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Article

THE OREGON TAX COURT AT MID-CENTURY

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I. Introduction

The year 2011 marks the fiftieth anniversary of the creation of the Oregon Tax Court.¹ Just after the 10th anniversary of its creation, the third judge of the court, Hon. Carlisle Roberts, provided an introduction of the court to the bar and the public.² The introduction by Judge Roberts remains a valuable resource on the background of the creation of the court and many of the statutes governing the court and its proceedings.

There have, however, been significant changes in the structure of the court and its operations. Primary among these was the creation of the Magistrate Division of the court by the Oregon Legislature in 1995.³ The goal of this article is to survey, from a current standpoint, both the relationships in which the court is involved and the legal developments since Judge Roberts provided his introduction.

It is hoped that a review of these relationships and legal developments will aid those who have an interest in the workings of the court.

***148 II. Major Developments in Court Structure**

A. The Regular Division

From 1961 until 1997, the business of the court occurred primarily in the Regular Division of the court, so named because there also existed within the court a Small Claims Division, discussed at some length by Judge Roberts. As is discussed below, the Small Claims Division has now been replaced with the Magistrate Division.

Prior to 1997, cases came to the court primarily by way of appeal from orders of the Department of Revenue (“Department”). Those orders related primarily to income tax assessments made by the Department and decisions of the Department on appeals to the Department from actions of the counties in the administration of the statewide property tax. In both cases the orders came after administrative hearings conducted by the Department. Then, as now, litigants dissatisfied with the decisions of the Regular Division on the de novo appeal to that division could take a further appeal, as a matter of right, to the Oregon Supreme Court.

B. Creation of the Magistrate Division

After thirty-six years as the first and one of only three judicial branch tax courts in the United States, the role of the Oregon Tax Court was expanded when, in accordance with legislation from 1995, the Magistrate Division began proceedings in September 1997.⁴ The role of the Magistrate Division as a first level of appeal continued efforts to create an appeal process that began, for our purposes, in 1969 with the formation of the Department.⁵ [Oregon Revised Statute section 305.115](#) set forth

the appeal procedures within the Department, including an opportunity for a hearing to challenge determinations made by the Department. A written summary of the evidence serving as the basis for the assigned hearing officer's⁶ *149 recommendation was to be reviewed by the Director of the Department ("Director") or his chief deputy,⁷ following which a final order was required if the hearing was not conducted by the Director. The concept of "a separate agency to appeal to other than the tax commission" was proposed by Farm Bureau members who "felt the present tax commission setup" made it "too hard for the average person to appeal and it was too expensive and time consuming when you had an appeal."⁸ The concept of the first appeal being outside the agency was not, however, adopted.

Oregon Revised Statute section 305.115 was substantially amended in 1977 to detail the hearing process and require a written order for each appeal, determining "all the questions of law and fact arising in the appeal under the tax laws of the State of Oregon." The 1977 amendment adding section 305.115(9) is noteworthy because it permitted the Department to issue an amended order without explanation within the time allowed for the order to be appealed. If the original order had been appealed, then the amended order was substituted for the original order and "the appealing party" had "an additional 60 days from the date of the amended order in which to amend his petition to conform to the amended order."⁹ That statute remained unchanged until 1987 but led to a 1979 amendment.

In 1979, House Bill 3172 was introduced to address what was described as "concerns regarding the Department of Revenue tax appeals process."¹⁰ Section 305.115(1) was amended to require the Director to issue a "statement of modifications and reasons therefore" if the "hearings officer's recommendation" was not accepted by the Director.¹¹ Further, if the modified order was "based on evidence received by the director outside of the hearings record," the Director, *150 prior to issuing a final order, was required to notify the parties and to "reopen the hearing for the taking of the new evidence and to allow the parties to respond to the new evidence."¹² During the proposed amendment discussion, Representative Vera Katz stated that it had come to her attention that "in many cases the Director of Revenue [had] overturned the hearings officer's recommendations without specifying reasons for his action," and this proposal "directs the Director to prepare statements as to why he modifies the recommendations of the hearing officer."¹³

An amendment to section 305.115(5) was proposed in 1987 to shift the responsibility of defending the Department's orders for certain types of property assessments to the county where the property was located.¹⁴ That amendment failed. Counties argued that: (1) it was more cost effective to leave that responsibility with the Department; (2) if the law was enacted, it would be a state mandate without state funding; and (3) the Department's overall supervision of the property tax system ensured uniform application of assessment and taxation laws as required by the Constitution, including Article IX, section 1.¹⁵

Even though the amendment to section 305.115(5) was not passed, there were other substantive changes to section 305.115 in 1987. Section 305.115(1) was amended to require that testimony be taken under oath or affirmation. Section 305.115(9) was rewritten and sections 305.115(10) and (11) were added. Section 305.115(9) provided that the Department could amend or rescind an order within the time permitted to appeal the order to the court, or issue a new order after the appeal period lapsed. Section 305.115(10) provided a 60-day appeal period beginning from the date of the amended order or new order. Section 305.115(11) gave the Department the right "at any time" to "correct an order that has not been appealed to the tax *151 court or remedy a clerical error which does not alter the rights or obligations determined in the original order."¹⁶

Twenty-five years of legislative efforts to make the Department's appeal process more transparent and equitable culminated in the 1995 legislative session when numerous individuals, including past and present employees of the Department, taxpayers, individuals employed by some of Oregon's largest employers, trade associations, and professional organizations proposed that the initial appeal process be moved from the Department to the Oregon Judicial Department. The sponsors of the proposed changes wanted to maintain a relatively informal initial appeal process. They also wanted to permit a taxpayer to challenge an act or notice of a taxing authority or governmental entity and have the initial decision maker be someone who was not employed by the Executive Department. Testimony was received that the 1979 amendment required the Director to issue a statement of modification if the hearing officer's recommendation was not being followed and that evidence outside the hearing record was being considered by the Director in issuing the final order. The proponents of change charged that the process lacked transparency and taxpayers were unaware of factors influencing the Director's final order.¹⁷ The Department's process was characterized as unfair because "the hearing officer and the appraisers [had] the same boss."¹⁸

The creation of the Magistrate Division was most fundamentally the movement of the first level of formal tax dispute resolution from the Executive Department to the Judicial Department. Budgetary resources were shifted from the Executive

Department to the Judicial Department, as was the responsibility for holding the first level of hearings. Many of the features of the Department's hearing process were incorporated into the statutes governing the Magistrate Division. A first stage informal proceeding would exist in which an individual could represent himself or herself with few procedural rules and without the application of the formal rules of evidence. The resulting decision would remain subject to a de novo appeal to the Regular Division of the court. The major difference between the former *152 process and the new process was that the decision maker would be an appointed judicial officer and not a Department employee. [Section 305.115](#) of the Oregon Revised Statute was repealed in 1995 when legislation authorizing the Magistrate Division was enacted.¹⁹ In addition, the requirement to exhaust administrative remedies that had existed was repealed.²⁰

C. Elimination of Small Claims Division

Until 2005 the Small Claims Division of the court continued to exist. This was a forum for cases where the refund or amount of tax in controversy did not exceed \$5,000 (exclusive of interest and penalties) or the real market value in dispute of land, improvement, or personal property value was not in excess of \$250,000.²¹ The Small Claims procedure did not permit either party a right to appeal the magistrate's decision to the Regular Division. The legislature recognized that the purposes of the Small Claims Division had been subsumed in the creation of the Magistrate Division with the added benefit that decisions of the magistrates could be appealed to the Regular Division. The Small Claims Division was then eliminated.²²

III. The Court Within the Judicial Department

A. Exclusive but Limited Jurisdiction

Although the court is fundamentally an Oregon circuit court as to its powers,²³ it is properly viewed as a specialized court whose rules and practices differ from a general circuit court as needed to support its special focus on Oregon's tax system. But even that description is misleading.

Take for example the court's subject-matter jurisdiction. The court is statutorily granted "the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact arising under the tax laws of" Oregon.²⁴ Excepted from that statutory authority are 15 categories of taxes or assessments that a *153 taxpayer might consider to be taxes subject to the court's exclusive jurisdiction,²⁵ and added is concurrent jurisdiction with general circuit courts over issues arising under lien priority and the validity of certain real property title instruments.²⁶

Also added to the jurisdiction of the court are cases involving certain taxes of political subdivisions of the state in those cases where the political subdivision has administration and collection agreements with the department or any other state agency.²⁷

Determining what constitutes a question of law or fact "arising under the tax laws of" Oregon is something the courts have repeatedly been called upon to address. The seminal case in this area is *Sanok v. Grimes*.²⁸ In that case, the taxpayer brought an amended complaint in the tax court against a county assessor and three county appraisers.²⁹ The taxpayer alleged defendants deprived the taxpayer of certain rights available under chapter 321 of the Oregon Revised Statute, related to forestland designation, and acted in bad faith and malice with the intent to an unfavorable assessment precedent.³⁰ The taxpayer demanded nine specific items of relief including declaratory judgments and damages.³¹ The tax court dismissed the taxpayer's amended complaint, apparently for lack of subject matter jurisdiction.³²

As to the claims arising in tort, the Oregon Supreme Court affirmed the decision of the tax court.³³ Starting with [Oregon Revised Statute section 305.405](#) and [section 305.410](#) as forming the general outlines of the tax court's jurisdiction, the Supreme Court outlined a series of cases in which it had defined various aspects of the tax court's statutory grant of authority.³⁴ The Supreme Court concluded that:

*154 [its] cases set two boundaries. On the one hand, questions which must be resolved in order to decide taxability or the amount of tax do arise under the tax laws. On the other hand, a precondition to taxation does not arise under the tax laws if jurisdiction to decide that precondition has been affirmatively located in another court or if a decision on the precondition has substantial non-tax consequences.³⁵

Having so concluded, the Supreme Court agreed with the tax court that taxpayer's claims arising in tort were not within the jurisdiction of the tax court.³⁶

In the intervening years, the court has been called upon to decide whether other claims "arise under the law of" Oregon. For example, the court has declined to hear issues involving quasi-contract and constructive trust,³⁷ the validity of a licensing law and related administrative rule,³⁸ procedures of the magistrate,³⁹ procedural correctness and timeliness of Department actions,⁴⁰ discrimination by assessors against out-of-town property purchasers,⁴¹ and, of course, tort.⁴² Conversely, the court has held issues of uniformity, if brought under [Article I, section 32, of the Oregon Constitution](#), are within its jurisdictional grant.⁴³ It should also be noted the Court views this restriction as equally applicable to itself; e.g., the court may not order discovery that would go to issues not within its jurisdiction.⁴⁴

It can be difficult to determine if the proper jurisdiction for a question is in the court or in a circuit court. Recognizing this, the legislature in 2001 adopted provisions providing for transfer of certain actions against government bodies from circuit courts to the appropriate tribunal for decision of the matter.⁴⁵ The provisions only ***155** deal with actions originated in a circuit court. The transfer provisions also provide for relief from the bar of the statute of limitations if conditions of the statute are met. There have been instances where taxpayers have attempted to sue a government body on a tax matter, with this statute being used to transfer the case to the court.

The court has recognized that it has concurrent jurisdiction with the federal bankruptcy courts as to certain matters arising under the federal bankruptcy laws, but has most often abstained from exercising that jurisdiction.⁴⁶ The stay provisions of federal bankruptcy law can cause issues to arise as to statutes of limitation, depending on when in the appeal process they occur.⁴⁷

Under [section 294.485 of the Oregon Revised Statute](#), the court has jurisdiction over cases challenging levies allegedly made contrary to the local budget law requirements. The court is directed to give such cases priority status on the docket.⁴⁸ Prior to the adoption of Measure 50, discussed in more detail below in section VI, the court heard a number of local budget law cases.⁴⁹ In *Luedtke v Estacada School District No. 108*,⁵⁰ the court discussed how the provisions of Measure 50 as to permanent rates and other matters have most probably rendered such budget law challenges obsolete.

B. Requisites to Judicial Review

There are four main requisites to judicial review in the Tax Court, assuming the court has jurisdiction over the dispute: standing, the statute of limitations, payment of required fees and certain taxes, and service on the opposing party. Each is discussed in turn below.

1. Standing

Not everyone who questions the accuracy or validity of a tax has a right to file suit in the Tax Court. Rather, only those taxpayers who are personally financially aggrieved by a tax assessment have "standing" to sue.⁵¹ Standing is considered a jurisdictional issue.⁵² ***156** For example, A might believe that B is not paying enough tax, such that A's taxes are correspondingly too high, but that ordinarily is not enough to give A standing to challenge B's tax bill.⁵³ It also is not enough that A rents property from B and thinks B's property taxes are too high, or that A, under no obligation to do so, has agreed to pay B's taxes for him.⁵⁴ A will have standing, however, if his own tax bill is directly affected by the assessment at issue.⁵⁵ Appeals by subsequent owners of property to "correct" prior year assessments also have been unsuccessful.⁵⁶ Other attempts to correct prior year errors have also encountered difficulties.

Even then, it is important to remember that it is generally actual tax liability that drives the standing analysis. In the property tax arena, for example, Measure 50 has significantly limited the standing of property owners to challenge the determinations of real market value of their property by county assessors. That is because, under Measure 50, property tax liability is based on its assessed value. Assessed value is the lesser of the Measure 50 maximum assessed value and the real market value of a property.⁵⁷ In many, if not most, cases, the assessed value is significantly less than real market value even after the economic downturn that began in 2008. In such cases, as no reduction in the real market value would affect the taxpayer's tax bill, the taxpayer has no standing to challenge the real market value.⁵⁸

*157 Oregon Revised Statute section 305.275 specifies generally who may appeal to the court. The standing principles discussed above derive from the statutory requirement that a person be “aggrieved” by the actions of a government. Specific standing may be afforded under other statutes.⁵⁹ The question of the proper statutory basis for appeal and related time limits can be a complicated one, and care is required in the analysis of the government action taken and the proper remedy.⁶⁰ Finally, it is worth noting that the same “standing” principles that govern taxpayer appeals also govern tax suits brought by government agencies.⁶¹

2. Time Limits

Depending on the nature of the tax determination at issue, a party wishing to appeal that determination to the Tax Court must be careful to file its complaint within the correct statutory time limit. The failure to do so gives rise to an affirmative defense against the claim of the taxpayer. Under Oregon Revised Statute section 305.418, filing may be accomplished by mailing, but the requirements of the statute providing for that result must be scrupulously observed.

