

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 15, 2010, and sent to Allison R. Boomer, Law Clerk, Oregon Tax Court, 1163 State Street, Salem, Oregon 97301. These rules will become effective January 1, 2011.

RULES OF THE OREGON TAX COURT REGULAR DIVISION

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

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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.

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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 fee as provided in TCR 1 E, 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)(a) A petition for special designation shall be filed with the Regular Division and a copy shall be sent to the

Magistrate Division. Once a petition is filed, proceedings in the Magistrate Division will be suspended until the Regular Division issues its order.

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

C(2)(d) If the petition for special designation is granted, the court will hold a case management conference to discuss procedural matters, including the intervention of other parties and the filing of responsive pleadings.

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

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F Representation.

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

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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, **2009** [2008]) 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.

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**RULE 7
SUMMONS GENERALLY**

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D Manner of Service

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

D(3)(b)(i) Primary Service Method. By personal service or office service upon a registered agent, officer, **or** director[, *general partner, or managing agent*] of the corporation; [or limited partnership,] 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[, *general partner, or managing agent*] 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[, *general partner, or managing agent*]; [or]

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

(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 [or limited partnership], if any, as shown by the records on file in the office of the Secretary of State or, if the corporation [or 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 corporation [or limited partnership], and in any case to any address the use of which the plaintiff knows or[, *on the basis of reasonable inquiry,*] 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)[(c)] 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)[(d)] 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)(e) General Partnerships. Upon any general partnership by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the 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)(i)[(g)] 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.

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**RULE 32
CLASS ACTIONS**

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[K Limitation on Maintenance of Class Actions for Recovery of Certain Statutory Penalties. *A class action may not be maintained for the recovery of statutory minimum penalties for any class member as provided in ORS 646.638 or 15 USC § 1640(a) or any other similar statute.*]

[L] 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(1)(a)] *When class actions sharing a common question of fact or law are pending in different courts, the presiding judge of any such court, upon motion of any party or on the court's own initiative, may request the Supreme Court to assign a Circuit Court, Court of Appeals, or Supreme Court judge to determine whether coordination of the actions is appropriate, and a judge shall be so assigned to make that determination.*]

[L(1)(b)] *Coordination of class actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and personnel; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and the likelihood of settlement of the actions without further litigation should coordination be denied.*]

[L(2)] *If the assigned judge determines that coordination is appropriate, such judge shall order the actions coordinated, report that fact to the Chief Justice of the Supreme Court, and the Chief Justice shall assign a judge to hear and*

determine the actions in the site or sites the Chief Justice deems appropriate.]

[L(3)] *The judge of any court in which there is pending an action sharing a common question of fact or law with coordinated actions, upon motion of any party or on the court's own initiative, may request the judge assigned to hear the coordinated action for an order coordinating such actions. Coordination of the action pending before the judge so requesting shall be determined under the standards specified in subsection (1) of this section.]*

[L(4)] *Pending any determination of whether coordination is appropriate, the judge assigned to make the determination may stay any action being considered for, or affecting any action being considered for, coordination.]*

[L(5)] *Notwithstanding any other provision of law, the Supreme Court shall provide by rule the practice and procedure for coordination of class actions in convenient courts, including provision for giving notice and presenting evidence.]*

[M] Form of Judgment. The judgment in an action ordered maintained as a class action, whether or not favorable to the class, shall 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 shall, when possible, identify by name each member of the class and the amount to be recovered thereby.

[N] Attorney Fees, Costs, Disbursements, and Litigation Expenses.

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

[N](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[N](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[N](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[N](1)(e) In determining the amount of attorney fees for a prevailing class the court shall consider the following factors:

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

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

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

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

M[N](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 shall file with the court, jointly or separately:

M[N](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[N](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[N](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 shall be supplemented promptly if additional arrangements are made.

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

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

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

**RULE 56
EXHIBITS; VIEW OF PROPERTY**

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D Custody of Exhibits. Any original record of the court or any exhibit offered as evidence shall 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 shall 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** [*After the time for appeal has expired, upon motion of any party, the court will enter an order allowing the party introducing the exhibits to withdraw them*]. [*If*

no such motion has been made within 60 days after the judgment becomes final, the court, on its own motion, may order the destruction of the exhibits.]

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**RULE 70
FORM AND ENTRY OF JUDGMENT**

A Form.

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A(2) Money Judgment.

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A(2)(a)(ii) The name of the judgment debtor and, if known, the address, **year** [*date*] 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.

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