

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Court Administration

IN THE MATTER OF THE ADOPTION )  
OF A REVISION TO THE )  
RULES OF THE OREGON TAX ) **ORDER ADOPTING REVISIONS**  
COURT - MAGISTRATE DIVISION ) **TO MAGISTRATE DIVISION RULES**

Revisions to the Magistrate Division Rules of the Oregon Tax Court are attached to this order. The Magistrate Division Rules have been reorganized to correspond to the progression of a case through the Magistrate Division. Some of the Magistrate Division Rules have been updated to improve clarity and to better reflect court policy.

Being duly advised, the court adopts the revised rules as set forth in the attachment to this order, effective January 2, 2015.

Dated this 31<sup>st</sup> day of December 2014.

  
\_\_\_\_\_  
Jill A. Tanner  
Presiding Magistrate

  
\_\_\_\_\_  
Henry C. Breithaupt  
Judge

## PREFACE

The Oregon Tax Court consists of two divisions: the Regular Division and the Magistrate Division. An appeal from a final decision of the Magistrate Division is to the Regular Division in a *de novo* proceeding; that is, a new trial. All proceedings in the Magistrate Division are original proceedings, tried without a jury.

Magistrate Division 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. If circumstances arise that are not covered by a Magistrate Division rule, the rules of the Regular Division may be used as a guide to the extent relevant. Other Magistrate Division information may be found in chapter 305 of the Oregon Revised Statutes (ORS).

The Magistrate Division will not accept or file facsimile communications transmitted to the court in excess of 10 pages. The Magistrate Division will not accept electronic mail for pending matters.

The rules are organized to mirror the progression of a dispute through the court. The rules reflect the responsibility of the parties to contribute to the efficient management and resolution of their dispute. The court requests full cooperation and disclosure by the parties to avoid surprise or misrepresentation. These rules are designed to allow the court to resolve appeals in a fair and impartial way. All pleadings will be liberally construed with a view to substantial justice between the parties. The court may grant relief from the application of these Magistrate Division rules in an individual case for good cause if necessary to prevent hardship or injustice. Suggestions for improvements in the rules are welcome.

The rules should be cited as "Tax Court Rule-Magistrate Division" (TCR-MD). For example, Rule 1, section A, subsection 1, paragraph a, should be referred to as TCR-MD 1 A(1)(a). All citations to TCR refer to the rules of the Regular Division of the Tax Court.

**RULES OF THE OREGON TAX COURT  
MAGISTRATE DIVISION**

**RULE 1  
FILING APPEALS**

**A Filing a Complaint; Fee.**

**A(1) Filing a Complaint.** The plaintiff must deliver or mail to the court all of the following:

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

**A(1)(b)** Two copies of the written complaint; and

**A(1)(c)** A fee for each complaint filed. ORS 305.490; ORS 21.135. The fee must be tendered at the time of the filing of the complaint. The current fee is \$252.<sup>1</sup>

**A(2) Fee Deferral or Waiver.** The plaintiff may, by application, request the court to consider deferral or waiver of the fee, as provided under ORS 21.680 and ORS 21.685. The plaintiff must make such application in place of the required fee at the time of filing the complaint.

**B Contents of the Complaint.**

**B(1) Complaint Form.** The complaint must state:

**B(1)(a)** The nature of the plaintiff's interest;

**B(1)(b)** The facts showing how the plaintiff is aggrieved by the order, act, omission, or determination; and

**B(1)(c)** The reasons why the order, act, omission or determination should be reversed or modified.

**B(1)(d)** For cases involving property valuation, the complaint must state the real market value requested for each tax account and for each tax year at issue.

**B(2) Complaint Attachments.** A copy of the order or notice being appealed, if any, must be attached to the original complaint.

**C Service.** Where the taxpayer is the plaintiff, the taxpayer does not need to mail a copy of the complaint to the defendant. In those cases, the court will serve copies of the complaint upon the defendant. However, where the plaintiff is not the taxpayer, the plaintiff must serve by

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<sup>1</sup> The Oregon Legislature may modify fees between publication dates of the Tax Court Rules. The Oregon Tax Court's website (<http://courts.oregon.gov/Tax>) states the current amount for fees.

certified mail a copy of the complaint upon the taxpayer within the period for filing an appeal and file an affidavit with the court attesting to the service within a reasonable time. For purposes of this rule, the date of service of the complaint is the date that a copy of the complaint was mailed to the defendant.