For many tax determinations, the party must file a complaint with the Magistrate Division within 90 days of the determination.⁶² For most notices of assessment under the income tax laws, the statutory period is extended to two years after the tax is paid.⁶³ For appeals from a county board of tax appeals, the statutory period is 30 days.⁶⁴ Other statutory time limits may apply as well. With few exceptions,⁶⁵ a late filing will result in dismissal of the appeal.⁶⁶

*158 Practitioners should note that the relief afforded by Oregon Revised Statute section 305.280(3), extending the time for appeal from assessments under chapters 314, 316, 317 or 318 does not appear to apply to other taxes, even those that are administered under chapter 305.⁶⁷ Section 305.280(3) was enacted to provide relief from a strict rule that failure to take an appeal, at the time from an action of the Department, rendered the assessment of tax final.⁶⁸ That rule still is found in section 305.265(13) and a court decision has applied the less forgiving rule to inheritance tax.⁶⁹

After the magistrate has rendered a decision, if a party wishes to appeal the decision to the Regular Division of the court, the party must do so within 60 days of the decision or lose the right to appeal.⁷⁰

Time limits on direct appeal to the Regular Division may be found in the statute authorizing the direct appeal.⁷¹

3. Timely Payment of Fees and Certain Taxes

To perfect a filing of a complaint with the Tax Court, a litigant, other than the state or enumerated political subdivisions, must pay the filing fee established by law at or before the time the complaint is submitted to the court. The fee is currently \$75 at the Magistrate Division and \$150 at the Regular Division. These amounts will increase to \$240 at the Magistrate Division and \$240 at the Regular Division on October 1, 2011.⁷² A taxpayer may file a motion for deferral or waiver of the filing fee on account of financial hardship.⁷³

*159 In all events, the fee or motion for deferral or waiver must be filed at or before the time the complaint is filed.⁷⁴ The court has long treated the issue as jurisdictional and refused to accept complaints that are not accompanied by the fee or motion. Failure to comply with these requirements has resulted in a party losing its appeal right, as the defect typically cannot be remedied within the statutory period for filing a complaint.⁷⁵

A litigant must pay a separate filing fee for filing a complaint in the Regular Division. In addition to the filing fee, in cases involving a deficiency in taxes “on or measured by net income,” the taxpayer must also pay the entire tax assessment at issue before filing the complaint. The taxpayer’s claim is then one for a refund.⁷⁶ If payment of the tax would be an “undue hardship,” the taxpayer is required to instead file an affidavit to that effect, at or before the time of the filing of the complaint.⁷⁷ As with the filing fee, payment of the tax in dispute or filing of the hardship affidavit is jurisdictional.⁷⁸ The requirement of payment prior to judicial review does not implicate due process concerns where the taxpayer is afforded a formal quasi-judicial hearing before the obligation to pay the tax.⁷⁹ That result would also appear to clearly apply where, as currently, a formal, albeit simplified, hearing within the judicial branch is available prior to the requirement to pay the tax.

In a series of recent cases the court has been presented with the question of when deficiencies involve “taxes on or measured

by net income.” The court has concluded that withholding taxes do not fall within that rubric,⁸⁰ nor do property taxes.⁸¹ The court has also ruled that an assessment of minimum tax due under [*160 Oregon Revised Statute section 317.090](#), even as recently amended so as to require much larger minimum tax payments based on gross sales in Oregon, is also not a deficiency of a tax on or measured by net income.⁸²

4. Service on Opposing Party

Under [Oregon Revised Statute section 305.565\(1\)\(b\)](#), the clerk of the court serves copies of all complaints on the Department, whether the action is in the Magistrate Division or the Regular Division. In the Magistrate Division, under Tax Ct. R. 1(C), the court serves the defendant in cases where the taxpayer is the appealing party. When a government is the plaintiff in the Magistrate Division, that government must effect service in accordance with the same rule. When a government is the appealing party in the Regular Division it must comply with the service of process rules of the statutes and the rules of the Regular Division. Failure to effect service in accordance with these requirements can result in the dismissal of the appeal.⁸³

C. Tax Court Rules (“OTRs”)

Another way in which the court differs from circuit courts of general jurisdiction is found in its rules. The Oregon Rules of Civil Procedure (“ORCPs”) do not apply to the court.⁸⁴ The court has the authority to promulgate its own rules, but they of course do not have the statutory status of the ORCPs.⁸⁵ The general process for proposing rules, public comment, and final adoption is described on the website of the court.⁸⁶

The Preface to the OTRs acknowledges that, to the extent the language of the OTRs and ORCPs is identical, case law interpreting an equivalent ORCP may be looked at as precedent in interpreting an OTR. OTR 81, however, cautions that the court has not adopted at least 25 specific ORCPs.

***161** Many differences between the OTRs and ORCPs reflect the special jurisdiction and structure of the court. For example, all proceedings are to the court and de novo; therefore, no jury is permitted or required.⁸⁷ All of the ORCPs dealing with jury proceedings-e.g., [ORCP 56](#)-are necessarily omitted from the OTRs.⁸⁸

The court has also developed its own trial rules that may catch an otherwise experienced general jurisdiction civil trial lawyer unaware. For example, OTR 56B requires the exchange of all trial exhibits in advance of the trial, including appraisal reports. In valuation cases, the court will set a date by which the parties must exchange such documents.⁸⁹ That date is usually at least 30 days before the date of trial for appraisal reports.⁹⁰ An exchange of appraisal reports includes exchange of field notes, work papers, and all other documents relied upon by the appraiser. A failure to abide by this rule can lead to the exclusion of the offending party’s appraisal and testimony relating to it, an almost certainly fatal consequence.⁹¹

Another difference that owes to its two-division structure is the court’s separate set of rules of each division. As is discussed below in Section IV, the Magistrate Division is intended to “facilitate resolution of the parties’ dispute through an informal and easy to use process.”⁹² As one might expect, the Rules of the Magistrate Division are fewer in number than the OTRs (22 as compared with 81) and consistent with the Division’s informal atmosphere.

Thus, a litigant in the court must be familiar with multiple sets of rules of practice. As to enforcement of its rules, the court, under TCR 12 generally disregards errors and defects in pleadings and proceedings that do not affect substantial rights of the adverse party.⁹³ However, when the adverse party is prejudiced, such as in the case of a failure to exchange trial exhibits and material supporting an ***162** appraisal report, a serious prejudice to the ability of the opponent to cross examine the appraiser, the enforcement of the rules will most often occur.⁹⁴

D. The Court Follows General Rules of Construction

Tax law is fundamentally a statute-driven area of the law. Unlike common-law claims that evolve over time through the application of case law, interpretation of tax law starts with the applicable statute at issue in the case. In this respect, therefore, the tax court interprets tax law in the same manner general-jurisdiction circuit courts interpret statutes within their

jurisdiction.

In that regard, “the court’s task is to discern the intent of the legislature” using the Supreme Court’s PGE methodology⁹⁵ as amplified by [State v. Gaines, 206 P.3d 1042, 1050 \(Or. 2009\)](#). Legislative intent is determined first by analyzing the text and context of the statute.⁹⁶ As the court stated in *Hynix*,

In trying to ascertain the meaning of a statutory provision, . . . the court considers rules of construction of the statutory text that bear directly on how to read the text. Some of those rules are mandated by statute, including . . . the statutory enjoiner ‘not to insert what has been omitted, or to omit what has been inserted.’ ‘[W]ords of common usage typically should be given their plain, natural, and ordinary meaning.’ ‘[T]he context of the statutory provision at issue . . . includes other provisions of the same statute and other related statutes.’⁹⁷

After considering the text and context of the statute, the court may consider legislative history.⁹⁸

Additionally, the court may be guided by general constructional rules relating to taxation.⁹⁹ For example, a general principle is that *163 taxation is the rule, and exemption from taxation is an exception.¹⁰⁰ Such exemption statutes are to be strictly construed in favor of the state against the taxpayer.¹⁰¹ Although strictly construed, exemption statutes must be reasonably construed giving due consideration to the ordinary meaning of the words of the statute and the legislative intent.¹⁰² Rules of construction serve, however, only as tie-breakers when the regular processes do not indicate legislative intent.¹⁰³

E. Attorney and Expert Witness Fees

The tax court has statutory authority to award attorney fees and expert witness fees¹⁰⁴ to prevailing taxpayers.¹⁰⁵ Examples of this statutory authority can be found in [Oregon Revised Statute section 305.490\(3\)](#) (individual taxpayers in income and inheritance tax cases in the Regular Division);¹⁰⁶ [Oregon Revised Statute section 305.490\(4\)](#) (all taxpayers in property tax cases in the Regular Division); [Oregon Revised Statute section 305.447](#) (individual taxpayers in income tax cases in Supreme Court).¹⁰⁷ A prevailing taxpayer is one who improves his or her position.¹⁰⁸

*164 Of course, any fee award is discretionary; that is, the court “may” award attorney fees, but it does not need to. The tax court has adopted the following guideline to aid in its exercise of discretion under [Oregon Revised Statute section 305.490](#): Generally, the court will award attorney and expert witness fees so long as the taxpayer acts reasonably, at least in cases involving tax disputes of general application.¹⁰⁹ If the dispute is one involving only the parties, such as a property valuation dispute, then the court will usually not award fees.¹¹⁰ The Supreme Court has adopted a slightly different guideline under [Oregon Revised Statute section 305.447](#): It will generally award fees only when the taxpayer acts reasonably and the department does not. If the department acts reasonably, the Supreme Court will usually not award fees (even if the department is wrong).¹¹¹

The tax court also has statutory authority to award attorney fees against a party who takes a frivolous position in the court—indeed, the court must award fees in that situation.¹¹² Primarily, the court has *165 awarded penalties against pro se tax protestors—those who do not believe in the constitutionality of taxation as a general matter or who simply believe that their taxes are too high, without any legitimate reason to believe that is the case.¹¹³ Occasionally, however, the court has awarded attorney fees against the department.¹¹⁴ Where parties have presented reasonable arguments, the court has not awarded fees or penalties.¹¹⁵ Care should be taken to follow the procedure set out in TCR 68 in the claim for attorney fees.¹¹⁶

Merely repeating in the Regular Division factual and legal arguments that were unsuccessful in the Magistrate Division may be considered by the court in awarding attorney fees to a party who is also the prevailing party in the Regular Division.¹¹⁷

***166 F. The Court Is Excepted from the Comprehensive Judgments Bill**

Although the court is a trial court, its judgments are not subject to the comprehensive provisions on judgments contained in Oregon Revised Statute chapter 18.¹¹⁸ In this regard the court is treated like the other statewide courts, the Supreme Court and the Court of Appeals. The statewide courts have in common the fact that their judgments do not go of record in county records absent action by the judgment creditor to enter them in those records.

G. Change in Scope of Review by Supreme Court

If a party to a decision of the court seeks an appeal, the sole and exclusive remedy is an appeal to the Oregon Supreme Court.¹¹⁹ This is a procedural departure from some decisions of a general-jurisdiction circuit court that are reviewed first by the Oregon Court of Appeals. Upon review by the Supreme Court, the tax court's decision is "limited to errors or questions of law or lack of substantial evidence in the record to support the tax court's decision or order."¹²⁰ This standard of review is a relatively recent change, and applies only to cases filed in the tax court on or after September 1, 1997.¹²¹ For cases filed before that date the standard of review was de novo.¹²² Practitioners should consider that the question of the value of property is considered a question of fact and would appear to be subject to the new standard of Supreme Court review.¹²³

*167 IV. The Court Within Itself

A. The Role of the Magistrate Division

The role, purpose and process of proceedings filed in the Magistrate Division: "Magistrate proceedings are designed to facilitate resolution of the parties' dispute through an informal and easy to use process, while maintaining the respect due a court of law."¹²⁴

B. Starting Place for Most Appeals

Except in the case of special designation, discussed below, or statutory direction to file initially in the Regular Division, appeals, including property tax, personal income tax, corporate excise tax, timber tax, and cigarette tax, arising under the tax laws of this state are first filed in the Magistrate Division.¹²⁵

The court has the authority to hear declaratory judgment actions, although they must be commenced in the Regular Division because they can only be brought in a court of record.¹²⁶ Litigants may not cast a case as a declaratory judgment action so as to avoid the need to commence the case in the Magistrate Division where an appeal to the Magistrate Division would afford an adequate remedy.¹²⁷ The same analysis applies in the case of persons attempting to raise questions regarding tax liability by way of application for a writ of mandamus, another remedy that can only be sought in a court of record.¹²⁸

In the Magistrate Division, cases are heard by a magistrate who is a judicial officer sworn to apply the laws in a fair and impartial manner.¹²⁹ Magistrates encourage cooperation between the parties, who are expected to contribute to the efficient management and resolution of their dispute. The opportunity to mediate, a process offered to resolve an appeal prior to trial, is available for appeals filed *168 in the Magistrate Division.¹³⁰ At mediation, a magistrate facilitates the discussion to help the parties talk about their case openly and honestly. The goal is to find out where the parties agree and work on resolving areas of disagreement. If the parties do not resolve all areas of disagreement at mediation, a magistrate other than the magistrate who led the mediation will be assigned to preside over the trial no later than 60 days after the date of the mediation.¹³¹ All final decisions of a Magistrate are in writing.¹³²

To assist a party filing an appeal, sample forms, instructions, a handbook including how to present an appeal, and rules are readily available by a telephone request or at the court's website: <http://courts.oregon.gov/tax>. The informal appeal process permits a party to represent himself or herself or be represented by an Oregon attorney, an Oregon certified public accountant, Oregon licensed broker or real estate agent, or a family member.¹³³ The Oregon Rules of Evidence do not apply in the Magistrate Division and no record is made of the proceedings.¹³⁴ Magistrates are permitted to confer with one another on any matter pending before them.¹³⁵

The national and state fiscal crisis occurring in 2008 and 2009 directly impacted the Magistrate Division and all operations of the Oregon Judicial Department. The court's budget was reduced during the 2009-2011 biennium, resulting in staff reduction and furloughs. Those budgetary realities continue to exist in the current 2011-2013 biennium. To conserve available funds, the Magistrate Division moved to a call-in system for all case management conferences. Parties are requested to provide email contact information and notices for all proceedings providing a call-in telephone number and passcode are emailed.

