

PROPOSED REVISIONS TO RULES OF THE OREGON TAX COURT

As part of its annual rules revision process, the Oregon Tax Court solicited rule revision suggestions internally and from the public through a variety of publications. After careful consideration of those suggestions, the court proposes the following revisions to the rules of the Oregon Tax Court Regular Division. New text is underlined in bold-face and deleted text is italicized within brackets. Comments regarding these proposed revisions should be made in writing, received by October 16, 2009, and sent to Mary L. Dougherty, Law Clerk, Oregon Tax Court, 1163 State Street, Salem, Oregon 97301. These rules will become effective January 1, 2010.

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 [2]) By special designation. ORS 305.501(1).

B Appeals from the Magistrate Division.

B(1) Appeals from a Decision of the Magistrate Division. Upon receipt of an original complaint accompanied by a *[\$50 filing]* fee **as provided in TCR 1 E**, the tax court clerk shall file the complaint in the Regular Division. A copy of the magistrate's written decision 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 shall be accompanied by a fee as provided in TCR 1 E.

B(2)(a) The protective order petition shall 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 shall 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 shall serve each of the parties in the manner provided in TCR 9.

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

B(2)(b) An opposing party shall 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, 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. * * *

* * * * *

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, upon payment of a [the \$50 filing] fee **as provided in TCR 1 E** [required by ORS 305.490], the electronic file shall be converted to a paper file and transferred to the Regular Division where a new case number will be assigned.

* * * * *

C(2)(b) An opposing party shall respond to the petition within 20 days from the date of service of the petition. **The response of the opposing party shall be filed with the Regular Division.**

* * * * *

E [Filing] Fee. Unless exempt by law, the plaintiff shall pay a [\$50 filing] fee as provided by ORS 305.490. That fee must be tendered at the time of the filing of the complaint **or petition. The current fee is as follows:**

	<u>Through</u> <u>09/30/09</u>	<u>On and after</u> <u>10/01/09</u>
<u>Fee</u> ¹	<u>\$50</u>	<u>\$150</u>

[If] T[t]he plaintiff [wishes] may, by application, request the court to consider [a motion for] deferral or waiver of the [filing] fee, as provided under ORS 21.685[.]. T[t]he plaintiff shall make such [motion] application to the court at the time of filing the complaint [and serve the motion on all parties to the appeal].

F Representation.

* * * * *

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

* * * * *

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, **2008** [2006]) 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 may be designated by the corporation and other shareholders. OAR 150-305.230(4)(b) contains the rules the court will follow as to the form of designation. A designation must be filed with the complaint or initial pleading.

* * * * *

¹ The total fee is composed of a \$50 filing fee and a \$100 surcharge. Or Laws 2009, ch 650, § 4(23). 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 (www.ojd.state.or.us/courts/tax) to confirm the current amount for fees.

**RULE 9
SERVICE AND FILING OF PLEADINGS
AND OTHER DOCUMENTS**

* * * * *

G Filing by Telephonic Facsimile Communication Device. All documents to be filed with the court, except those requiring a [*filing*] fee, may be filed by means of a telephonic facsimile communication device. Such documents shall be accepted as the original and no further copies need be submitted.