**D Confidential Information.** The filing of a signed Authorization to Represent form is recognized by the court as permitting authorized representatives to receive information from the Department of Revenue that would otherwise be confidential under ORS 314.835. *See* ORS 305.230(2).

## **E Representation.**

### **E(1) Generally.**

**E(1)(a) Individual Representation.** In any proceeding before the Magistrate Division, a party who is an individual may represent and appear on his or her own behalf.

**E(1)(b) Authorized Representatives Permitted.** A party may be represented by:

**E(1)(b)(i)** An Oregon attorney;

**E(1)(b)(ii)** An Oregon Certified Public Accountant;

**E(1)(b)(iii)** The authorized employee of a taxpayer who is regularly employed by the taxpayer in tax matters;

**E(1)(b)(iv)** A trustee of a trust;

**E(1)(b)(v)** A personal representative of a decedent's estate;

**E(1)(b)(vi)** A designated representative of a nonprofit organization or an organization exempt from taxation;

**E(1)(b)(vii)** A spouse, child who has arrived at the age of majority, or parent; or

**E(1)(b)(viii)** A person with power of attorney. ORS 305.230(1)(a). *See* ORS 305.230(1)(g).

**E(1)(c) Authorized Representative Forms.** Except for an Oregon attorney, a representative appearing pursuant to the provisions of ORS 305.230 must file with the court, and serve on all opposing parties, an Authorization to Represent form. *See* ORS 305.230(2).<sup>2</sup>

**E(1)(d) Income Tax Matters Representation Generally.** A licensed tax practitioner may represent a taxpayer in matters related to the administration of any tax on or measured by net income. ORS 305.230(1)(b).

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<sup>2</sup> A copy of the form is available on the court website (<http://courts.oregon.gov/Tax>).

**E(1)(e) Property Tax Matters Representation Generally.** A licensed real estate broker or state certified, licensed, or registered appraiser may represent a taxpayer in matters related to the administration of any *ad valorem* property tax. ORS 305.230(1)(d).

**E(2) Representing a Partnership, S Corporation, or Other Entity.** A partnership, limited liability company, trust, or other entity may be represented in all matters pursuant to ORS 305.230(1)(a), in income tax matters pursuant to ORS 305.230(1)(b), and in property tax matters pursuant to 305.230(1)(d).

**E(2)(a) Limited Liability Company.** A limited liability company may be treated as a partnership for purposes of this representation rule. *See* ORS 63.810.

**E(2)(b) Partnership.** Pursuant to ORS 305.230(1)(e) and ORS 305.242, partners in a partnership may be represented by the designated tax matters partner with respect to appeals involving taxes on or measured by net income. Oregon Administrative Rules (OAR) 150-305.242(2) and 150-305.242(5) contain the rules the court will follow as to the form of designation. A designation must be filed with the complaint or responsive pleading.

**E(2)(c) S Corporation.** Pursuant to ORS 305.230(1)(c), an S corporation (as defined in section 1361 of the Internal Revenue Code as amended and in effect on December 31, 2013) may be represented by a shareholder in the same manner as if the S corporation were a partnership and the shareholder were a partner. A representative shareholder may be designated by the corporation. OAR 150-305.230(1) and 150-305.230(2) contain the rules the court will follow as to the form of designation. A designation must be filed with the complaint or responsive pleading.

### **E(3) Authorized Representatives: Designation, Communication, and Change.**

**E(3)(a) Number of Authorized Representatives.** A party may be represented by no more than two authorized representatives. If a party designates more than one authorized representative, any document filed with the Magistrate Division of the Oregon Tax Court may be signed by either individual designated as an authorized representative for that party. A document is not signed unless it bears the signature of an authorized representative.

**E(3)(b) Communication Through an Authorized Representative.** The first authorized representative named will be the primary representative. The court and opposing parties will provide written communications only to the primary representative. The court will direct all telephone conferences and communications to the primary representative. If the primary representative is not available, the second authorized representative will be contacted. Once a party designates an authorized representative(s), the party may only communicate with the court through its authorized representative(s).

**E(3)(c) Change in Authorized Representative.** Once an individual is designated as an authorized representative and recognized by the court as the authorized representative, that individual must inform the court and all other parties in writing when he or she no longer

represents a party. In the case where the authorized representative represents a party who is an individual, that party may also provide written notice of a change in authorized representative to the court. In the case where the named party is other than an individual, if an authorized representative is an employee and is no longer employed by the named party or otherwise unavailable due to illness or death, that party may appoint another individual to replace the authorized representative. In the case of any change in representation, notification of the change must be made in writing to the court and all other parties.