Those operational changes have conserved allocated funds and reduced time spent by operation team members in mailing notices to the parties and placing telephone calls for the magistrates.

***169 C. Appeal to the Regular Division and De Novo Proceeding**

Generally, an appeal may be taken only from a written decision of a magistrate but not from a judgment issued by a magistrate.¹³⁶ Time limits on proceedings in the regular division are discussed above at III.B.2. As to certain determinations regarding the confidentiality of material submitted to the court, an appeal may be taken from an order of a magistrate and to the Supreme Court from a decision of the Regular Division.¹³⁷ An appeal from a written decision of a magistrate is accomplished by the filing of a complaint with the Regular Division seeking a de novo proceeding at which a record will be made and a decision rendered that is further subject to appeal to the Oregon Supreme Court.¹³⁸

Soon after the Magistrate Division began its operations, a question arose as to what would occur if a party to a proceeding in the Magistrate Division were dismissed for failure to pursue the case. If such action were to be ignored and a full de novo proceeding permitted in the Regular Division, parties could easily avoid the legislative policy that most cases first be heard in the Magistrate Division, subject only to a decision by the Regular Division to specially designate a case. If a completely de novo proceeding was available in such cases, a party could, by defaulting or failing to prosecute a case, in effect specially designate the case itself.

In a series of opinions the Regular Division has concluded that in such a case, the Regular Division will initially restrict its review to the decision made by the Magistrate Division as to default or failure to prosecute.¹³⁹ As to that question review will be de novo, but a full de novo proceeding will occur only if the Regular Division decides that the case should not have been dismissed.¹⁴⁰

***170 D. Special Designation**

Cases filed in the Magistrate Division may be specially designated for hearing in the Regular Division.¹⁴¹ A rule of the Regular Division specifies the procedure to be followed as to petitions for special designation.¹⁴² Practitioners should note that TCR 1C also describes certain appeals that, by statute, must be initiated in the Regular Division.

Special designation, if granted, can have significant consequences. Parties that could have been represented in the Magistrate Division by a much broader set of representatives may need to be represented by a member of the bar.¹⁴³ In cases involving tax on or measured by net income, a case specially designated to the Regular Division cannot be heard before payment of the tax or proof that such payment is a hardship.¹⁴⁴

Special designation may also impact allocation of the burden of proof. If a taxpayer were to prevail in the Magistrate Division, it could be that [Oregon Revised Statute section 305.427](#) would be read as placing the burden of proof on the government, as it is the party seeking affirmative relief.¹⁴⁵

If an appeal to the Magistrate Division is specially designated to the Regular Division, it would appear that the affirmative relief is still being sought by the appealing party, so that the appealing party bears the burden of proof. If the case was not specially designated and the appealing party prevailed at the Magistrate Division, it would appear, although the matter has not been the subject of a decision, that the other party in the Magistrate Division case would be the party seeking affirmative relief from the decision of the magistrate and would bear the burden of proof.

Neither the statute describing special designation nor the rules of the court state any standard for exercise of the discretion vested in the judge of the Tax Court.

***171 E. Impacts of De Novo Review on the Court and Litigants**

To carry out the statutory directive that cases before the judge of the Tax Court are to be heard de novo, the judge and magistrates are careful to avoid interchanges on legal questions in pending cases. Similar caution is exercised in connection

with the assignment of law clerks to particular cases.

In some cases, duplication of effort in appeals to the Regular Division can be avoided through agreed upon use of exhibits. If the parties so stipulate, a recording made of earlier proceedings could be designated as the record in the Regular Division.¹⁴⁶ Although a record is made for the first time in the Regular Division, statements made in the Magistrate Division that are otherwise admissible in the Regular Division do not become inadmissible simply because they were made in the proceedings in the Magistrate Division.¹⁴⁷

Procedural or other asserted irregularities occurring before the case is heard in the Regular Division are not usually a proper subject of inquiry as the objections of the appellant are heard de novo. Accordingly irregularities in the audit process or the prior hearings are not reviewed but may be raised in the Regular Division in connection with the trial of the matter anew.¹⁴⁸

F. Elimination of Requirement of Exhaustion of Administrative Remedies/Scope of Decision

Prior to the establishment of the Magistrate Division, appeal was taken to the Tax Court from administrative hearing decisions of the department.¹⁴⁹ The exhaustion requirement was eliminated by the legislation establishing the Magistrate Division. The scope of the proceeding in the court is therefore not limited by what occurred prior to the litigation, except in cases where the review of the court is for abuse of discretion.¹⁵⁰

Nor is the scope of the proceedings limited to the positions advanced by the parties, at least as appeals from assessments made *172 under [Oregon Revised Statute section 305.265](#) and cases involving valuation of property.¹⁵¹

G. Internal Matters

Although not dictated by statute, the Magistrate Division operates with certain internal practices, one of which is the position that no decision of a magistrate is considered precedential as to other magistrates. In addition, the division does not have a process for full court opinion consideration such as exists in the United States Tax Court and the Oregon Court of Appeals. However, magistrates are permitted by statute to confer with each other.¹⁵²

When budget and staffing limitations allow, the Magistrate Division is authorized to conduct mediation in cases.¹⁵³ The magistrate who acts as a mediator is not assigned to hear the case if the mediation does not resolve the matter.

The court has reconsidered prior decisions and has, when appropriate reconsidered and departed from its past decisions.¹⁵⁴

The judge of the Regular Division does not consult with magistrates regarding their decision-making processes or results. To do so would be to interfere with the statutory requirement that litigants receive a de novo consideration of a case on an appeal to the Regular Division.¹⁵⁵ However, the judge of the Regular Division and the Presiding Magistrate consult regarding administration of the court generally.

V. The Court and Its Relationship with Taxing Authorities

A. The Court and the Department of Revenue

The jurisdiction of the court is limited to questions arising under the tax laws of Oregon.¹⁵⁶ Necessarily, therefore, the Department is a *173 regular litigant in the court. The Department is generally responsible for the administration of the tax law of Oregon.¹⁵⁷ It has an exclusive role in the administration of the income tax and inheritance tax regimes as well as those such as timber tax and cigarette tax.¹⁵⁸

In Oregon, property taxes arise under the laws of the state. However, the property tax system is administered in the first instance, with only limited exceptions, by officials of the counties.¹⁵⁹ The department is required to exercise general supervision and control over the property tax system so that consistent and uniform administration is achieved.¹⁶⁰

The court has concluded that this statutory allocation of responsibility means that, under the administrative law doctrine of primary jurisdiction, the court should not hear a case until, and perhaps unless, the department has been afforded an opportunity to exercise its supervisory role.¹⁶¹ Similarly, the court has at times remanded matters to the Department so that it can undertake its role in the resolution of the dispute.¹⁶²

The court has also consistently held that, notwithstanding the statutory statement that cases before the judge of the Tax Court are de novo proceedings, the judge of the Tax Court will review certain actions of the department only for abuse of discretion.¹⁶³ Among those actions are decisions of the department as to whether to exercise its supervisory powers under [Oregon Revised Statute section 306.115\(3\), \(4\)](#),¹⁶⁴ and its decisions as to whether to reduce certain penalties.¹⁶⁵ There are cases, however, where department decisions subject to review for abuse of discretion have been found improper.¹⁶⁶ In addition, even where all litigants have requested the court to take *174 action, the court has declined to do so where decision on the matter has been assigned in the first instance to the department.¹⁶⁷

The responsibilities and authority of the department are recognized in several statutory provisions in the statutes governing the court, including certain procedural statutes adopted in connection with creation of the Magistrate Division. Thus, the department has a right, without leave of the court, to intervene in any case at any time.¹⁶⁸ Even without intervention, the Department has the authority to file an appeal in the Regular Division.¹⁶⁹ The Department is required to be the defendant in any property tax case in which a party other than a county appeals to the Regular Division from a decision of a magistrate.¹⁷⁰

Although the Department may intervene in cases at any level, it has at times chosen to permit counties and their representatives to prosecute or defend a case.¹⁷¹ However, when a county prosecutes or defends a case in such a way as to cause an award of attorney fees to a taxpayer under [Oregon Revised Statute section 305.490\(4\)](#), the Department is responsible for payment of any such award.¹⁷²

The Department may express its interpretation of statutes in litigation or through the rulemaking process.¹⁷³ The authority is, except for specific instances, interpretive in nature. The court may defer in certain cases to Department interpretive rules.¹⁷⁴ Such rules are generally viewed only as the Department's interpretation of a statute and, like a litigating position, must be consistent with the relevant statute.¹⁷⁵ Similarly, in its administration of the revenue *175 laws, the Department or other governments must "turn square corners."¹⁷⁶

However, under statutes such as [Oregon Revised Statute section 314.280](#), the department has been vested with legislative rule making authority. Much greater force and effect is given to such rules.¹⁷⁷ The court is guided by Oregon Supreme Court precedent on the approach to interpretation of the scope of the Department's authority.¹⁷⁸ On more than one occasion the Oregon Supreme Court has discussed the authority the Department has under [Oregon Revised Statute section 308.205](#) to promulgate legislative type rules with respect to property valuation matters and the effect of such rules or the lack of such rules.¹⁷⁹

The Supreme Court has held that rules of the Department may have retrospective application where the Department intends that.¹⁸⁰ There is a statute limiting certain retrospective application of rules.¹⁸¹ In addition the Department by rule has stated that it will not apply rules retrospectively to periods no longer open to examination.¹⁸² The court has rejected the argument of the Department that this rule allows application of rules retrospectively to periods subject to appeal but no longer open to examination by the department.¹⁸³

The court has considered when the Department is required to engage in rulemaking in order to provide guidance to its own staff and avoid impermissible ad hoc action taken by auditors or others.¹⁸⁴

In its administration of the revenue laws, the Department or other governments must "turn square corners" in its compliance with the statutory directives.¹⁸⁵ However, the substantial powers vested in *176 the Department by the legislature have been regularly recognized by the court and upheld in the face of challenge.¹⁸⁶ In addition, taxpayers must clear a high hurdle in attempting to successfully invoke the estoppel doctrine against the Department.¹⁸⁷

B. The Court and Its Relationship with the Counties

The court's relationship with Oregon's 36 counties arises from taxpayer appeals of property valuation, disqualification from

special property assessment and denial of property tax exemption. The Oregon Legislature developed an appeals procedure for taxpayers to follow when challenging the values assigned to their property. Generally, the first step in the property appeals process is to appeal the county's valuation assessment to the local county board of property tax appeals ("BOPTA") by December 31 of the current tax year.¹⁸⁸ A taxpayer may appeal the decision of BOPTA to this court within 30 days of the date of that decision.¹⁸⁹ A taxpayer's appeal of a disqualification from special property assessment or denial of property tax exemption is directly to this court.¹⁹⁰

C. Property Valuation Appeals

Generally, a taxpayer may not appeal a property value issue to this court without first appealing to BOPTA unless a statutory exception applies.¹⁹¹ Such an exception is found in [Oregon Revised Statute section 305.288](#).¹⁹²

The statutory requirements of [Oregon Revised Statute section 305.288\(1\)](#) (20 percent difference in the property's real market value and the property's real market value on the tax roll)¹⁹³ or [*177 Oregon Revised Statute section 305.288\(3\)](#) (good and sufficient cause for failing to appeal to BOPTA)¹⁹⁴ allow taxpayers to directly file their appeal with the court, rather than BOPTA.

For purposes of [Oregon Revised Statute section 305.288\(3\)](#), the definition of "good and sufficient cause" is set out in [Oregon Revised Statute section 305.288\(5\)](#):

(b) "Good and sufficient cause":

(A) Means an extraordinary circumstance that is beyond the control of the taxpayer or the taxpayer's agent or representative, and that causes the taxpayer, agent, or representative to fail to pursue the statutory right of appeal; and

(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.

In order for this court to order a change to the tax roll, the statutory requirements of [Oregon Revised Statute section 305.288](#) must be met.¹⁹⁵ A stipulated agreement of the parties without the taxpayer meeting the statutory requirements of [Oregon Revised Statute section 305.288](#) is not sufficient to give the court the authority to order a change.¹⁹⁶

Even though [Oregon Revised Statute section 305.288](#) allows taxpayers to appeal, a taxpayer must have standing to bring a property tax appeal to the court.¹⁹⁷ To have standing, a taxpayer must be [*178](#) "aggrieved."¹⁹⁸ "In requiring that taxpayers be 'aggrieved' under [Oregon Revised Statute section 305.275](#), the legislature intended that the taxpayer have an immediate claim of wrong. It did not intend that taxpayers could require the expenditure of public resources to litigate issues that might never arise."¹⁹⁹ Generally, for a taxpayer to be aggrieved, the alleged real market value must be lower than the maximum assessed value.²⁰⁰

To address the timeliness of industrial property tax appeals [Oregon Revised Statute section 305.487](#) was enacted in 2005 in Senate Bill 268, 2005, Oregon Laws chapter 345. [Oregon Revised Statute section 305.487](#) was added as an amendment in the House of Representatives on May 23, 2005.²⁰¹ Representative Jeff Kropf testified that the amendment was intended to address "a recent problem regarding the Norpak [sic]²⁰² case" which was "an industrial property tax appeal that spanned five or six years and resulted in the state paying 12% interest for a total of \$1.2 million" on refunded property taxes.²⁰³ Chairman Tom Butler was concerned that those who control the appeal process merely voiced "an agreement to agree."²⁰⁴ He requested that the following "for the record statement" made by Representative Kropf be included:

The intention of this agreement is to provide quick and efficient resolution to appeals. That does not mean for the record business as usual. It means something less than a five or six year or twelve or fifteen year appeal process on a piece of property. So, for the record we are saying we intend everyone to work together to dramatically shorten the appeals process.²⁰⁵

Immediately following that statement, Chairman Butler added: "equitably, fairly, and justly amongst all the parties."²⁰⁶

*179 As enacted, [Oregon Revised Statute section 305.487](#) provides that

(1) The Legislative Assembly finds that:

(a) Principal and secondary industrial property that is appraised by the Department of Revenue under [Oregon Revised Statute section 306.126](#) and property that is centrally assessed by the department under [Oregon Revised Statute section 308.505 to 308.665](#) involve large amounts of property value and complex appraisal issues.

