IN THE OREGON TAX COURT
REGULAR DIVISION
Court Administration

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OREGON TAX COURT
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STATE COURT ADMINISTRATOR
BY

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

The following are revisions to the Rules of the Regular Division of the Oregon Tax Court. Material being deleted is *italicized* and [*bracketed*]; material being added or altered is set forth in **bold** with **underlining**. If an existing rule with multiple subsections is being revised, subsections and footnotes containing no revisions are omitted and denoted by asterisks.

RULES OF THE OREGON TAX COURT
REGULAR DIVISION

PREFACE

The Oregon Tax Court consists of two divisions: the Regular Division and the Magistrate Division. Appeals from decisions of the Magistrate Division are to the Regular Division. Regular Division trials are *de novo* and are conducted without a jury. Although proceedings in the Magistrate Division are informal, proceedings in the Regular Division are formal because they must "conform, as far as practical to the rules of equity practice and procedure in this state." ORS 305.425. Unless otherwise provided by statute or rule, if the plaintiff in a case before the tax court is the taxpayer, the Department of Revenue will begin the case as the sole defendant. *See* ORS 305.501. Other parties may be joined to the case or intervene in the case, but only with permission from the court.

The Oregon Rules of Civil Procedure (ORCP) are not applicable to the Tax Court (*see* ORCP 1), but many Tax Court Rules (TCR) reflect provisions of the ORCP (*see* TCR 81). To the extent that the wording of a TCR is the same as that of an ORCP, cases interpreting the ORCP may be looked to as authority for interpreting the TCR. In addition, the Uniform Trial Court Rules (UTCR) are not applicable to the Tax Court (*see* UTCR 1.010), but many TCR reflect provisions of the UTCR.

All of the rules should be cited as "Tax Court Rule" (TCR). The TCR should be cited by rule, section, subsection, paragraph, and subparagraph. For example, Rule 7, section D, subsection (3), paragraph (a), subparagraph (i), would be cited as TCR 7 D(3)(a)(i). An attempt has been made to correlate TCR numbers with ORCP numbers.

The Regular Division will not accept or file communications in excess of 10 pages that are transmitted to the court by facsimile. [*Facsimile communications in excess of 10 pages transmitted to the court 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 Regular Division will not accept electronic mail regarding pending matters.

Suggestions for improvements in the rules are welcome.

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

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F Representation.

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

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F(2)(b) S Corporations. Pursuant to ORS 305.494, an S corporation (as defined in section 1361 of the Internal Revenue Code as amended and in effect on December 31, [*2009*] **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(4)(b) contains the rules the court will follow as to the form of designation. A designation must be filed with the complaint or initial pleading.

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RULE 9
SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS

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G Filing by Facsimile Communication. The court will not accept or file communications in excess of 10 pages submitted to the court by facsimile. [*Communications submitted to the court by facsimile that are 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.] Under no circumstances shall documents requiring a fee be accepted or filed if they are submitted to the court by facsimile communication.

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RULE 11
APPEARANCE BY ATTORNEYS LICENSED IN OTHER JURISDICTIONS

A Requirements. An attorney authorized to practice law before the highest court of record in any state or country ("out-of-state attorney") may appear on behalf of a party in the Tax Court even though that attorney is not licensed to practice law in this state, if the attorney satisfies all the following requirements:

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F Appearance Fee. Except as otherwise provided in this rule, for each application under this rule to appear before a court, the applicant must pay to the Bar a fee of [*$250*] **$500** at the time of submission of information under subsection (B) of this section, including when application is sought to renew an application at the end of a current one-year grant for a case. The fee will not be refundable.

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RULE 48
PARTIES APPEARING *AMICUS CURIAE* ON CROSS-MOTIONS FOR SUMMARY JUDGMENT AND OTHER PROCEEDINGS

A An individual or an organization may appear *amicus curiae* only by permission from the court on a written application setting forth the interest of the individual or organization in the case. The application shall state whether the applicant intends to present a private interest of its own or to present a position as to the correct rule of law that does not affect a private interest of its own. The application shall not contain argument on the resolution of the case.

B The application shall be submitted by an active member of the Oregon State Bar. A filing fee is not required. The form of the application shall comply with TCR 16 and the applicant shall file the original and one copy of the application. The individual or organization seeking to appear *amicus curiae* shall serve a copy of the application on all parties to the proceeding.

C The application shall be accompanied by the brief sought to be filed. The form of an *amicus* brief and the number of copies of the brief shall be subject to the same rules as

those governing briefs of parties.[1] If, consistently with this rule, a brief is submitted with the application, then:

C(1) If the court grants the application, the date of filing for the brief relates back to the date of filing for the application; or

C(2) If the court denies the application, the court will strike the brief.

D Time for Filing *Amicus* Briefs on Cross-Motions for Summary Judgment. Unless the court grants leave otherwise for good cause shown, an *amicus* brief on cross-motions for judgment shall be due seven days after the date the brief is due of the party with whom *amicus curiae* is aligned or, if *amicus curiae* is not aligned with any party, seven days after the date the opening brief is due. Responses to the *amicus* brief will be due 21 days after the due date for the *amicus* brief. If a party obtains an extension of time to file a brief and the *amicus curiae* is aligned with that party, the time for filing the *amicus* brief is automatically extended to seven days following the extended due date.

E *Amicus* Briefs in Matters Scheduled for Trial. *Amicus* briefs will generally be allowed only on cross-motions for summary judgment. On matters to be tried, the court will consider applications for *amicus curiae*.

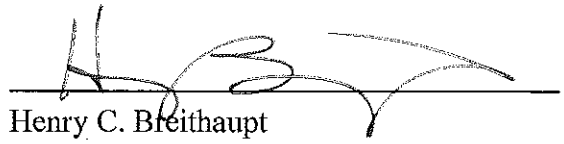
F *Amicus curiae* shall not be allowed to orally argue the case, unless the court specifically authorizes or directs oral argument.[2]

RULE 81
APPLICABILITY OF ORCP TO TAX COURT

Pursuant to ORCP 1 A, the ORCP are applicable to the proceedings of the Tax Court except to the extent that the TCR do not include provisions of the ORCP or provide otherwise[,]. Further, and without limiting the foregoing, the Tax Court has not adopted: ORCP Rules 1, 3, 31, 44, 50, 51, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 73, 79, 80, 81, 82, 83, 84, and 85.

Being duly advised, the court adopts the revised rule as set forth above, effective January 2, 2015.

Dated this 31st day of December 2014.



Henry C. Breithaupt
Judge

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[1] *See* TCR 61 concerning requirements for briefs.
[2] *See* TCR 14 F concerning oral argument.