## **RULE 2 RESPONSIVE PLEADINGS**

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

**B Contents of Answer or Motion to Dismiss.** The response must contain the names of the parties, the case number, and a brief response to the claims raised in the complaint. Claims and affirmative defenses, *e.g.*, an ORS 305.287 determination request or an allegation that plaintiff failed to timely file an appeal, must be alleged in a defendant's first filed pleading, captioned Motion to Dismiss, Answer, or other appropriate caption. If a motion to dismiss is filed and subsequently denied, a defendant must file an answer responsive to the claims contained in the complaint, no later than 30 days after service of the order denying the motion.

**C Facsimile Transmittal.** The court will not receive or file pleadings submitted to the court via facsimile in excess of 10 pages.

## **RULE 3 SERVICE**

Once a complaint has been filed, a response, motion, or other writing may be served on all the other parties by United States Postal Service first class mail (mail). If service is by mail, it will be deemed completed three days after the date the document is mailed if the address to which it is mailed is within the state or seven days if mailed to an address outside the state. After the complaint is filed, TCR 9 may be used as a guide to the extent relevant.

## **RULE 4 SPECIAL DESIGNATION**

After a complaint is filed in the Magistrate Division, it may be specially designated for hearing in the Regular Division by two methods: (1) by rule (based on statutory language) and (2) by court order (upon the written petition of a party or on the court's own motion). The requirements for special designation are set out in TCR 1 C.

**RULE 5**  
**EX PARTE COMMUNICATION**

A party must provide to all other parties a copy of every writing sent to the court, for example, letters, motions, and documents. Writings submitted to the court must be accompanied by a certificate of service or other evidence they were provided to all parties.<sup>3</sup> Parties and their representatives must not communicate with the court regarding any pending case unless all other parties are copied or present.

**RULE 6**  
**COURT PROCEEDINGS AND PROCEDURES**

**A Initial Case Management Conference.** In most appeals, the court will schedule an initial telephone case management conference. *See* TCR-MD 8. At the time of the initial case management conference, each party must be prepared to briefly identify the issue(s), discuss discovery (*see* TCR-MD 9) and discovery cut-off dates if applicable, and have a calendar available to set a date for a mediation or trial or both.

**B Trial Date.** A trial date will usually be scheduled at the initial case management conference. If mediation is scheduled with the agreement of the court and the parties, a trial date will be set no more than 60 days after the mediation date.

**C Exhibit Exchange.** Exhibit exchange dates will be set at the initial case management conference. *See* TCR-MD 12.

**D Settlement.** After the initial case management conference, the parties are encouraged to discuss the issues and work toward a resolution.

**E Stipulation.** If the parties resolve all issues raised in an appeal, a signed stipulation must be submitted to the court prior to trial.<sup>4</sup> If a party is represented, the stipulation must be signed by an authorized representative. *See* TCR-MD 20 B.

**F Motion to Withdraw.** A plaintiff seeking to dismiss or withdraw its appeal must submit the request in writing to the court with evidence that a copy was provided to the other parties. *See* TCR-MD 7 E, TCR-MD 20 A.

**RULE 7**  
**MOTIONS**

**A Request to the Court.** After the filing of a complaint, any request for an order of the court is a motion. Every motion, except those made during a case management conference or trial, must be in writing and must state the reasons and authorities for the motion and the relief requested.

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

<sup>4</sup> A sample form of a stipulated agreement is available on the court's website (<http://courts.oregon.gov/Tax>).

**B Response to Motion Generally.** An opposing party may file a written response to any written motion. Except as provided in this rule, a response to a motion filed prior to the initial case management conference is not due until after the initial case management conference. A party may respond orally to the motion at the initial case management conference or, if the responding party requests, the court will allow time after the initial case management conference for a written response to be filed.

**C Preliminary Motion Filed Prior to Initial Case Management Conference.** Prior to the initial case management conference, the court may rule on one or more of the following preliminary motions: motion to amend pleading, motion to make more definite and certain, motion to strike, motion to consolidate, motion to dismiss a named party, and motion to intervene. Nonmoving parties are permitted to file a written response within 10 days of the date of service of the preliminary motion. After the response period has passed, or all parties have filed a response, the court may rule on the preliminary motion.