(b) Appeals of the value of principal and secondary industrial property or centrally assessed property can have significant impact on the stable funding of essential local government services because of the fiscal consequences of substantial tax refunds.

(c) The citizens of this state and the owners of industrial or centrally assessed property are best served by the efficient resolution of property tax appeals related to these properties.

(2) The Legislative Assembly declares that it is the policy of this state to strongly encourage taxpayers, local governments, the department and the Oregon Tax Court to resolve appeals related to the value of principal or secondary industrial property or centrally assessed property as quickly and efficiently as possible, in order to reduce the financial impacts of lengthy appeal processes.

The court continues to work with parties to move their appeals forward “as quickly and efficiently as possible” while providing an impartial judicial forum to resolve their dispute.²⁰⁷

***180 D. 2011 Legislature**

[Oregon Revised Statute section 305.403](#)²⁰⁸ provides that appeals of large industrial property values may be made to BOPTA or directly to the court, a taxpayer choice. The proposed 2011 legislation (H.B. 2478) to amend that statute would require that valuation appeals of industrial property appraised by the Department of Revenue be filed with court rather than BOPTA. The valuation appeals would include land, improvements, personal property, and machinery and equipment used in the operation of the industrial property.

The proposed change addresses concerns of statewide consistency and efficiency. BOPTA is usually a three-person panel of appointed volunteers who may not be experienced and trained to handle complex industrial property valuations. According to the Department, BOPTA allows on average no more than 15 minutes per property appeal, providing little time to consider the complexities of an industrial account. The Department argued that the result of short hearings and inexperienced decision makers is a lack of consistency among the state’s 36 counties. According to the Department, a substantial share of the industrial properties’ tax roll values appealed to BOPTA are sustained and over half of those determinations are subsequently appealed to the court. The Department concluded that a direct appeal to the court would increase efficiency for both the property owner and the Department.

On May 19, 2011, H.B. 2478 was signed by Governor Kitzhaber. [Oregon Revised Statute section 305.403](#) was amended to require appeals of principal or secondary industrial properties to appeal directly to the Tax Court “during the period following the date the tax statements are mailed for the current tax year and ending December 31.” This amendment is applicable to appeals filed for property tax years beginning on or after July 1, 2011.

***181 VI. The Court and Measures 5 and 50**

In the decade of the 1990s the landscape of property taxation in Oregon was fundamentally changed by the enactment of two constitutional measures, known popularly as Measure 5 and Measure 50.²⁰⁹ A limited number of cases have come to the court and on appeal to the Oregon Supreme Court involving interpretation of the constitutional language of the measures. The adoption of Measure 50 has had, however, much more impact on the court through a very significant reduction in the number of cases coming to the court. A complete analysis of these constitutional measures is beyond the scope of this article. What follows is a general discussion of the measures and the activity of the court and the Supreme Court with respect to the

measures.

A. Measure 5

Adopted by initiative on November 6, 1990, Measure 5 was undoubtedly inspired by the property tax revolt and action taken in California leading to the adoption of California's Proposition 13. Concerned about increasing property taxes, proponents of Measure 5 presented to the voters of Oregon a constitutional amendment to limit the permissible rate for property taxation.

As adopted, Measure 5 provides that, with certain exceptions to be discussed below, charges on any property imposed by a government unit on property or on a property owner, as a direct consequence of ownership of property, cannot exceed certain amounts. The amounts differ depending on the use of the tax revenue. In the case of charges imposed specifically to fund public schools, the limit is \$5.00 for each \$1,000 of real market value of the property. In the case of charges imposed to pay for other government operations, the limit is \$10.00 for each \$1,000 of real market value.

The charges that do not need to be considered in these calculations are incurred charges, assessments for local improvements, charges for debt service on bonded debt specifically authorized in the constitution, charges for debt service on bonded debt for capital construction or improvements, or charges approved by the electors of the government unit.

The Tax Court and Supreme Court have addressed many, if not all, the questions that can arise under these provisions. The question *182 of what is a government unit to which Measure 5 applies was addressed by the courts in *Comeaux v Water Wonderland Improvement District*.²¹⁰ In *Comeaux*, the Supreme Court concluded that a government unit under Measure 5 must be one with electors or legal voters. The entity imposing the charge in *Comeaux* was a water district formed under Oregon Revised Statute chapter 554. As it did not have electors or legal voters, it was not a government unit to which Measure 5 applied.

Measure 5 only concerns "taxes on property." Those are defined as charges imposed on property or on a property owner as a direct consequence of ownership of that property. The court has held that if a tax is imposed on a person for the privilege of displaying property, the tax is not imposed on the property or the owner by reason of ownership and is not therefore subject to Measure 5 limits.²¹¹

Charges due from persons responsible for the payment of a municipal water service fee that is not secured by a lien on property are not taxes on property.²¹² *Knapp v. City of Jacksonville*,²¹³ is a particularly helpful case in understanding the distinctions between fees and taxes as one ordinance was found to be subject to Measure 5 while a slightly modified ordinance was found not to involve a tax on property.

The Tax Court and Supreme Court have also had to deal with the constitutional provisions that take certain taxes on property imposed by governmental units out of the Measure 5 calculation. Thus, the Supreme Court has held that property taxes used to pay the debt service charges on urban renewal bonds are not taxes imposed for the purpose of paying debt service on bonded debt specifically authorized by provisions of the constitution.²¹⁴ General provisions in the constitution authorizing urban renewal programs were not found to be specific provisions authorizing particular bonded debt.

Another constitutional provision states that taxes to pay debt service on indebtedness issued before November 6, 1990 are not to be taken into account in the Measure 5 calculation. This provision was *183 held applicable to a fee, the proceeds of which were used to service pre-1990 debt.²¹⁵ The exception applied even though the governmental unit imposing the fee was not the same governmental unit that issued the bonds in question. The *Lake* case also includes a discussion of the constitutional exception for incurred charges and why the fee in question did not fit within that exception.

Taxes to pay debt service on bonds issued for capital construction or improvements are also not taken into account in the Measure 5 calculation.²¹⁶ In *Gill v. Beaverton School Dist.*,²¹⁷ the court held that repairs or personal property and equipment expected to add value beyond a single operating period were capital in nature and within the exception from Measure 5.

Assessments to cover the actual costs incurred by a government unit in designing, constructing and financing a project that is a local improvement are not subject to the Measure 5 calculation.²¹⁸ In *Ester v. City of Monmouth*,²¹⁹ the Supreme Court concluded that the definition of a local improvement was not altered by the adoption of Measure 5. Although questions of

proper imposition of an assessment for a local improvement are subject to challenge by a writ of review in another forum, the Tax Court did hold in *Martin v. City of Tigard*²²⁰ that the actual costs of an improvement project are not limited to the direct costs of the project. The court further concluded that the provisions of Measure 5 contemplate the possibility that payment of assessments for local improvements may be spread over 10 years, but do not require such deferral in payment. Beyond that, the court concluded that whether conditioning deferral of payment on waiver of a challenge to the legality of an assessment was a question beyond the jurisdiction of the court.

Important questions can arise as to whether a particular tax on property is to be put in the school category, where the general limit is \$5.00 for every \$1,000 of real market value, or into the other government category, where the limit is \$10.00 for every \$1,000 of real market value. In *Shilo Inn v. Multnomah Cnty.*,²²¹ the Supreme *184 Court, reversing the Tax Court, held that tax revenues are to be characterized by the use to which they are dedicated and not by the nature of the governmental unit that imposes the tax. The case involved property tax receipts in effect collected by school districts but paid over to urban renewal agencies so that those agencies could pay debt service on urban renewal bonds. In *Urhausen v. City of Eugene*,²²² the Supreme Court affirmed the Tax Court in holding that property tax receipts collected by a city could not be counted in the “other government” category of Measure 5 when the receipts were in effect dedicated to the purposes of public education.

The actual operation of Measure 5 can result in property in the same taxing unit being subjected to different tax rates than similar property within the unit. This can occur when the constitutional limits are exceeded as to a property and rates must be “compressed.”²²³ Such differential treatment has been held to not be a violation of the 14th Amendment to the United States Constitution.²²⁴

Proper classification and testing of actual or proposed tax receipts is of high importance to taxpayers and governments alike. The legislature has provided special and expedited procedures for appeal to the court for necessary determinations.²²⁵ Such early challenges survive challenges as to ripeness.²²⁶ The remedies provided are exclusive. Refunds may not be obtained under the general refund provisions of [Oregon Revised Statute section 311.806](#) and are only available to persons who petition and not to the public at large.²²⁷

B. Measure 50

As discussed above, Measure 5 placed a limit on the rate of taxation on property. Tax liability is, however, a function of the tax base as well as the rate. Following the adoption of Measure 5, property tax bills continued to rise. What followed was another initiated measure, Measure 47, designed to place limits on how much the base for taxation of property could increase over time.

*185 Oregon voters approved Measure 47; however, it contained a number of fundamental problems that were recognized even by its proponents. Those proponents and others then negotiated a set of adjustments and amendments to Measure 47 that were adopted by the Oregon Legislature and referred to the people as Measure 50. The voters approved Measure 50 on May 20, 1997. The Oregon Legislature then adopted a set of statutes implementing the provisions of Measure 50.

Measure 50 created the concept of maximum assessed value (MAV) for units of property. All units of property were assigned a MAV for the 1997 tax year and later years equal to the real market value of the unit of property as of July 1, 1995, reduced by 10 percent. That MAV cannot increase by more than 3 percent from the previous year.²²⁸ The assessed value (AV) for a unit of property is then computed by taking the lower of the MAV for the unit of property and the RMV for that unit.²²⁹

By law, the AV of property will therefore be the MAV for the property until and unless the RMV for the property drops below the level of the MAV of the property. The initial MAV for properties existing in 1997 was set at 90 percent of the RMV of the property two years earlier and there was a general inflation in property values in Oregon from 1995 until very recently. Accordingly, for most properties, the MAV of the property, limited to a three percent increase, has been lower than the RMV of the property over the years from 1997 to very recent times. That has resulted in the AV for the property being determined by mathematical formula rather than litigation in the vast majority of cases that have arisen since 1997.

Measure 50 applies easily to property that was in existence in 1995 and did not undergo any changes subsequently. Of course, some property did not exist in 1995 and some property that existed has undergone changes. The constitution and

implementing statutes address these situations in providing that the basic rule of Measure 50 special calculations apply to (1) new property or improvements; (2) property that is partitioned or subdivided; (3) property that is rezoned; (4) omitted property; (5) property that becomes disqualified from *186 exemption, partial exemption, or special assessment; or (6) property subject to a lot line adjustment.²³⁰

In the cases listed above, an initial MAV is established by taking the RMV at the appropriate point and multiplying it by a ratio that expresses the relationship between the average MAV and average RMV for property of the same class in the tax area.²³¹

The consequence of the provisions of Measure 50 for the work of the Tax Court has been that the docket at both the Magistrate Division and the Regular Division has been significantly reduced. In years prior to 1997 the court had a significant number of property tax appeals that involved trial of the fact question as to the real market value of property, a question that could only be solved by litigation or settlement by the parties. As Measure 50 became implemented and understood, the number of appeals to the court dropped dramatically as the AV for property could, without dispute, be settled by formula. One result for the court has been a dramatic reduction in the number of decision makers and staff needed to handle the docket of the court.

Questions have arisen under Measure 50 that demanded the attention of the Tax Court and the Supreme Court. Of basic importance in Measure 50 is the concept of a unit of property. After all, the limitations on the growth of the tax base apply to such units. In *Flavorland Foods v. Washington Cnty. Assessor*,²³² the Supreme Court held that a unit of property is all property contained any given property tax account, even though the account may contain personal as well as real property. The importance of the property tax account means that actions that affect the account must be carefully considered.²³³

Perhaps the most important consequence of Measure 50 for the Tax Court has been in the area of the standing of taxpayers to bring disputes to the court. To come to the court, a taxpayer must be “aggrieved.”²³⁴ Since the passage of Measure 50, taxpayers have attempted to challenge what they view as excessive RMV conclusions, even though the RMV finding by a local assessor does not serve as the base for taxation for the reason that the MAV of the property is lower than the RMV. The court has consistently turned *187 away such cases on the grounds that the taxpayer was not aggrieved by the action of the assessor because the action of the assessor in determining RMV did not, in fact, produce any tax liability.²³⁵

In those cases where the taxpayer was found not to be aggrieved, no showing was made that “compression” existed such that a finding of a lower RMV could reduce the amount of tax even though the RMV was found to be greater than the MAV. Compression is the process required by [Article XI, section 11\(b\)\(4\), of the Oregon Constitution](#) in those cases where the taxes on a property exceed either or both of the categorical limits found in Measure 5. Recall that the Measure 5 limits are expressed as a number of dollars for each \$1,000 of RMV. In such a case, the constitutional provision requires that taxes on the property be “reduced evenly by percentage” so that the dollar limits expressed in the constitution are satisfied. It follows that there could be a RMV determination that exceeded MAV and therefore under Measure 50 would not be the AV for the property. However, that RMV determination, used to test Measure 5 compliance, could result in there being a violation of Measure 5. In such a case, there would need to be a reduction in the amount of tax to be paid even though the RMV of the property exceeded its MAV and, therefore, its Measure 5 AV. The possibility of compression makes it important for taxpayers to assert RMV positions in their pleadings so that the taxing authorities can determine if relief through Measure 5 compression might be available even though no relief under Measure 50 exists.²³⁶

Another issue that has come to the court on several occasions is based upon the importance under Measure of the RMV of property for the tax year beginning July 1, 1995. That value sets an extremely important and potentially long lasting starting point in the Measure 50 calculations. Can a taxpayer, including someone who did not own a property for the 1995 tax year, challenge the 1995 RMV in a later year? The Tax Court has held that no such challenge is possible given the provision in Measure 50 that there is not to be a “reappraisal” of the RMV of the property used in the 1995 tax year.²³⁷

*188 Measure 50 introduced for the first time the concept of a maximum assessed value. As discussed above, the MAV often determines the AV of a property. Taxpayers have at times argued that a showing of a reduction of RMV for a property in a year after 1997 should lead to a proportional reduction in the MAV also and therefore a reduction in AV. The court has held that there is no necessary linkage between the concepts of RMV and MAV such that a reduction in RMV leads to any reduction in MAV.²³⁸ RMV and MAV were linked under Measure 50 only for the determination of initial MAV for 1997 year

based on the RMV of property in the 1995 year. It is, of course, true that the RMV for a property in a post-1997 year could coincidentally be exactly equal to the MAV for the property determined under [ORS 308.146\(1\)](#). That would be a coincidental rather than a necessary result however.

