A motion under this section does not affect the finality of a judgment or suspend its operation.

B(2) When Appeal Pending. A motion under sections A or B may be filed and decided by the Tax Court during the time an appeal from a judgment is pending before an appellate court. The moving party must serve a copy of the motion on the appellate court. The moving party must file a copy of the Tax Court's order in the appellate court within seven days of the date of

the tax court order. Any necessary modification of the appeal required by the court order must be pursuant to rule of the appellate court.

C Relief from Judgment by Other Means. This rule does not limit the inherent power of the court to modify a judgment within a reasonable time, the power of the court to entertain an independent action to relieve a party from a judgment, or the power of the court to set aside a judgment for fraud upon the court.

D Writs and Bills Abolished. Writs of *coram nobis*, *coram vobis*, *audita querela*, bills of review, and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment must be by motion or by an independent action.

RULE 72
STAY OF PROCEEDINGS TO ENFORCE JUDGMENT

A Immediate Execution; Discretionary Stay. Execution or other proceeding to enforce a judgment may issue immediately upon the entry of the judgment, unless the court, in its discretion and on such conditions for the security of the adverse party as are proper, as otherwise directs. The court will have authority to stay execution of a judgment temporarily until the filing of a Notice of Appeal and stay execution of a judgment pending disposition of an appeal, as provided in ORS 19.335, ORS 19.340, and ORS 19.350 or other provision of law.

B Other Stays. This rule does not limit the right of a party to a stay otherwise provided for by these rules or other statute or rule.

C Stay or Injunction in Favor of Public Body. The federal government, any of its public corporations or commissions, the state, any of its public corporations or commissions, a county, a municipal corporation, or other similar public body will not be required to furnish any bond or other security when a stay is granted by authority of section A of this rule in any action to which it is a party or is responsible for payment or performance of the judgment.

D Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in TCR 67 B, the court may stay enforcement of that judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

RULE 73
[RESERVED FOR EXPANSION]

RULE 74
[RESERVED FOR EXPANSION]

RULE 75
[RESERVED FOR EXPANSION]

RULE 76
[RESERVED FOR EXPANSION]

RULE 77
[RESERVED FOR EXPANSION]

RULE 78
ORDER OR JUDGMENT FOR SPECIFIC ACTS

A Judgment Requiring Performance Considered Equivalent Thereto. A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified will, if such party does not comply with the judgment, be deemed to be equivalent thereto.

B Enforcement; Contempt. The court may enforce an order or judgment directing a party to perform a specific act by punishing the party refusing or neglecting to comply therewith, as for a contempt as provided in ORS 33.015 through ORS 33.155.

RULE 79
[RESERVED FOR EXPANSION]

RULE 80
MOTIONS FOR RECONSIDERATION OR TO REOPEN HEARING

A Filing Deadline and Content of Motion. Motions for reconsideration or to reopen a hearing or trial must be submitted within 20 days after the opinion or order has been rendered and before the judgment is signed. The motion should state specific grounds and the authority on which counsel relies and must be based on one or more of these contentions:

(1) A claim of factual error in the opinion or order;

(2) A claim of error in the designation of the prevailing party or award of costs;

(3) A claim that there has been a change in the applicable statutes or case law since the court's opinion or order; or

(4) A claim that the court erred in construing or applying the law. Claims addressing legal issues already argued in the parties' briefs and addressed by the court are disfavored.

B Oral Argument on Motion.

B(1) Requesting Oral Argument. Any party to an action may request oral argument on a motion made pursuant to this rule. Such request will be granted only if the court, in its discretion, determines that oral argument will aid the court in reaching a decision on the motion. The court may also request oral argument on a motion made pursuant to this rule *sua sponte*.

B(2) Contents of Request. Any party requesting oral argument must specify the amount of time required for arguments, whether appearance by telecommunication is requested, and the names and telephone numbers of all parties served with the motion or response.

RULE 81
APPLICABILITY OF ORCP TO TAX COURT

Pursuant to ORCP 1 A, the ORCP are applicable to the proceedings of the Tax Court except to the extent that the TCR do not include provisions of the ORCP or provide otherwise. Further, and without limiting the foregoing, the Tax Court has not adopted: ORCP Rules 1, 3, 31, 44, 50, 51, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 73, 79, 80, 81, 82, 83, 84, and 85.

The foregoing Rules of Procedure of the Oregon Tax Court, Regular Division, are hereby promulgated effective beginning January 1, 2022.