PROPOSED REVISIONS TO RULES OF THE OREGON TAX COURT

As part of its annual rules revision process, the Oregon Tax Court solicited rule revision suggestions internally and from the public through a variety of publications. After careful consideration of those suggestions, the court proposes the following revisions to the rules of the Oregon Tax Court Magistrate Division. New text is underlined in bold-face and deleted text is italicized within brackets. Comments should be made in writing, received by October 10, 2014, and sent to Derek N. Dizney, Law Clerk, Oregon Tax Court, 1163 State Street, Salem, Oregon 97301. These rules will become effective January 1, 2015.

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 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, rules of the Regular Division of the Tax Court may be used as a guide to the extent relevant. Other information as to the Magistrate Division 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. [*Facsimile communications transmitted to the court in excess of 10 pages shall incur a charge of $2.00 for the eleventh page and $1.00 for each page after the eleventh page and the sender will be billed.*] 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 requires full cooperation and disclosure so that surprise or misrepresentation do not disadvantage parties. These rules are designed to allow the court to resolve appeals in a fair and impartial way. All pleadings shall be liberally construed with a view of substantial justice between the parties. Relief from application of these rules in an individual case may be given by a magistrate on good cause shown 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 3, paragraph a, shall be referred to as TCR-MD 1 A(3)(a). All citations to TCR refer to the rules of the Regular Division of the Tax Court.

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RULE 1
FILING APPEALS

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E Representation.

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

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E(2)(b) S Corporations. As to matters involving taxes on or measured by net income, an S corporation or a shareholder may be represented by persons specified in ORS 305.230(1)(a) and (b). In addition, 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, [*2009*] **2013**), and shareholders in an S corporation may be represented by a shareholder in the same manner as if the S corporation were a partnership and the shareholder were a partner. Therefore, with respect to only those matters involving taxes on or measured by net income, a representative shareholder may be designated by the corporation and other shareholders. OAR 150-305.230(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 initial pleading.

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RULE 2
COURT PROCEEDINGS AND PROCEDURES

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D Rescheduling Request. Requests to reschedule mediation and trial proceedings set [*at a case management conference*] **by the court** will not be granted except in exceptional circumstances. The court allows two individuals to be designated as an authorized representative and expects that one of those two authorized representatives be available for all scheduled proceedings.

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RULE 4
RESPONSIVE PLEADING

A Answer or Motion to Dismiss. The defendant shall respond to the complaint by answer or motion within 30 days from the date the complaint was served on the defendant. The response, usually titled Answer or Motion to Dismiss, must be signed by (1) the named party if the named party is an individual, or (2) one of its authorized representatives. The response shall

be filed by delivering or mailing the signed original to the Magistrate Division and mailing a copy to [*the plaintiff*] **all other parties**, or, if the [*plaintiff has an*] **other parties have** authorized representative**s**, the copy shall be mailed to [*that*] **those** representative**s**.

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RULE 6
MOTIONS

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B Responses to Motions and Written Correspondence.

B(1) Responses to Motions Generally; Responses to Preliminary Motions Filed Prior to Initial Case Management Conference.

B(1)(a) Generally. An opposing party may file a written response to any written motion. [*The court encourages parties to submit their response as soon as possible. However, except*] **Exception** as provided in subsection [*(2)*] **B(1)(b)**, subsection (3), and section D, a response **to a motion filed prior to the initial case management conference** is not due until after the [*first*] **initial** case management conference. [*A party may respond orally to the motion at the case management conference or, if the responding party requests, the court will allow time after the case management conference for a written response to be filed. For motions filed after the case management conference, unless otherwise specified by the court, a response is due 10 days after the date of service of the motion or 20 days after the date of service in the case of a response to a motion for summary judgment. The court will not rule on the motion until a response from all non-moving parties has been filed unless the designated response time has lapsed.*]

B(1)(b) Preliminary Motions Filed Prior to Initial Case Management Conference. Prior to the initial case management conference, the court may act on a preliminary motion (e.g., motion to amend pleading, motion to make more definite and certain, motion to strike, motion to consolidate, motion to dismiss a named party, motion to intervene). Before the court rules on a preliminary motion, any non-moving party will be given an opportunity to file a written response.

B(2) Responses to Motions or Correspondence Filed After Initial Case management Conference. Except as provided in subsection (3), a response to a motion or written correspondence including status reports and recommendations filed after the initial case management conference, unless otherwise specified by the court, 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. The court will not rule on the motion until a response from all non-moving parties has been filed unless the designated response time has lapsed.

B[*(2)*](3) Motions to Dismiss Filed by [*Plaintiffs*] the Appealing Party. [*Prior to a case management conference, the*] The court may [*act*] **rule** on a motion to dismiss filed by the

appealing party **without waiting for a response from the non-moving party,** [*(*]unless a counterclaim has been asserted[*)*]. When [*a plaintiff*] **an appealing party** files a motion to dismiss **and a counterclaim has been asserted**, the [*defending*] **non-moving** party has 10 days from the date of service to file a response **before the court will rule on the appealing party's motion to dismiss**.

[***B(3) Preliminary Motions.*** *Prior to the first case management conference, the court may act on preliminary motions (e.g., motions to amend a pleading, motions to make more definite and certain, motions to strike, motions to consolidate, motions to dismiss a named party, motions to intervene). Before acting on a preliminary motion the court will offer any nonmoving party an opportunity to respond.*]

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RULE 9
EVIDENCE

A Presentation of Evidence, Testimony and Trial Procedure. Any evidence the parties want considered must be given to the magistrate **and exchanged with the other party or parties** as an exhibit even though it was already presented in a prior administrative hearing. *See* TCR-MD 10, Exhibits, for the exchange of evidence requirements**, TCR 56 for Exhibits, and TCRs 57 through 61 for Testimony and Trial Procedure**.

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RULE 19
ALLOWANCE AND AWARD OF COSTS AND DISBURSEMENTS

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C Award of [*and Order for*] Costs and Disbursements.

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

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RULE 20
JUDGMENTS

A Judgment of Dismissal

Unless a counterclaim has been asserted in the filed pleadings, the court will issue a judgment of dismissal in response to an appealing party's motion for dismissal made pursuant to TCR-MD 6 B(3). Neither party will be awarded costs and disbursements.

B Judgment of Stipulation

The court will issue a judgment of stipulation in response to the parties' signed stipulated agreement. Unless the parties' signed stipulated agreement specifies an award, the court's judgment of stipulation will not include an award of costs and disbursements.

C Judgment from Final Decisions

The magistrate will enter a judgment consistent with his or her final decision if no appeal is filed within 60 days after the date of entry of the magistrate's final decision. [*Judgments issued by the magistrate are not appealable.*]

D Appealability

Judgments issued by the magistrate are not appealable.