**D Motion Filed After Initial Case Management Conference.**

**D(1) Time to File.** Except as provided in subsection E, and unless otherwise specified by the court, a response to a motion filed after the initial case management conference, including a status report and recommendations, is due 10 days after the date of service or 20 days after the date of service in the case of a response to a motion for summary judgment.

**D(2) When Court Will Rule.** Except as provided in subsection E, the court will not rule on a motion until responses from all nonmoving parties have been filed or the response time has lapsed.

**E Motion to Dismiss or Withdraw Filed by Plaintiff.** The court may rule on a motion to dismiss or withdraw filed by a plaintiff without waiting for a response from the nonmoving parties when the motion indicates that the parties agree that no party will seek costs and disbursements. In all other cases, the nonmoving parties have 10 days from the date of service to file a response before the court will rule on the motion.

**F Oral Argument.** Any party may request oral argument on a motion. The court will determine whether oral argument is held.

**G Motion for Default.** A written motion for default may be filed when a defendant has failed to file an answer or a response. The court may notify all parties that defendant failed to file an answer or a response. The plaintiff may submit a written motion for default asking that the relief requested in its complaint be granted. Once the motion for default is filed, the complaint cannot be amended unless the court approves. If the motion for default is filed with the court before an answer or a response is filed, the court will consider the motion and may hold a hearing. After due consideration, the court may enter a decision of default. Appeal may be taken from a final decision of default by following the provisions of TCR-MD 19.

**H Facsimile Transmittal.** The Magistrate Division will not receive or file documents submitted to the court via facsimile in excess of 10 pages.

## RULE 8 SCHEDULING

**A Scheduling Requests.** In general, cases pending before the court will be scheduled for an initial case management conference and additional proceedings as needed.

**A(1) Initial Case Management Conference.** An initial case management conference is scheduled after all defendants have filed an answer or other response to a complaint.

**A(1)(a) Definition.** A case management conference is a telephone proceeding where a magistrate talks with the parties about their dispute. Case management conferences are not recorded.

**A(1)(b) Purpose.** The purposes of the conference are, among others, to consider the issues and areas of agreement or disagreement and to determine whether to set a trial or mediation. An additional schedule may be established.

**A(1)(c) Industrial Property.** In appeals involving principal or secondary industrial property or centrally assessed property, both sides must be prepared to discuss the reporting requirements of ORS 311.814 and to discuss participation by or notification of affected government entities.

**A(2) Mediation.** A party may verbally request mediation at the initial case management conference. All other requests for court-assisted mediation must be in writing. A party submitting a written request for mediation must obtain the consent of the other parties prior to filing the request with the court. A requesting party must submit the written request to the court, listing three mutually convenient mediation dates. Any request for mediation must be submitted no later than 45 days prior to a scheduled trial.

**A(3) Trial.** A trial date usually will be scheduled at the initial case management conference. All trial requests submitted by a party after the initial case management conference must be in writing. A party requesting a trial must notify all other parties before submitting the written request to the court. The request must list three mutually convenient trial dates and state whether the parties prefer an in-person or a telephone trial. Note: for budgetary reasons, in-person trials are restricted to the Oregon Tax Court in Salem.

**B Rescheduling Requests.** The court allows two individuals to be designated as authorized representatives and expects that one of those two authorized representatives be available for any scheduled proceeding. A request to reschedule a proceeding will be denied absent a showing that both authorized representatives are unavailable.

**B(1) Case Management Conference Rescheduling.** If a party seeks to reschedule a case management conference, the party must, before contacting the court, obtain the approval of

all other parties as well as three mutually convenient alternative dates and times. All rescheduling requests must be for good cause and submitted to the court in writing no later than 10 days prior to the case management conference. The court may deny the request if good cause is not shown. The court allows two individuals to be designated as authorized representatives and expects that one of those two authorized representatives will be available for any scheduled proceeding.

**B(2) Oral Argument Rescheduling.** If a party seeks to reschedule an oral argument, the party must, before contacting the court, obtain the approval of all other parties as well as three mutually convenient alternative dates and times. The request must state whether the parties prefer an in-person or a telephone oral argument. All rescheduling requests must be for good cause and must be submitted to the court in writing no later than 10 days prior to the oral argument. The court may deny the request if good cause is not shown.