As mentioned above, special determinations of MAV are required for new property and certain changes in property. The court has addressed a number of the instances in which special determinations of value must be made.²³⁹ The instance of omitted property and the need for a special determination was discussed in *Strom v. Dep't of Rev.*²⁴⁰ The subjects of new improvements, or removal of property and destruction of property were discussed in *Chart Development Corp. v. Dep't of Rev.*²⁴¹ The issues surrounding the transition of property from a special assessment regime to a regularly taxable status have been discussed in several cases.²⁴²

Properties with similar RMV determinations may well have significantly different MAV and AV determinations. This can lead to markedly different tax liabilities for the owners of the property to pay.²⁴³ Undoubtedly anticipating this, Measure 50 provides that the *189 tax uniformity provisions of [Article I, section 32, of the Oregon Constitution](#) are not applicable to the outcomes under Measure 50. The court has upheld Measure 50 against attacks under the uniformity or equality provisions of the Oregon and federal constitutions.²⁴⁴

VII. The Court and the Income Tax

A survey of the case law from the court in the area of the personal and corporate income tax is beyond the scope of this article. No attempt is made to catalogue the numerous decisions involving the construction of Oregon tax statutes in general. As described above, as to such questions the court follows the rules of statutory construction employed by Oregon courts. In many cases, by reason of the fact that Oregon has adopted federal definitions in the determination of taxable income, the court finds itself construing and applying provisions of federal income tax law.²⁴⁵ In construing a federal statute, the court follows the constructional rules applicable in federal courts.²⁴⁶

The Oregon legislature and courts act within limits imposed by the Constitution of Oregon, federal statutes, and provisions of the United States Constitution. A brief review of the types of cases that have arisen in these areas subsequent to 1971 may be helpful. The limitations of the Oregon Constitution are primarily concerned with the property tax and have been discussed above. As to all taxes, concerns can also arise regarding uniformity and equal treatment.²⁴⁷

An interesting feature of the law in this area is that the concerns that arise in respect of taxation by Oregon of businesses and individuals operating in a federal union and more than one state mirror in many ways the concerns that arise in the law of taxation of international activities.²⁴⁸ The solutions to the concerns are found, however, most often in the application of federal laws and provisions of the federal constitution rather than the application of treaty provisions.

*190 A. Personal Income Tax

As the founders of our nation hoped, our citizens move around and, even if residing in one state, conduct income-producing activities in other states of the Union. As each state in the Union has the power to impose an income tax or other tax on the income producing activities of a mobile citizenry, problems as to taxation can and do arise.

Oregon may and does impose taxation on the world-wide income of residents of the state, subject only to such exemptions or other reductions as provided by Oregon law. The status of a person as a resident is therefore of primary importance. Residency is defined in [Oregon Revised Statute section 316.027](#) and generally depends on the domicile of the individual taxpayer. The court has repeatedly had occasion to address the question of whether a person is domiciled in Oregon.²⁴⁹

Oregon residents are entitled to the benefits of the income apportionment and allocation provisions applicable to interstate business operations.²⁵⁰ As to non-business income, Oregon affords to its residents credits to help insure that income also subject to taxation in another state is not subjected to impermissible multiple taxation. Such credits are available only in respect of income taxes paid to another state. Cases have arisen as to whether taxes paid in another state fit that requirement.²⁵¹

Oregon residents are also protected by federal statutory provisions from treatment of pension income from federal employment that is less favorable than that afforded to persons receiving pensions from service to the state.²⁵²

Persons who have become Oregon residents may be exposed to taxation on income earned in other states but collected after establishing Oregon residency. The court has decided such a case in respect of income from a Subchapter S corporation for the year of the *191 change of residency,²⁵³ gain from the disposition of an asset located in a state of former residence,²⁵⁴ retirement benefits received after establishing Oregon residency,²⁵⁵ and collection of installment sale proceeds after establishing Oregon residency.²⁵⁶

Persons who are not residents of Oregon are subject to taxation in Oregon on income from Oregon sources.²⁵⁷ Such income includes not only income from assets such as real property located in Oregon, but also income from partnerships doing business in Oregon,²⁵⁸ guaranteed payments from such partnerships,²⁵⁹ income from a Subchapter S corporation,²⁶⁰ and income from property such as stock options earned through employment within Oregon.²⁶¹

Non-residents of Oregon are not taxable, however, on severance payments from Oregon employers that are not in consideration of services in Oregon.²⁶² Nor can the net operating losses from Oregon sources be reduced by income earned while a person is a non-resident.²⁶³

Non-residents employed by employers operating instrumentalities of interstate commerce have the protection of a federal statute providing that compensation earned in the regular performance of work in several states may only be subject to taxation in the state of residence, notwithstanding that it was earned, in part, in Oregon.²⁶⁴

A non-resident engaging in an exchange of an Oregon asset on which gain is deferred for federal income tax purposes has the protection of the privileges and immunities clause of Article IV section 2 of the United States Constitution. Accordingly, gain on *192 such an exchange may not be subjected to tax for the reason that the property received in the exchange is located in another state.²⁶⁵ Similar concerns exist with respect to deductions denied to non-residents as to deductions for alimony payments²⁶⁶ and gambling losses.²⁶⁷

B. Corporate Income and Excise Tax

Oregon, like many states, has addressed the issues of taxation of corporations operating in several states through adoption of statutes on allocation and apportionment.²⁶⁸ The court since 1971 has addressed a number of cases involving the constitutionality and operation of such statutes.²⁶⁹ A discussion of the cases involving construction and application of particular provisions relating to apportionment and allocation of income is beyond the scope of this article. They can easily be found by reference to the particular provisions of the statutes of concern to the reader.

The court has concluded that the intent of the Oregon legislature has been to reach to the federal constitutional limits in connection with the reach of tax statutes, subject only to particular provisions adopted by the legislature.²⁷⁰ Although not common, the court has found at times that the legislature or Department have exceeded the relevant federal limitations under the Due Process or Commerce clauses of the United States Constitution.²⁷¹

*193 Federal statutory limitations have also been the subject of litigation in the court, especially with respect to P.L. 86-272, 15 U.S.C § 381 (1959).²⁷²

Other limitations of the federal constitution have also been addressed by the court, including the limitations of the First Amendment.²⁷³

VIII. Conclusion

The Oregon Tax Court has, for a half-century, played an important role in the resolution of disputes between taxpayers and their governments. By all relevant measures, the goals of the Oregon Legislature in establishing the court in 1961 and expanding its operations with the addition of the Magistrate Division in 1997 have been met. The first judicial branch tax court in the nation, the court remains today as evidence of the benefits of such a structure for resolution of tax disputes.

Footnotes

- ^{d1} Henry C. Breithaupt: Judge, Oregon Tax Court; Jill A. Tanner: Presiding Magistrate, Oregon Tax Court. The authors wish to thank Dan Eller and Cody Hoesly, former law clerks at the court, for their assistance in the preparation of this article.
- ¹ 1961 Or. Laws ch. 533, § 1. The Oregon Tax Court is referred to as the “court” in this article, except when the context requires more specificity such as when a decision of the court is described on appeal to the Oregon Supreme Court. In such cases the Oregon Tax Court is referred to as the “tax court.” In the case of quotations making reference to the Court, this quotation reference is not changed.
- ² Hon. Carlisle Roberts, *An Introduction to the Or. Tax Ct*, 9 WLJ 193 (1973); Judge Roberts served after judges Peter Gunnar and Edward Howell and before judges Samuel Stewart, Carl Byers, and Henry Breithaupt.
- ³ 1995 Or. Laws ch. 650, § 2.
- ⁴ 1995 Or. Law ch. 650, § 116.
- ⁵ 1969 Or. Laws ch. 520, § 10 merged the three person tax commission into the newly created Oregon Department of Revenue and transferred the gift taxes and fuel taxes administration to the Department.
- ⁶ [Or. Rev. Stat. § 305.115\(2\)](#) (1969), 1969 Or. Laws ch. 520 § 10 (repealed 1995) provided that the “hearings officer shall be a graduate from a four-year college or university, and shall meet such other requirements as may be pertinent under the State Merit System Law.” Association of Oregon Industries testified that the hearing officer should not be required to be a member of the Oregon State Bar. *Relating to the Reorganization of State Gov’t, Including but not Limited to Provisions Establishing a Dep’t of Rev.; Creating New Provisions; Appropriating Money; Providing Penalties; Providing an Operative Date; and Declaring an Emergency: Hearing on H.B. 1575 Before the House and State Federal Affairs Comm., 55th Leg. Assemb., Reg. Sess. (1969)* (statement of Association of Oregon Industries).
- ⁷ [Or. Rev. Stat. § 305.115\(1\)](#) (1969), 1969 Or. Laws ch. 520 § 10 (repealed 1995) was amended in 1981 to remove the Director’s right to delegate the final determination to the deputy director. The Director of the Department is referred to in this article as the “Director.”
- ⁸ *Relating to the Reorganization of State Gov’t, Including but not Limited to Provisions Establishing a Dep’t of Rev.; Creating New Provisions; Appropriating Money; Providing Penalties; Providing an Operative Date; and Declaring an Emergency: Hearing on H.B. 1575 Before the House and State Federal Affairs Comm., 55th Leg. Assemb., Reg. Sess. (1969)* (statement of Farm Bureau Members).
- ⁹ [Or. Rev. Stat. § 305.115\(9\)](#) (1977), 1977 Or. Laws ch. 870 § 8 (repealed 1995).
- ¹⁰ 1979 Or. Laws ch. 527, § 1.
- ¹¹ [Or. Rev. Stat. § 305.115\(1\)](#) (1979), 1979 Or. Laws ch. 687 § 5 (repealed 1995).
- ¹² *Id.*

- ¹³ Relating to Tax Appeals; Creating New Provisions; Amending 305.115; and Declaring and Emergency: Hearing on H.B. 3172 Before the Ways and Means Comm., 60th Leg. Assemb., Reg. Sess. (1979) (statement of Representative Vera Katz).
- ¹⁴ S.B. 127, 64th Leg. Assemb., Reg. Sess. (Or. 1987).
- ¹⁵ Relating to Tax Appeals; Creating New Provisions, Hearing on S.B. 127, 64th Leg. Assemb., Reg. Sess. (1987) (statement of Gil Riddle, Executive Assistant, Association of Oregon Counties). As will be seen *infra* p. 21, counties nonetheless have remained concerned about the timeliness of dispute resolution where their interests are represented by the Department.
- ¹⁶ [Or. Rev. Stat. § 305.115](#)(11) (1987), 1987 Or. Laws ch. 512 § 1 (repealed 1995).
- ¹⁷ Tax Appeals-Oregon Tax Court Magistrate Division; Small Claims; Procedure; Valuations and Assessments; Etc.: Hearing on H.B. 2325 Before the House Judiciary Subcomm. on Civil Law and Judicial Admin., 68th Legis. Assemb., Reg. Sess. (1995) (statement of Scot Sideras, Hearings Officer, Oregon Dep't of Rev.).
- ¹⁸ *Id.* (statement of Jerry Fisher, Manager of Oregon Public Affairs, Hewlett Packard).
- ¹⁹ 1995 Or. Laws ch. 650; see [Or. Rev. Stat. § 305.501](#) (2003).
- ²⁰ 1995 Or. Laws ch. 650.
- ²¹ See [Or. Rev. Stat. § 305.514](#) (repealed 2005).
- ²² 2005 Or. Laws ch. 345, § 1.
- ²³ See [Or. Rev. Stat. § 305.405](#) (2011).
- ²⁴ *Id.* § [305.410](#)(1).
- ²⁵ *Id.* § [305.410](#)(1)(a)-(o).
- ²⁶ *Id.* § [305.410](#)(2).
- ²⁷ *Id.* § [305.620](#); see, e.g., [Schweitzer's Casual Wear v. Dep't of Rev.](#), 16 Or. Tax 46 (2002).
- ²⁸ [Sanok v. Grimes](#), 662 P.2d 693 (Or. 1983).
- ²⁹ *Id.*
- ³⁰ *Id.* at 697.

31 Id.

32 Id. at 694.

33 Id. at 703. The Supreme Court remanded to the tax court taxpayer's claims regarding the taxpayer's qualification for forestland tax status under [Oregon Revised Statute sections 321.805-855](#) (1983). See [Sanok](#), 662 P.2d at 701-04.

34 [Sanok](#), 662 P.2d at 697-99.

35 Id. at 701.

36 Id. at 702.

37 [Nutbrown v. Munn](#), 11 Or. Tax 294, 299, 299 n.1 (1989) (deciding that such claims must be dismissed because of procedural deficiencies but cautioning that those claims may fall within the prohibition announced in [Sanok v. Grimes](#)).

38 [TVKO v. Howland](#), 15 Or. Tax 335, 343 (2001), [aff'd](#) 73 P.3d 905 (Jul. 24, 2003).

39 [Numrich v. Dep't of Rev.](#) 17 Or. Tax 402, 406 (2004).

40 Id.

41 [Yanez v. Wash. Cnty. Assessor](#), 18 Or. Tax 276, 278 n.2 (2005).

42 [Rivera v. Dep't of Rev.](#), 16 Or. Tax 60, 62 (2002); [Masse v. Dep't of Rev.](#), 18 Or. Tax 100, 107 (2004); [Gall v. Dep't of Rev.](#), 19 Or. Tax 188, 195-96 (2006).

43 [Knapp v. City of Jacksonville](#), 18 Or. Tax. 22(2004).

44 [Masse](#), 18 Or. Tax at 251 n.8.

45 [Or. Rev. Stat. § 14.165](#) (2011) (adopted 2001 Or. Laws ch. 561, § 1).

46 See [Smith v. Dep't of Rev.](#), 16 Or. Tax 44 (2002).

47 [Dep't of Rev. v. Foote](#), 19 Or. Tax 405 (2008).

48 [Or. Rev. Stat. § 294.485](#) (2011).

