

PROPOSED REVISIONS TO RULES OF THE OREGON TAX COURT

As part of its annual rules revision process, the Oregon Tax Court solicits rule revision suggestions both internally and from the public. After careful consideration of those suggestions, the court proposes the following revisions to the rules of the Oregon Tax Court Magistrate Division. New text is underlined in bold-face and deleted text is italicized within brackets. Comments should be made in writing, received by November 10, 2017, and sent to Kevin Stokes, Law Clerk, Oregon Tax Court, 1163 State Street, Salem, Oregon 97301. These rules will become effective January 1, 2018.

RULE 1 FILING APPEALS

A Filing a Complaint; Fee.

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

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

A(1)(b) Two copies of the signed written complaint and any attached documents[, *unless the complaint is electronically filed*];¹ and

A(1)(c) A fee for each complaint filed. ORS 305.490; ORS 21.135. The fee must be tendered at the time of the filing of the complaint. The current fee is \$265[52].²

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RULE 2 RESPONSIVE PLEADINGS; AMENDED PLEADINGS

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

¹ [*See TCR 9, applying UTCR 21, regarding electronic filing.*] **Electronic filers are required to submit to the court two copies of the efiled complaint and any attachments.**

² The Oregon Legislature may modify fees between publication dates of the Tax Court Rules. The Oregon Tax Court's website (<http://courts.oregon.gov/Tax>) states the current amount for fees.

**RULE 1
FILING APPEALS**

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[C(3) Date of Service. For purposes of this rule, the date of service of the complaint is the date that a copy of the complaint was mailed to defendant.]

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**RULE 3
SERVICE; COMPUTING TIME**

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A(1) Form of Service. Unless otherwise provided by statute or rule, *[Once a complaint has been filed,]* a response, motion, or other document may be served on all other parties by personal service etc.

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**RULE 5
EX PARTE COMMUNICATION**

A party must provide to all other parties a copy of every writing sent to the court, with the exception of the Complaint, which is served by the court. *See* TCR-MD 1 C. A writing includes, but is not limited to, letters, motions, and documents. Writings submitted to the court must be accompanied by a certificate of service or other evidence they were provided to all parties.³ Parties and their representatives must not communicate with the court regarding any pending case unless all other parties are copied or present. **The court may not file your document if a certificate of service or other evidence of service is not included with your filing.**

**RULE 7
MOTIONS**

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G(1) Motion for Default. A motion for default may be filed when a defendant has failed to file an answer or a response. The court may notify all parties that defendant failed to file an answer or a response. The plaintiff may submit a motion for default asking that the relief requested in its complaint be granted. Once the motion for default is filed, the complaint cannot be amended unless the court approves. If the motion for default is filed **and Defendant fails to file** *[with the*

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

court before] an answer or a response [*is filed*] **within 10 days**, the court will consider the motion and may **enter an order of default**. [*hold a hearing. After due consideration, the court may enter a decision of default. Appeal may be taken from a final decision of default by following the provisions of TCR-MD 19.*]

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

G(3) Decision Following Order of Default. The court will consider **plaintiff’s appeal** [*the motion*] and may hold **an evidentiary hearing before entering a decision**. [*After due consideration, the court may enter a decision of default*]. Appeal may be taken from a final decision [*of default*] by following the provisions of TCR-MD 19.”

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RULE 8 SCHEDULING

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

B(1) Case Management Conference Rescheduling. If a party seeks to reschedule a case management conference, the party must **submit a written request to the court. Before submitting its written request, the party must** [*, before contacting the court,*] obtain the approval of all other parties as well as three mutually convenient alternative dates and times. [*All rescheduling requests must be for good cause and submitted to the court in writing no later than 10 days prior to the case management conference. The court may deny the request if good cause is not shown. The court allows two individuals to be designated as authorized representatives and expects that one of those two authorized representatives will be available for any scheduled proceeding.*]

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RULE 12
EXHIBITS

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[B(1) Plaintiff's exhibits must be marked numerically. Each page of the exhibit must be numbered sequentially from 1 through the end of the exhibit.]

[B(2) Defendant's exhibits must be marked alphabetically. Each page of the exhibit must be numbered sequentially from A through the end of the exhibit.]

B(1) Plaintiff's exhibits must be marked numerically. Each exhibit should be given its own number (1, 2, 3); if the exhibit has multiple pages the labeling should include page numbers (e.g., Ex 1, p1 of 3, Ex 1, p2 of 3, Ex 1, p3 of 3, etc.)

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

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RULE 20
JUDGMENTS

A. Judgment of Dismissal. *[Unless a counterclaim has been asserted in the pleadings, the] The court *[will]* may issue a judgment of dismissal in response to a plaintiff's motion to dismiss or withdraw made pursuant to TCR-MD 7 E or TCR 54. Unless specifically requested in the motion or a response to the motion, *[or a counterclaim,]* neither party will be awarded costs and disbursements.*

RULE 21
ENFORCEMENT

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