**B(3) Trial and Mediation Rescheduling.** Requests to reschedule mediation and trial proceedings set by the court will not be granted except in exceptional circumstances.

## **RULE 9 DISCOVERY**

**A Generally.** Discovery is allowed in the Magistrate Division only when a party requests it and the court orders it. TCR 36 through TCR 46 will apply only when the court so orders.

**B Motion for Discovery.** Before filing a motion for discovery, a party must make a written request to the nonmoving party for documents or items to be discovered. A party's motion for discovery must demonstrate that it has complied with the written request requirement.

**C Motion to Compel.** If a party seeks, but is unable to obtain, discoverable items from another party, the moving party may request from the court an order compelling the production of those items. In its motion to compel, the moving party must state with sufficient particularity the items it seeks to discover, the reasons for the request, and its prior attempt(s) to obtain the requested items.

**D Sanctions.** The court may sanction any party withholding information, including exclusion of the information from future proceedings, or any other measure the court considers appropriate.

## **RULE 10 MEDIATION**

**A Assignment to Mediation.** A party to the appeal may request mediation or the court on its own motion may assign the matter to mediation. The court will consider an appeal appropriate for mediation only where all parties agree to participate. The court will set the date and time of the mediation. Mediation will be set as soon as possible in order to reduce the financial impact of a lengthy appeal process.

**B Responsibilities of Mediating Parties.** A magistrate acting as mediator will ask the parties to submit written position papers to the mediator. An individual participating in mediation, whether a party or a representative, must have authority to settle all issues. Failure to appear at a scheduled mediation may cause a party to be sanctioned.

**C Confidentiality.** In general, statements made during mediation are confidential. If a state agency is a party to the mediation, statements may only be confidential to the extent provided by statute or agency rules. Statements of fact(s) already known, or of matters that are independently discoverable, for example, matters of public record, are not treated as confidential. A magistrate acting as a mediator will not serve as the trial magistrate in that same appeal.

## RULE 11 EVIDENCE; TRIAL PROCEDURE

**A Presentation of Evidence.** Any evidence the parties want considered must be filed with the court and exchanged with all other parties as an exhibit even if it was already presented in a prior administrative hearing or submitted with an earlier pleading or document. *See* TCR-MD 12 for the exchange of evidence requirements.

**B Testimony and Trial Procedure.** The Magistrate Division follows the testimony and trial procedure guidelines stated in Tax Court Rules 56 through 61. Where the content of those rules conflicts with a Magistrate Division rule, the Magistrate Division rule controls. *See* TCR 56-61.

**C Return of Evidence.** Written or tangible evidence will not be returned unless requested by the submitting party. After final disposition of the case, a notice will be sent to the parties stating that all exhibits will be disposed of by the court unless they are retrieved within 30 days.

## RULE 12 EXHIBITS

**A Exhibits: Definition.** Exhibits are documents or other items that will be offered as evidence in support of a party's case. Exhibits include, but are not limited to, writings, reports, notes, graphs, pictures, photographs, documents, maps, receipts, records, diaries, minutes, ledgers, returns, calculations, articles, papers, data, field notes, work papers, and tests.

**B Marking Exhibits.** Each document, report, or other paper or item is a separate exhibit. The parties have the responsibility of organizing and marking their exhibits. Each exhibit must be marked as follows:

**B(1)** Plaintiff's exhibits must be marked numerically. Each page of the exhibit must be numbered sequentially from 1 through the end of the exhibit and must be marked with the case number.

**B(2)** Defendant's exhibits must be marked alphabetically. Each page of the exhibit must be numbered sequentially from 1 through the end of the exhibit and must be marked with the case number.

**B(3)** Intervenor's exhibits must be marked numerically with a capital "I" in front of the number. Each page of the exhibit must be numbered sequentially from 1 through the end of the exhibit and must be marked with the case number.

**C Exchange of Exhibits.** The early exchange of information is encouraged. Each party must provide the court and all other parties with copies of all exhibits to be introduced into evidence in support of that party's case. Exhibits will not be filed with the court unless they are correctly labeled as required by this rule and proof of service on all other parties is provided.

**C(1) Time of Exchange.**

**C(1)(a) Generally.** Unless otherwise set by the court, all exhibits must be either postmarked at least 14 days before the trial date or physically received by the court and all other parties at least 10 days before the trial date. The tenth day ends at 5:00 p.m. local time of the recipient. In the event that the tenth day falls on a legal holiday or weekend, the next business day following the legal holiday or weekend will be considered the tenth day. For purposes of this rule, a legal holiday is defined in ORS 187.010 and ORS 187.020.