49 See, e.g., [Gugler v. Baker Cnty. Educ. Serv. Dist.](#), 754 P.2d 900 (Or. 1988).

- 50 [Luedtke v Estacada School District No. 108](#), 16 Or. Tax 114 (2002)
- 51 See [Chadwick v. Alexander](#), 801 P.2d 797 (Or. 1990); [Savage v. Munn](#), 856 P.2d 298, 302 (Or. 1993); [Sherman v. Dep't of Rev.](#), 17 Or. Tax 319 (2004).
- 52 See [Stadelman v. Dep't of Rev.](#), 1996 WL 600806, at *1 (Or. Tax Oct. 16, 1996).
- 53 See [Brummell v. Dep't of Rev.](#), 4 Or. Tax 168 (1970); [Hermo v. City of Lincoln City](#), 12 Or. Tax 52 (1991); [NW Alliance for Market Equality v. Dep't of Rev.](#), 862 P.2d 1300 (Or. 1993).
- 54 See [Kaup v. Dep't of Rev.](#), 13 Or. Tax 432 (1996); [Columbia Sun, Inc. v. Dep't of Rev.](#), 900 P.2d 1039 (Or. 1995) (contract to pay taxes).
- 55 See [Martin v. Dep't of Rev.](#), 655 P.2d 168, 170 (Or. 1982) (taxpayer had standing because he was personally liable for paying withholding tax); [Mt. Sexton Props., Inc. v. Dep't of Rev.](#), 760 P.2d 1320, 1326 (Or. 1988) (taxpayer had standing to challenge method by which its property taxes were calculated); [Poddar v. Dep't of Rev.](#), 983 P.2d 527 (Or. 1999) (taxpayer can choose to appeal only part of the tax bill, and does not need to appeal all of it). However, a taxpayer may not complain about the failure of his or her predecessors in interest to challenge prior tax bills. See [Zervis v. Dep't of Rev.](#), 2010 WL 107929 (Or. Tax Jan. 13, 2010).
- 56 Other attempts to correct prior alleged errors have also encountered difficulties. See [Zervis v. Dep't of Rev.](#), 2010 WL 107929, and [Ghazi-Moghaddam v. Dep't of Rev.](#), 2011 WL 2750894 (Or. Tax June 21, 2011).
- 57 [Or. Rev. Stat. §308.146](#) (2011).
- 58 See [Parks Westsac LLC v. Dep't of Rev.](#), 15 Or. Tax 50 (1999); [Kaady v. Dep't of Rev.](#), 15 Or. Tax 124 (2000); [Sherman v. Dep't of Rev.](#), 17 Or. Tax 322 (2004); [Paris v. Dep't of Rev.](#), 19 Or. Tax 519 (2008).
- 59 See, e.g., [Or. Rev. Stat §305.583](#) (2011).
- 60 The possibilities for fatal mistakes in this area are demonstrated in [Westlake Homeowners Assoc. v. Clackamas Cnty.](#), 11 Or. Tax 108 (1988).
- 61 See [Multnomah Cnty. v. Talbot](#), 657 P.2d 684 (Or. 1983) (county assessor had standing to challenge decision of state historic preservation officer); [Wynne v. Dep't of Rev.](#), 9 Or. Tax 378 (1984) (county assessor lacks standing to challenge tax board approval of property's assessed value). Statutes addressing the standing of governments are [Or. Rev. Stat. §§305.275\(4\), 305.570](#) (2011).
- 62 [Or. Rev. Stat. §305.280\(1\), \(2\)](#) (2011).
- 63 [Id. § 305.280\(3\)](#).
- 64 [Id. § 305.280\(4\)](#).
- 65 For example, the government may be estopped from relying on the lateness of an appeal as a ground for dismissal. See [Schellin v.](#)

Dep't of Rev., 15 Or. Tax 126 (2000).

⁶⁶ See *Kell v. Dep't of Rev.*, 16 Or. Tax 1 (2001); *Smith v. Dep't of Rev.*, 17 Or. Tax 135 (2003); *Fackler v. Dep't of Rev.*, 18 Or. Tax 67 (2004); *Patton v. Dep't of Rev.*, 18 Or. Tax 111 (2004); *White v. Dep't of Rev.*, 19 Or. Tax 119 (2006).

⁶⁷ *Patton* 18 Or. Tax 111.

⁶⁸ *Utgard v. Comm'n*, 1 Or. Tax 274 (1963).

⁶⁹ *Estate of Tate v. Dep't of Rev.*, 10 Or. Tax 343 (1987).

⁷⁰ Or. Rev. Stat. §305.501 (2011). See *Mongeon v. Dep't of Rev.*, 876 P.2d 752 (Or. 1994); *Gurs v. Dep't of Rev.*, 951 P.2d 726 (Or. 1998); *Jackson Cnty. Assessor v. Brown*, 1999 WL 639548 (Or. Tax Aug. 13, 1999); *Ebaugh v. Dep't of Rev.*, 2002 WL 507527 (Or. Tax March 20, 2002); *Vincent v. Dep't of Rev.*, 2004 WL 1759873 (Or. Tax July 12, 2004); *Sproul & Sproul, Inc. v. Dep't of Rev.*, 18 Or. Tax 321 (2005); *Hayes v. Dep't of Rev.*, 2008 WL 246096 (Or. Tax Jan. 30, 2008); *Garrison v. Dep't of Rev.*, 200 P.3d 126 (Or. 2008); *Purtzer v. Dep't of Rev.*, 2010 WL 2501198 (Or. Tax June 21, 2010). The statutory deadlines apply equally to taxpayers and taxing authorities. See *Dep't of Rev. v. Foote*, 19 Or. Tax 405 (2008). In an early decision, the court excused an untimely taxpayer appeal on the ground that a then-existing Tax Court Rule appeared to permit late appeals. *Brenner v. Dep't of Rev.*, 9 Or. Tax 200 (1982). The Tax Court Rule has since been amended.

⁷¹ See, e.g., Or. Rev. Stat. §305.583(4) (2011) as to time limits for petitions raising questions with respect to Measure 5 determinations.

⁷² Or. Rev. Stat. §305.490 (2009), amended by Or. Laws ch. 595.

⁷³ Id. § 21.682 (2010).

⁷⁴ Or. Tax Ct. R. 1 (B) & (E).

⁷⁵ See *Lackey v. State Tax Comm'n*, 2 Or. Tax 83 (1965), *aff'd*, 411 P.2d 78 (Or. 1966); *Ebaugh*, 2002 WL 507527; *Durmaz v. Dep't of Rev.*, 18 Or. Tax 94 (2004); *Garrison*, 200 P.3d 126.

⁷⁶ Or. Rev. Stat. §305.419(1) (2011).

⁷⁷ Id. § 305.419(3); Or. Tax Ct. R. 18C.

⁷⁸ See *Cole v. Dep't of Rev.*, 655 P.2d 171 (Or. 1982) (treating the prepayment requirement as jurisdictional for personal income taxes); *Leffler Indus., Inc. v. Dep't of Rev.*, 704 P.2d 97,99 (Or. 1985) (corporate excise taxes); See also *Lowry v. Dep't of Rev.*, 15 Or. Tax 221 (2000); *Smith v. Dep't of Rev.*, 16 Or. Tax 44 (2002); *Curtis v. Dep't of Rev.*, 19 Or. Tax 132 (2006); *Purtzer v. Dep't of Rev.*, 2010 WL 2501198 (Or. Tax, June 21, 2010).

⁷⁹ *Cole*, 655 P.2d 171.

⁸⁰ *Zamani v. Dep't of Rev.*, 19 Or. Tax 318, 322 (2007); *FedEx Ground Pkg. Sys., Inc. v. Dep't of Rev.*, 2010 WL 1366987 (Or. Tax Apr. 7, 2010).

- 81 [Utterback v. Dep't of Rev.](#), 17 Or. Tax 276, 277 n.1 (2003).
- 82 [Con-Way, Inc. v. Dep't of Rev.](#), 2011 WL 2556813 (Or T.C. June 28, 2011). See also Or. Rev. Stat. § 317.090 (2011) (new minimum tax provisions added by referendum).
- 83 [Multnomah Cnty. v. Dep't of Rev.](#), 13 Or. Tax 422, 424 (1995), [aff'd](#), 935 P.2d 426 (Or. 1997).
- 84 Or. R. Civ. P. 1. See also Or. Tax Ct. R. preface 81.
- 85 [Sproul & Sproul, Inc. v. Dep't of Rev.](#), 18 Or. Tax 321 (2005).
- 86 Tax Court Rules, Oregon Judicial Department (Feb 8, 2011), <http://www.ojd.state.or.us/Web/OJDPublications.nsf/TaxR?OpenView>.
- 87 Or. Rev. Stat. §305.425. This does not present constitutional difficulties under either the Oregon or federal constitutions. See [Curtis v. Dep't of Rev.](#), 17 Or. Tax 414, 422 (2004) (rejecting arguments based on right to jury trial and due process), [aff'd](#) 112 P.3d 330 (2005).
- 88 For this reason enforcement of tax criminal statutes is also outside the court's jurisdiction.
- 89 Or. T.C. R. 56B(2).
- 90 *Id.*
- 91 See [McVey Crossing v. Clackamas Cnty.](#), 2011 WL 2520146 (Or. Tax June 23, 2011).
- 92 Or. Tax Magis. Div. preface.
- 93 See [Colgate-Palmolive Co. v. Dep't of Rev.](#) 13 Or. Tax 112, 113 (1994); [Hartman v. Dep't of Rev.](#), 19 Or. Tax 571, 575 (2009).
- 94 [McVey Crossing](#), 2011 WL 2520146 at *1.
- 95 [Portland Gen. Elec. Co. v. Bureau of Labor and Indus.](#), 859 P.2d 1143, 1145-46 (Or.1993).
- 96 [Hynix Semiconductor Mfg. Am. v. Lane Cnty. Assessor](#), 2011 Or. Tax LEXIS 215 *9 (2011), (citing [Portland Gen. Elect. Co.](#), 859 P.2d at 1146; [State v. Gaines](#), 206 P.3d 1042, 1050 (Or. 2009).
- 97 [Hynix](#), 2011 Or. Tax LEXIS 215, *9 (internal citations omitted).
- 98 *Id.* (citing [Gaines](#), 206 P.3d at 1050); Or. Rev. Stat. §174.020(3) (2010).

- ⁹⁹ See Hynix, 2011 Or. Tax LEXIS 215, *9.
- ¹⁰⁰ Id. (citing *Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev.*, 723 P.2d 320-321 (Or. 1986)).
- ¹⁰¹ *N. Harbour Corp. v. Dept. of Rev.*, 16 Or. Tax 91, 94 (2002).
- ¹⁰² Hynix, 2011 Or. Tax LEXIS 215, *9.
- ¹⁰³ *N. Harbour Corp.*, 16 Or. Tax at 95.
- ¹⁰⁴ The expert witness fees apply to accountants and they are recoverable even if the expert does not testify or otherwise participate directly in a hearing or trial; see *Johnson v. Dep't of Rev.*, 1996 WL 622215, at *2 (Or. Tax Oct. 26, 1996). At a minimum, the expert's work must have some bearing on the case. See *Clackamas Cnty. Assessor*, 2010 WL 2377828, at *1. The fee statute is one-sided, however: although counties often incur appraiser fees in property tax cases, they cannot recover those fees when they prevail. See *Freitag v. Dep't of Rev.*, 19 Or. Tax 37, 40 (2006).
- ¹⁰⁵ The tax court also has inherent equitable authority to award attorney fees to prevailing taxpayers. However, the court rarely does so, because taxpayers generally seek to vindicate their own pecuniary interests, even if those interests are also of constitutional magnitude, and even if they are shared by other taxpayers. See generally *Dennehy v. City of Gresham*, 841 P.2d 633, 634 (1992) (explaining when it is appropriate for the tax court to exercise equitable authority to award attorney costs).
- ¹⁰⁶ Magistrates may not award these fees. See *Ellibee v. Dep't of Rev.*, 2003 WL 21241328, at *3 (Or. Tax April 21, 2003). However, if a case is appealed to the Regular Division, that division may award fees for the entire proceedings in the tax court, including those before a magistrate. See *Allen v. Dep't of Rev.*, 17 Or. Tax 427, 432 (2004); *Dep't of Rev. v. Wheeler*, 18 Or. Tax 129, 140 (2004).
- ¹⁰⁷ Oregon Revised Statute sections 305.490(3) and 305.447 do not authorize fee awards to corporations or government agencies. See *Portland Gen. Elec. v. Dep't of Rev.*, 1988 WL 126215, at *1-2 (Or. Tax) (holding that Or. Rev. Stat. §305.490(3) only applies to "natural persons"); *Martin v. Dep't of Rev.*, 9 Or. Tax 1, 2 n.1 (1981) (holding that Or. Rev. Stat. §305.490(3) does not apply to corporations or government agencies); *Sch. Dist. No. 1 v. Multnomah Cnty.*, 9 Or. Tax 362, 370 (1983) (nor to school districts); *Martin v. Dep't of Rev.*, 9 Or. Tax 100, 111 n.4 (1981) (noting that Or. Rev. Stat. § 305.446 applies to individuals), rev'd on other grounds, 655 P.2d 168 (Or. 1982). Those two statutes also do not authorize fees in property tax cases; Or. Rev. Stat. §305.490(4) does that. See *Port of Coos Bay v. Dep't of Rev.* 691 P.2d 100, 105 n.5 (Or. 1984) (rejecting claim that Or. Rev. Stat. §305.447 applies to property tax cases); See also *Dep't of Rev. v. Kelly*, 2010 WL 1256058, at *2-3 (Or. Tax) (interpreting Or. Rev. Stat. §305.490(4) to include all property tax cases).
- ¹⁰⁸ See *Martin*, 9 Or. Tax at 2 n.1 (1981) (applying this definition of "prevailing party" to Or. Rev. Stat. §305.490(3)); *Ormsby v. Dep't of Rev.*, 18 Or. Tax 146, 182 (2004) (explaining the conditions for an award of fees); *Pendell v. Dep't of Rev.*, 847 P.2d 846, 852 (Or. 1993) (holding that awarding fees under Or. Rev. Stat. §§305.447, 490(2) is discretionary). There is no "prevailing party" requirement: so long as the taxpayer obtains any relief, the court may award fees. *Waterbury v. Dep't of Rev.*, 11 Or. Tax 314, 315-16; *Dep't of Rev. v. Rakocy*, 15 Or. Tax 389, 391 (2001).
- ¹⁰⁹ See *Romani v. Dep't of Rev.*, 10 Or. Tax 64, 72-74 (1984); See also *Waterbury*, 11 Or. Tax at 316 (following that practice); *Johnson*, 1996 WL 622215, at *2 (following that practice); *Rakocy*, 15 Or. Tax 389, 391-94 (2001) (following that practice); *Dep't of Rev. v. Wheeler*, 18 Or. Tax 129, 137-40 (2004), on recons., 18 Or. Tax 232 (2005) (following that practice); *Clackamas Cnty. Assessor v. Village at Main St. Phase II, LLC*, 2010 WL 2377828, at *1 (Or. Tax, June 15, 2010) (following that practice).