**C(1)(b) Database Disclosure.** If an appraiser relies on a computer database to form an opinion of value of the property that is the subject of the appeal, the appraiser must disclose the use of that database to all parties at or before the time for exchanging exhibits. If the database is not freely available to the general public or readily available for commercial purchase or subscription, the party making use of the database must provide, as part of the exhibit exchange, the portions of the database relied on in forming the appraiser's value opinion. For purposes of this rule, an appraiser is any witness, other than the owner of the property at issue, whose testimony or work product is offered to establish the valuation of the property at issue.

**C(1)(c) Rebuttal Exhibits.** Exhibits submitted as rebuttal evidence do not need to be exchanged pursuant to the deadlines stated in TCR-MD 12 C(1)(a). A party submitting rebuttal evidence in a telephone trial must file all rebuttal exhibits no later than 5 p.m. prior to the trial date.

**C(2) Facsimile Transmittal.** Exhibits may not be submitted to the court via facsimile without the prior approval of the court.

**D Sanctions.** The court may exclude any evidence received after the time of exchange, sanction any party who withholds information, or use any other measure the court considers appropriate.

**RULE 13**  
**[RESERVED FOR EXPANSION]**

**RULE 14  
CONDUCT AND DECORUM**

The proceedings and participants are at all times subject to the direction and authority of the court. All persons are to treat the court and each other with respect and courtesy. The magistrate is addressed as “Your Honor,” “Magistrate,” or “Judge.”

**RULE 15  
RECORDING**

**A Court Recordings.** Proceedings before the court are not formally recorded by the court, either electronically or stenographically. ORS 305.430.

**A(1) Requesting Recordings.** If the court decides to record a proceeding, the recording may be disclosed after the court receives a written request and payment of the applicable fees.

**A(2) Protected Recordings.** The court will protect from disclosure any recording or any part of a recording that state or federal law prohibits the court from disclosing; state law exempts from disclosure; the court has sealed; or a protective order restricts one or more of the parties from disclosing. Any recording made at the request of the court will be destroyed 30 days after a judgment is filed or the matter is appealed to the Regular Division.

**B Party Recordings.** Any party may record proceedings. If a party decides to record a proceeding, either stenographically or electronically, that party must give written notice no later than 10 days before the proceeding to the court and all other parties and must provide a copy of the recording to the court within 14 days of receiving the recording.

**RULE 16  
ALLOWANCE AND AWARD OF COSTS AND DISBURSEMENTS**

**A Definition of Costs and Disbursements.** “Costs and disbursements” are reasonable and necessary expenses incurred in the prosecution or defense of an action other than for legal services, and include the filing fee; the fees of officers; the statutory fees for witnesses; the postage for summonses or notices; the necessary expense of copying of any public record, book, or document used as evidence in the trial; recordation of any document where recordation is required to give notice of the creation, modification, or termination of an interest in real property; a reasonable sum paid a person for executing any bond, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by other rule or statute. The court, acting in its sole discretion, may allow as costs reasonable expenses incurred by a party for interpreter services. If such costs are not awarded and the beneficiary of the interpreter services is unable to pay, then interpreter services will be paid for in the same manner as interpreters used in the circuit court. *See* ORS 45.275(4)(c).

**B Allowance of Costs and Disbursements.** In any action, costs and disbursements may be allowed to the prevailing party, unless these rules or other rule or statute direct that in the

particular case costs and disbursements will not be allowed to the prevailing party or will be allowed to some other party, or unless the court otherwise directs. A party may state a request for costs and disbursements in its pleadings; however, failure to do so will not bar that party from later seeking such an award.

### **C Award of Costs and Disbursements.**

**C(1) Procedure for Seeking Costs and Disbursements.** A party seeking costs and disbursements must, not later than 14 days after the entry of a decision or 10 days after the date of service of a plaintiff's motion to dismiss or withdraw, file with the court and provide a copy to all other parties, a signed and detailed statement of costs and disbursements. With the exception of the filing fee, proof of claimed costs and disbursements must be attached to the statement.<sup>5</sup>

### **C(2) Objections and Responses.**

**C(2)(a) Objections.** A party may file a written objection, but must do so no later than 10 days after the filing of the statement of costs and disbursements. The objection must be specific. It must be filed with the court and a copy provided to all other parties.