- ¹¹⁰ See *Allen v. Dep't of Rev.*, 17 Or. Tax 427, 435-36 (2004) (following that practice).
- ¹¹¹ See *Swarens v. Dep't of Rev.*, 890 P.2d 1374, 1377 (Or. 1995); *Preble v. Dep't of Rev.*, 19 P.3d 335, 336 (Or. 2001). This court has in the past remarked on the difference between the Supreme Court's practice and its own. See *Rakocy*, 15 Or. Tax at 391-94 (2001).
- ¹¹² See OR. REV. STAT. § 20.105 (court "shall" award fees when party takes frivolous position); OR. REV. STAT. § 305.437 (same with specific reference to positions taken by taxpayers). The court has generally treated the "frivolousness" standard under the two statutes similarly. See *State ex rel. Mendonca v. Dep't of Rev.*, 11 Or. Tax 236, 239 (1989) (so doing); *Detrick v. Or. Dep't of Rev.*, 806 P.2d 682 (Or. 1991); *Sesma v. Dep't of Rev.*, 16 Or. Tax 29, 31-32 (2002); *Clark v. Dep't of Rev.*, 16 Or. Tax 51 (2002); *Buras v. Dep't of Rev.*, 17 Or. Tax 282, 288-89 (2004), *aff'd*, 112 P.3d 330 (Or. 2005); *Curtis v. Dep't of Rev.*, 17 Or. Tax 414 (2004), *aff'd*, 112 P.3d 330 (Or. 2005); *Parr v. Dep't of Rev.*, 18 Or. Tax 1, 8-10 (2004); *Ormsby*, 18 Or. Tax at 182-85; *Masse v. Dep't of Rev.*, 18 Or. Tax 240, 251-54 (2005); *Yanez* 18 Or. Tax at 281; *Freitag v. Dep't of Rev.*, 19 Or. Tax 37, 37 (2006).; *Curtis v. Dep't of Rev.*, 19 Or. Tax 132, 136 (2006); *Dep't of Rev. v. Croslin*, 201 P.3d 900, 908 (Or. 2009); *Ellison v. Dep't of Rev.*, 2011 WL 890886 (Or. Tax, Mar. 15, 2011).
- ¹¹³ See *State ex rel. Mendonca*, 11 Or. Tax at 239 (1989); *Sesma*, 16 Or. Tax at 31-32 (2002); *Clark*, 16 Or. Tax at 51; *Ellibee*, 17 Or. Tax at 229; *Dep't of Rev. v. Clark*, 17 Or. Tax 218, 223-25 (2003); *Buras*, 17 Or. Tax at 288-89; *Gall v. Dep't of Rev.*, 17 Or. Tax 352, *aff'd*, 98 P.3d 390 (Or. 2004); *Hill v. Dep't of Rev.*, 17 Or. Tax 409, 424-25 (2004); *Curtis*, 17 Or. Tax 414; *Parr*, 18 Or. Tax at 8-10; *Patton v. Dep't of Rev.*, 18 Or. Tax 111, 111 (2004); *Ormsby*, 18 Or. Tax at 182-85; *Yanez*, 18 Or. Tax at 281-82; *Newton v. Clackamas Cnty. Assessor*, 18 Or. Tax 389, 392-93 (2006); *Freitag*, 19 Or. Tax at 37; *Curtis*, 19 Or. Tax at 136; *Ellison*, 2011 WL 890886; *Harvey v. Dep't of Rev.*, 11 Or. Tax 407, 408-09 (1990); *Leitch v. Dep't of Rev.*, 13 Or. Tax 115 (1994), *aff'd*, 893 P.2d 1050 (Or. 1995); *Thomas v. Dep't of Rev.*, 14 Or. Tax 136 (1997), *aff'd*, 952 P.2d 542 (1998); *Combs v. Dep't of Rev.*, 15 Or. Tax 60 (1999), *aff'd*, 14 P.3d 584 (2000); *Clark v. Dep't of Rev.*, 15 Or. Tax 209 (2000), *aff'd*, 26 P.3d 821 (Or. 2001); *Utterback v. Dep't of Rev.*, 17 Or. Tax 276, 280-81 (2003).
- ¹¹⁴ See *Dep't of Rev. v. Kelly*, 2010 WL 1256058, at *1-3 (Or. Tax April 2, 2010).
- ¹¹⁵ See *Cohn v. Dep't of Rev.*, 2004 WL 1965992, at *3 (2004) (Or. Tax Magistrate Div., July 28, 2004) (declining to award fees where issue was one of first impression and not easy to resolve); *Masse*, 18 Or. Tax at 251-53 (declining to award fees where pro se taxpayer relied on magistrate ruling and where department requested a trial despite taxpayer's failure to appear); *Okorn v. Dep't of Rev.*, 11 Or. Tax 385, 388 (1990), *aff'd*, 818 P.2d 928 (Or. 1991) (declining to award penalty where taxpayer's position was not contrary to clearly established law).
- ¹¹⁶ See *Beeler v. Dep't of Rev.*, 19 Or. Tax 128 (2006).
- ¹¹⁷ *Dep't of Rev. v. Wheeler*, 18 Or. Tax 129 (2004); *Patton*, 18 Or. Tax at 111, on rehearing 18 Or. Tax 256 (2004).
- ¹¹⁸ See OR. REV. STAT. § 18.025 (2011) (naming courts to which the chapter applies).
- ¹¹⁹ *Id.* § 305.445.
- ¹²⁰ *Id.*
- ¹²¹ *Willamette Egg Farms, Inc. v. Dep't of Rev.*, 14 P.3d 609, 611 (2000).
- ¹²² *Id.*

- ¹²³ [Pacific Power & Light Co. v. Dep't of Rev.](#), 596 P.2d 912 (1979); [Mid Oil Co. v. Dep't of Rev.](#), 686 P.2d 1020 (1984); [Lewis v. Dep't of Rev.](#), 778 P.2d 1378 (1986).
- ¹²⁴ Or. Tax Magis. Div. R., Preface.
- ¹²⁵ Those laws that are not “tax laws of this state” are found in [OR. REV. STAT. § 305.410\(1\)\(a\)-\(o\)](#).
- ¹²⁶ OR. REV. STAT. ch. 28.
- ¹²⁷ [Wynne v. Dep't of Rev.](#), 156 P.3d 64 (Or. 2007); [Fields v. Dep't of Rev.](#), 19 Or. Tax 547 (2009).
- ¹²⁸ [Gall v. Dep't of Rev.](#), 17 Or. Tax 352, *aff'd*, 98 P.3d 390 (Or. 2004); [Croslin](#), 18 Or. Tax at 296.
- ¹²⁹ [OR. REV. STAT. § 305.498](#) (2011).
- ¹³⁰ *Id.* [§ 305.501\(2\)](#).
- ¹³¹ *Id.* [§ 305.501\(5\)](#).
- ¹³² *Id.* [§§ 305.501\(4\)\(b\), \(5\)](#).
- ¹³³ *Id.* [§ 305.230](#).
- ¹³⁴ *Id.* [§ 305.501\(4\)\(a\)](#).
- ¹³⁵ *Id.*
- ¹³⁶ *Id.* [§ 305.501\(5\)](#). The department can appeal a magistrate’s decision even though it was not a party at the magistrate level. [Dep't of Rev. v. Froman](#), 14 Or. Tax 543, 547 (1999). A judgment issued by a magistrate is not appealable.
- ¹³⁷ [OR. REV. STAT. § 305.430\(4\)](#) (2011).
- ¹³⁸ *Id.* [§§ 305.501, 305.445](#).
- ¹³⁹ See, e.g., [Dep't of Rev. v. Ritchie Chevron, Inc.](#), 14 Or. Tax 406 (1998); [NORPAX Foods, Inc. v. Dep't of Rev.](#), 15 Or. Tax 331 (2001); [Spears v. Dep't of Rev.](#), 2010 WL 4972740 (Or. Tax Dec. 7, 2010).
- ¹⁴⁰ [Spears](#), 2010 WL 4972740; [Williams v. Dep't of Rev.](#), 2011 WL 1754792 (Or. Tax May 9, 2011).

- 141 [OR. REV. STAT. § 305.501\(1\)](#).
- 142 Or. Tax Ct. Reg. Div. R. 1(C).
- 143 Compare representation rules of [OR. REV. STAT. § 305.230](#) with [OR. REV. STAT. § 305.494](#) and [OR. REV. STAT. § 9.320](#). See also Or. Tax Ct. Reg. Div. R. 1(F) and Or. Tax Magis. Div. R. 1(E).
- 144 [OR. REV. STAT. § 305.419](#) (2011).
- 145 Without some relief from the Regular Division, a prior decision of the Magistrate Division would become final and lead to entry of judgment.
- 146 See [Dep't of Rev. v. Guardian Mgmt.](#), 16 Or. Tax 17 (2002).
- 147 See [Grant Cnty. Assessor v. Dayville Sch. Dist.](#) 16J, 2011 WL 294445 (Or. Tax Jan. 31,2011).
- 148 [Curtis v. Dep't of Rev.](#), 19 Or. Tax 132, 132 (2006).
- 149 Or. Rev. Stat. § 305.105 (1997).
- 150 Id.
- 151 See Or. Rev. Stat. §305.412 (2011) (as to property valuation cases); but see Or. Rev. Stat. §305.575 as to deficiencies assessed under Or. Rev. Stat. §305.265.
- 152 Or. Rev. Stat. § 305.501(4)(a).
- 153 Id. § 305.501(2).
- 154 [King Estate Winery v. Dep't of Rev.](#), 988 P.2d 369 (Or. 1999); [Hallmark Mktg Corp. v. Dep't of Rev.](#), 16 Or. Tax 69 (2002).
- 155 See Or. Rev. Stat. § 305.425.
- 156 Id. §305.405 (2011).
- 157 Id. § 305.015. The powers and duties of the department and its director are generally set out in Or. Rev. Stat. §305.
- 158 Id. § 305.
- 159 See, e.g., Id. §§308.005-308.413 (2011); See also, e.g., Id. §§308.505-308.665 (2011) (as to the role of the department in initial assessment of certain “centrally assessed” properties).

- ¹⁶⁰ Id. §§306.115, 306.120 (2011).
- ¹⁶¹ [Harelson v. Schneider](#), 16 Or. Tax 123 (2003).
- ¹⁶² [Dep't of Rev. v. Guardian Mgmt.](#), 16 Or. Tax 17 (2002); [Philip Morris v. Dep't of Rev.](#), 11 Or. Tax 332 (1990).
- ¹⁶³ Or. Rev. Stat. §305.425 (2011) (specifying de novo proceedings).
- ¹⁶⁴ [Coos Cnty. Assessor v. Dep't of Rev.](#), 18 Or. Tax 339 (2004).
- ¹⁶⁵ See [ADC Kentrox v. Dep't of Rev.](#), 19 Or. Tax 91 (2006) (for discussion of several cases involving discretion).
- ¹⁶⁶ [Day v. Dep't of Rev.](#), 2010 WL 4880663 (Or. Tax Nov. 30, 2010).
- ¹⁶⁷ [Stonebridge Life Ins. Co. I v. Dep't of Rev.](#), 18 Or. Tax 423 (2006); [Stonebridge Life Ins. Co. II v. Dep't of Rev.](#), 18 Or. Tax 461 (2006).
- ¹⁶⁸ Or. Rev. Stat. §305.560(4)(a) (2011).
- ¹⁶⁹ See Id. §305.501(5)(b) (2011) (The department must, however, be vigilant); See [Dep't of Rev. v. Froman](#), 14 Or. Tax at 543.
- ¹⁷⁰ Or. Rev. Stat. §305.501(5)(c) (2011).
- ¹⁷¹ The department often files pleadings stating it has, for example, “tendered” the defense of a case appealed to the Regular Division to a county. That phrasing is questionable as there appears to be no duty on the part of a county to proceed with the case.
- ¹⁷² See Or. Rev. Stat. §305.490(4)(b) (2011); [Clackamas Cnty. Assessor v. Vill. at Main St., Phase II, LLC](#), 2009 WL 2901178 (Or. Tax Sept. 1, 2009).
- ¹⁷³ Or. Rev. Stat. § 305.100 (2011).
- ¹⁷⁴ [Bumblebee Seafoods, Inc. v. State Tax Comm'n](#), 421 P.2d 974 (Or. 1966).
- ¹⁷⁵ [Comcast v. Dep't of Rev.](#), 2011 WL 3505148 (Or. Tax Aug. 10, 2011); [Sherwin-Williams v. Dep't of Rev.](#), 14 Or. Tax 384 (1998); [Lufkin v. Dep't of Rev.](#), 11 Or. Tax 410 (1990).
- ¹⁷⁶ [Anaconda v. Dep't of Rev.](#), 565 P.2d 1084 (Or. 1977); [Preble v. Dep't of Rev.](#), 19 P.3d 335, 335 (Or. 2001).
- ¹⁷⁷ See, e.g., [Crystal Commc'n, Inc. v. Dep't of Rev.](#), 19 Or. Tax 524 (2008).

- 178 See [Springfield Educ. v. Springfield Sch. Dist.](#), 621 P.2d 547 (Or. 1980).
- 179 [Lewis v. Dep't of Rev.](#), 728 P.2d 1378 (Or. 1986); [S. Or. Broad. Co. v. Dep't of Rev.](#), 597 P.2d 795 (Or. 1979).
- 180 [U.S. Bancorp v. Dep't of Rev.](#), 103 P.3d 85 (Or. 2004).
- 181 [Or. Rev. Stat. § 305.125\(2\)](#) (2011).
- 182 [Or. Admin. R. 150-305.100-\(B\)](#) (2009).
- 183 [Powerex v. Dep't of Rev.](#), 2011 WL 3715961 (Or. Tax Aug. 24, 2011). The question of what periods are open to examination can be difficult to answer. See, e.g., [Swarens v. Dep't of Rev.](#), 883 P.2d 853 (Or. 1994); [Hallmark Mktg Corp. v. Dep't of Rev.](#), 16 Or. Tax 69, 69 (2002).
- 184 [U.S. Bancorp v. Dep't of Rev.](#), 103 P.3d 85 (Or. 2004).
- 185 E.g., [Anaconda Co.](#), 565 P.2d at 1084; [Preble v. Dep't of Rev.](#), 19 P.3d 335, 335 (Or. 2001).
- 186 [Curtis v. Dep't of Rev.](#), 19 Or. Tax 132, 132 (2006); [Burriss v. Dep't of Rev.](#), 2009 WL 4017951 (Or. Tax Nov. 20, 2009).
- 187 [Webb v. Dep't of Rev.](#), 19 Or. Tax 20 (2006).
- 188 See [Or. Rev. Stat. § 309.100\(2\)](#) (2011).
- 189 See [id. § 305.280\(4\)](#).
- 190 See [id. § 305.275\(1\)\(a\)\(C\)](#).
- 191 See [id. § 305.275\(3\)](#); See also [Dep't of Rev. v. Oral and Maxillofacial Surgeons](#), 15 Or. Tax 284, 287 (2001).
- 192 [Or. Rev. Stat. § 305.288\(6\)](#) states that the 'remedy' provided in [Or. Rev. Stat. § 305.288](#) 'is in addition to all other remedies provided by law.'
- 193 [Or. Rev. Stat. § 305.288\(1\)](#) provides that:
The tax court shall order a change or correction applicable to a separate assessment of property to the assessment and tax roll for the current tax year or for either of the two tax years immediately preceding the current tax year, or for any or all of those tax years, if all of the following conditions exist: (a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling * * * and was * * * a manufactured structure * * * (b) The change or correction requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.
- 194 [Or. Rev. Stat. § 305.288\(3\)](#) provides that the Tax Court 'may order a change or correction applicable to a separate assessment of

property to the assessment or tax roll for the current tax year * * * if * * * taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure * * * or taxpayer to pursue the statutory right of appeal.’ [Or. Rev. Stat. § 305.288\(5\)\(b\)\(B\)](#) provides good and sufficient cause ‘[d]oes not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.’

¹⁹⁵ See generally [Seifert v. Dep’t of Rev.](#), 14 Or. Tax 401, 404-05 (1998).

¹⁹⁶ Id.

¹⁹⁷ [Or. Rev. Stat. § 305.275](#) (2011).

¹⁹⁸ Id. [§ 305.275\(1\)\(a\)](#).

¹⁹⁹ [Kaady v. Dep’t of Rev.](#), 15 Or. Tax 124, 125 (2000).

²⁰⁰ [Parks Westsac LLC v. Dep’t of Rev.](#), 15 Or. Tax 50, 52 (1999).

²⁰¹ House Revenue Committee, Public Hearing and Work Session, S.B. 268, May 23, 2005.

²⁰² [NORPAC Foods Inc. v. Dep’t of Rev.](#), 15 Or. Tax 331 (2001).

²⁰³ Hearing on S.B. 268 Before the H. Comm. on Ways & Means, 2005 Leg., 73rd Reg. Sess. (Or. 2005) [hereinafter Hearing on S.B. 268] (statement of Rep. Jeff Kropf, Witness).

²⁰⁴ Hearing on S.B. 268, *supra* note 201 (statement of Rep. Tom Butler, Chair, H. Comm. on Ways & Means).

²⁰⁵ Hearing on S.B. 268, *supra* note 204 (statement of Rep. Jeff Kropf, Witness).

²⁰⁶ Id. (statement of Rep. Tom Butler, Chair, H. Comm. on Ways & Means).

²⁰⁷ Id.

²⁰⁸ [Or. Rev. Stat. § 305.403](#) provides that:

(1) In the case of a taxpayer dissatisfied with the assessed or specially assessed value of land or improvements of a principal or secondary industrial property, the taxpayer may elect to proceed directly to the tax court. An appeal involving the assessed or specially assessed value of both the land and improvements of a principal or secondary industrial property must be brought together in the same forum, whether the forum is the board of property tax appeals or the tax court. (2) Election shall be made by filing a complaint with the tax court in the manner as other complaints are filed under [Or. Rev. Stat. §305.560](#) within the time otherwise prescribed for filing an appeal to the board of property tax appeals. An election under this subsection may not be revoked and the taxpayer shall have no further right of appeal to the county board of property tax appeals.

²⁰⁹ See [Or. Const. art XI, §§ 11, 11b](#).

- 210 [Comeaux v Water Wonderland Improvement District](#), 12 Or. Tax 132 (1992), [aff'd 847 P.2d 841 \(Or. 1993\)](#).
- 211 [Alien Enter. Inc., v. Dep't of Rev.](#), 12 Or. Tax 126, 131 (1992).
- 212 [Roseburg Sch. Dist. v. City of Roseburg](#), 851 P.2d 595, 597-98 (Or. 1993); See also, [Knapp v. City of Jacksonville](#), 151 P.3d 143, 145-46 (Or. 2007); [Old Town Lofts v. City of Portland](#), 2009 WL 4695958 (Or. Tax Dec. 9, 2009).
- 213 [Knapp](#), 151 P.3d 143.
- 214 [City of Portland v. Smith](#), 12 Or. Tax 208 (1992), [aff'd 838 P.2d 568 \(Or. 1992\)](#).
- 215 [Lake v. Lane Cnty.](#), 13 Or Tax 194, 199 (1994).
- 216 Or. Const. art XI, § 11b(3)(b).
- 217 [Gill v. Beaverton School Dist.](#) 48, 14 Or. Tax 25 (1996).
- 218 Or. Const. art XI, § 11b(2)(d).
- 219 [Ester v. City of Monmouth](#), 903 P.2d 344 (Or. 1995)
- 220 [Martin v. City of Tigard](#), 14 Or. Tax 517 (1999)
- 221 [Shilo Inn v. Multnomah Cnty.](#), 36 P.3d 954 (Or. 2001)
- 222 [Urhausen v. City of Eugene](#), 142 P.3d 1023 (Or. 2006).
- 223 [Shilo Inn](#), 36 P.3d at 954 (discussing compression).
- 224 [Savage v. Munn](#), 856 P.2d 298, 305 (Or. 1993).
- 225 See Or. Rev. Stat. §§ 305.580-305.590.
- 226 [ZRZ Properties, LLC v. City of Portland](#), 18 Or. Tax 284, 290 (2005).
- 227 [Smith v. Multnomah Cnty. Bd. Of Comm'r](#), 12 Or. Tax 377, 380 (1993).
- 228 See Or. Const. art XI, § 11(1)(b); See also Or. Rev. Stat. § 308.146 (provides that the MAV for any year is the greater of 103 percent of the AV of the property for the prior year or 100 percent of the MAV for the prior year.).

- 229 Or. Rev. Stat. § 308.146(2) (2011).
- 230 Id. § 308.146(3).
- 231 Id. §§ 308.149-308.166.
- 232 Flavorland Foods v. Washington Cnty. Assessor, 54 P.3d 582 (Or. 2002).
- 233 Cf. Harelson v. Schneyder, 16 Or. Tax 123 (2003).
- 234 Or. Rev. Stat. §§ 305.275(1)(a), 305.570.
- 235 See Kaady v. Dep't of Rev., 15 Or. Tax 124, 124 (2000); Parks Westsac LLC v. Dep't of Rev., 15 Or. Tax 50, 52 (1999).
- 236 See Tax Ct. R. 18 B.
- 237 Or. Const. art XI, § 11(1)(g); Ellis v. Lorati, 14 Or. Tax 525, 531 (1999); Kaufman v. Dep't of Rev, 2010 WL 2930866 (Or. Tax July 27, 2010).
- 238 Gall v. Dep't of Rev., 17 Or. Tax 352, aff'd, 98 P.3d 390 (Or. 2004).
- 239 Practitioners refer to such situations as those involving “exception value.”
- 240 Strom v. Dep't of Rev., 15 Or. Tax 309 (2001).
- 241 Chart Development Corp. v. Dep't of Rev., 17 Or. Tax 170 (2003).
- 242 Multnomah Cnty. v. Dep't of Rev., 15 Or. Tax 5 (1999) (holding that new frozen value upon reapplication for historical property assessment is equal to the AV at time of reapplication if that value does not exceed RMV or MAV); Waldo Block Partners v. Dep't of Rev, 16 Or. Tax 33, 41-42 (2002) (reaching a result in the absence of the legislative guidance contemplated by the provisions of Measure 50); Haynie v. Dep't of Rev., 19 Or. Tax 488, 501 (2008)(determination of matters following voluntary cessation of special assessment).
- 243 See Oregon's Property Tax System: Horizontal Inequities Under Measure 50, <http://www.leg.state.or.us/comm/lro/>. (follow “Publications” hyperlink; then follow “Oregon's Property Tax System Horizontal Inequities under Measure 50 (Research Report #4-10).”
- 244 Paris v. Dep't of Rev., 19 Or. Tax 519, 519 (2008); Theda v. Dep't of Rev., 2010 WL 5031215 (Or. Tax Dec. 7, 2010).
- 245 Dep't of Rev. v. Marks, 2009 WL 3617493 (Or. Tax Reg. Div. Nov. 3, 2009).
- 246 Julian v. Dep't of Rev., 17 Or. Tax 384 (2004), revs'd on other grounds 118 P.3d 798 (Or. 2005).

- 247 See [Irwin v. Dep't of Rev.](#), 15 Or. Tax 24 (1999).
- 248 [Breithaupt](#), [Concluding Comments from the Host State](#), 17 Willamette J. Int'l L. & Disp. Resol. 192 (2009).
- 249 [Harlan v. Dep't of Rev.](#), 10 Or. Tax 497 (1987); [Ott v. Dep't of Rev.](#), 16 Or. Tax 102 (2002).
- 250 [Lane v. Dep't of Rev.](#), 10 Or. Tax 169 (1985).
- 251 [Keller v. Dep't of Rev.](#), 12 Or. Tax 381, [aff'd 872 P.2d 414 \(1994\)](#) (held that the Washington Business and Occupation Tax is not such an income tax); [Avni v. Dep't of Rev.](#), 15 Or. Tax 251 (2000) (held that the Texas franchise tax was an income tax; care should be taken as to certain states, including currently California, where a "reverse credit" mechanism is called for by [Or. Rev. Stat. § 316.131](#)).
- 252 [Vogl v. Dep't of Rev.](#), 960 P.2d 373 (1998).
- 253 [Perlman v. Dep't of Rev.](#), 17 Or. Tax 60 (2002).
- 254 [Zemke v. Dep't of Rev.](#), 17 Or. Tax 18 (2003).
- 255 [Lindau v. Dep't of Rev.](#), 10 Or. Tax 92 (1985).
- 256 [Dexheimer v. Dep't of Rev.](#), 12 Or. Tax 315 (1992).
- 257 [Or. Rev. Stat. § 316.127](#).
- 258 [Bishop v. Dep't of Rev.](#), 13 Or. Tax 472 (1996).
- 259 [Reeve v. Dep't of Rev.](#), 15 Or. Tax 148, [aff'd 37 P.3d 981 \(Or. 2001\)](#) (note however that wages earned by an employee for services in another state may not be subject to tax in Oregon, even when the employer is a partner in a partnership conducting business in Oregon.); [Jones, Grey, & Bayley](#) 16 Or. Tax 300 (2000).
- 260 [O'Neil v. Dep't of Rev.](#), 6 Or. Tax 467 (1976).
- 261 [McBroom v Dep't of Rev.](#), 14 Or. Tax 239 (1997), [aff'd 969 P.2d 380 \(1998\)](#).
- 262 [Dep't of Rev. v. Wheeler](#), 18 Or. Tax 129, 129 (2004).
- 263 [Lufkin v. Dep't of Rev.](#), 11 Or. Tax 410, 410 (1990).
- 264 Cases involving the so-called Amtrak Act include [Butler v. Dep't of Rev.](#), 14 Or. Tax 195 (1997); [Julian](#), 17 Or. Tax at 384.

- 265 Fisher v. Dep't of Rev., 16 Or. Tax 323 (2001).
- 266 Wood v. Dep't of Rev., 749 P.2d 1169 (1988).
- 267 Roelli v. Dep't of Rev., 14 Or. Tax 201 (1997).
- 268 Or. Rev. Stat. §§ 314.605-314.675 and Or. Rev. Stat. §§ 317.705-317.725 (provisions relevant to the taxation of partnerships and Subchapter S corporations and pass through entities are found in Or. Rev. Stat. §§314.712-314 760, Or. Rev. Stat. §§ 314.775-314.784 and the chapters of the statutes addressing personal and corporate income taxation).
- 269 Coca Cola Co. v. Dep't of Rev., 5 Or. Tax 405 (1974), aff'd 533 P.2d 788 (1975) (arising under pre-1983 Oregon law); U.S. West Inc. v. Dep't of Rev., 2011 WL 3847243 (Or. Tax Reg. Div. Aug. 30, 2011) (arising under post 1983 Oregon law).
- 270 Amer Refrig. Trans. Co. v. Comm'n, 395 P.2d 127 (1964); Maytag Corp. v. Dep't of Rev., 12 Or. Tax 502 (1993); Crystal Commc'n v. Dep't of Rev., 2011 WL 3505148 (Or. Tax Reg. Div. Aug. 10, 2011).
- 271 Stonebridge Life Ins. Co. I v. Dep't of Rev., 18 Or. Tax 423, 423 (2006).
- 272 Olympia Brewing Co v. Dep't of Rev., 5 Or. Tax 99 (1972), aff'd 511 P.2d 1187 (1973), cert denied 415 U.S. 976 (1974); Estee Lauder Services Inc., v. Dep't of Rev., 16 Or. Tax 279 (2000).
- 273 TVKO v. Howland, 15 Or. Tax 335, 335 (2001), aff'd 73 P.3d 905 (Jul. 24, 2003).