**C(2)(b) Responses.** The party seeking costs and disbursements may file, only with the leave of the court, a written response to an objection. A request to file a response must be submitted no later than 10 days after the filing of the written objection. Any response permitted must be timely provided to all parties.

**C(3) Hearing.** At the discretion of the court, a hearing may be held to consider issues and evidence related to the request for costs and disbursements. No other issues or evidence will be considered at the hearing.

**C(4) Final Decision.** Following the period of time to object to a party's request for costs and disbursements, the court will grant or deny a party's request for costs and disbursements. The court may make findings of fact and conclusions of law on an award of costs and disbursements. The court's analysis and grant or denial of a request for costs and disbursements will be incorporated into the court's final decision.

## **RULE 17 DECISIONS; FINAL DECISIONS**

Decisions and final decisions of the Magistrate Division will be made in writing. When a case is ready to be decided, the court will take it under advisement pending the preparation of a written decision. After a decision is filed, the court will issue a final decision with information regarding statutory appeal rights.

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<sup>5</sup> A sample statement of costs and disbursements can be found on the court's website (<http://courts.oregon.gov/Tax>).

**RULE 18**  
**CORRECTION; RECONSIDERATION**

**A Correction of Clerical Mistakes.**

**A(1) Definition of Clerical Mistake.** The correction of clerical mistakes, includes, but is not limited to, corrections of typographical errors, arithmetic, or copying errors.

**A(2) Clerical Mistake Correction; How Made.** The court may correct clerical mistakes or omissions at any time on its own motion. Within a reasonable time, any party may seek to correct a clerical mistake or omission. The request must be made by filing a motion. *CAUTION – A request based on this subsection should not be considered as an alternative to appeal. See TCR-MD 19.*

**B Correction of Other Errors.** Within a reasonable time, any party may request relief from a decision, final decision, or judgment for reasons of mutual mistake, inadvertence, excusable neglect, or misconduct of another party. The request must be made by filing a motion. *CAUTION – A request based on this subsection should not be considered as an alternative to appeal. See TCR-MD 19.*

**C Reconsideration.** Following issuance of a decision, final decision, or judgment, the court will not accept motions for reconsideration or to reopen the record; therefore, the provisions of TCR 80 are inapplicable in the Magistrate Division.

**RULE 19**  
**APPEALS**

**A Appealable Acts.** Final decisions filed by the Magistrate Division may be appealed to the Regular Division. ORS 305.501(5). The grant or denial of a motion for a protective order may be appealed to the Regular Division. ORS 305.430(4).

**B Method of Appeal.**

**B(1) Appeals of Final Decisions.** The appealing party must, within 60 days after the date of entry of the final decision, file a complaint in the Regular Division. A copy of the Magistrate Division final decision must be attached to the Regular Division complaint. *See TCR 1 B(1).*

**B(2) Appeals of the Grant or Denial of Protective Orders.** The appealing party must, within 60 days of the grant or denial of a motion for a protective order, file a protective order petition in the Regular Division. The petition must include the required fee. *See TCR 1 E.* A copy of the petition must be submitted to the Magistrate Division. Once a protective order petition is filed, proceedings in the Magistrate Division will be suspended until the Regular Division issues an order. *See TCR 1 B(2).*

## **RULE 20 JUDGMENTS**

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

**B Judgment of Stipulation.** The court will issue a judgment of stipulation when the parties file a signed stipulated agreement. The court's judgment of stipulation will not include an award for costs and disbursements unless stated in the signed stipulation agreement.

**C Judgment from Final Decision.** The court will enter a judgment consistent with the final decision unless an appeal is filed with the Regular Division no later than 60 days after the date of entry of the court's final decision.

**D Appeal.** A judgment issued by the Magistrate Division is not appealable.

## **RULE 21 ENFORCEMENT**

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

## **RULE 22 MEDIA COVERAGE OF COURT PROCEEDINGS**

The Magistrate Division will follow TCR 3, applying UTCR 3.180.

## **RULE 23 SEGREGATION AND PROTECTION OF PERSONAL INFORMATION**

The Magistrate Division will follow TCR 35.

The foregoing Rules of Procedure of the Oregon Tax Court, Magistrate Division, are hereby promulgated effective beginning January 2, 2015.