OREGON STATE BAR

# Taxation Section

VOLUME 8, NUMBER 1 Spring 2005

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## Property Tax Exemptions in Oregon: Slips and Tips

*Robert T. Manicke, Stoel Rives LLP*

"The property tax, dating back to antiquity, is one of the oldest known sources of revenue for the support of government."[1] Exemptions apparently are equally ancient. As the Maryland Court of Appeals stated in 1841, "There has never been a general tax law without exemptions of some sort * * *."[2] In Oregon, the property tax exemption statutes that were adopted by the Oregon Territorial Legislature have proven remarkably durable. Much of the text from section 95 of the 1845 "Act Relating to the Assessment and Collection of Taxes"[3] is still codified in today's edition of ORS chapter 307. For example, in 1845 was necessary to use the term "slips" to refer to long benches found in churches because the term "pews" still commonly referred to the gated "box pews" found in colonial churches.[4] Today, ORS 307.140 continues to exempt "the pews, slips and furniture" in houses of public worship.

The historical origins of the Oregon property tax exemptions can lead to other kinds of "slips." Because the Oregon exemption statutes predate the Internal Revenue Code by some 70 years, there are significant differences between the requirements for Oregon property tax exemption and the requirements for exemption from federal income tax. Failure to note these differences, or failure to satisfy specific application requirements, accounts for much of the case law on Oregon property tax exemptions. Under the "strict but reasonable" rule of construction, the courts resolve doubts against the taxpayer.[5]

### Eligibility: Categories of Exemption

Most of the statutes governing property tax exemption are codified in ORS chapter 307.[6] That chapter contains well over 130 statutes, organized under 34 headings that attempt to categorize the exemptions. For practitioners, the most commonly encountered categories include:

- Public Property (ORS 307.040-.126). As one would expect, this category includes property of federal, state, and local government entities. Also included, however, are property eligible for the "strategic investment" tax incentive program,[7] certain drydocks and shipyards,[8] and unpatented mining claims.[9]
- Charitable, Religious, Fraternal and Interment Properties (ORS 307.130-.162). As discussed in more detail below, this category is the first place to look for an exemption for property of an organization that is described in section 501(c) of the Internal Revenue Code (the "Code").
- Housing Exemptions. There are numerous separate categories of exemptions relating to housing. The list includes nonprofit housing for the elderly,[10] low-income housing,[11] farm labor camps,[12] and two separate exemptions for student housing, depending on whether the housing is owned by a school[13] or by a nonprofit organization such as a fraternity or sorority.[14]

*continued on page 4*

# Public Law 86-272: A Primer

## Part 2

*Valerie Sasaki, KPMG LLP*

This article is the second of a two part series. The first part of the article discussed permissible and impermissible activities under Public Law 86-272 ("PL 86-272"). It also discussed the extent to which the activities of an agent or independent contractor fall within the scope of P.L. 86-272. This part of the article will examine P.L.86-272 in the context of state taxing mechanisms with particular attention to typical problems encountered by practitioners.

## I. Public Law 86-272

P.L. 86-272 is codified at Section 381, et seq, of Title 15 of the United States Code. It prevents state and local jurisdictions from imposing a net income tax on the income derived from sources within the jurisdiction by any person in interstate commerce, if the only business activities within the state by or on behalf of such person during the taxable year is "the solicitation of orders by such person (or his representative) in the state for sales of tangible personal property, where the orders are sent outside the state for approval or rejection, and if approved, are filled by shipment from a point outside the state." 15 USC §381(a)(1) and (2).

By its terms, PL 86-272 protection is limited to taxes imposed on net income tax , transactions involving solicitation for the sale of tangible personal property in interstate commerce, and transactions where orders are approved and fulfilled from out of state. If the activities of a company, or its representatives, fall within the safe harbor protections, income derived from the transaction will be exempt from the state or local income tax.

## II. Taxes on a base other than "net income"

The protections of P.L. 86-272 are explicitly limited to taxes imposed on "net income." Several U.S. jurisdictions impose their primary tax mechanism on a base other than net income. Two of the most commonly encountered are Michigan's Single Business Tax and Washington's Business & Occupation tax.

Michigan's Single Business ("SBT") tax is imposed upon "the privilege of doing business" in Michigan. M.C.L. §208.31(3); M.S.A. §755.31.(3). In *Gillette Company v. Dept. of Treasury*, 198 Mich. App. 303 (1993), the Michigan Court of Appeals examined a situation very similar to *Wrigley*, discussed in the prior article. In *Gillette* the taxpayer was a Delaware corporation with a sales staff that called on customers in Michigan. The sales representatives took orders from Michigan customers that were sent to the main Gillette office in Massachusetts for approval. The sales force also reviewed customers' displays, informed customers of promotions, and replaced defective merchandise. The Michigan treasury department audited the taxpayer and assessed single business tax against the taxpayer for these sales.

The Court of Appeals found that the protections generally afforded by P.L. 86-272 didn't apply to the taxpayer because Michigan's SBT was a "consumption-type value added tax." *Gillette*, at 308. It cited an earlier decision in describing how a corporate income tax differed from a value added tax ("VAT"):

> A corporate income tax is based on the philosophy of ability to pay, as it consists of some portion of the profit remaining after a company has provided for its workers, suppliers, and other creditors. A VAT on the other hand, is a much broader measure of a firm's total business activity. Even if a business entity is unprofitable, under normal circumstances it adds value to its products and, as a consequence will owe some VAT. *Gillette*, at 308-309.

The court continued to note that a VAT corresponds more directly with the volume of governmental services received by the taxpayer. A VAT would be a more stable source of state revenue, as it would be less likely to fluctuate as widely as a tax on net income. Even though "business income or federal taxable income is a starting point for and a component of the tax base," the court held that Michigan's SBT was not a net income tax "because of the extensive adjustments" required to compute the tax. *Gillette*, at 311. The court concluded by holding that the appropriate nexus standards were the Commerce Clause standards set forth by the U.S. Supreme Court in *Complete Auto Transit v. Brady*, 430 US 274 (1977).

One issue that often arises with Oregon clients involves cross-border transactions. Washington's Business and Occupation ("B&O") tax is imposed on the privilege of engaging in business activities in Washington. R.C.W. §82.04.220. The tax bases include the value of the products, gross proceeds of sales, or gross income of the business, and are applied depending on the taxpayer's business classification. None of these bases are equivalent to or measured by net income.

In WTD 93-281, the Washington Department of Revenue addressed a situation where the taxpayer was a manufacturer and worldwide distributor. Its offices and distribution centers were located outside of Washington. It employed one salesperson in Washington to solicit and take orders from Washington customers. All orders were shipped by common carrier from out-of-state distribution centers. The department assessed retailing and wholesaling B&O tax against the taxpayer.

The department cited the Washington Supreme Court's holding in *Tyler Pipe Industries* that the B&O tax is not a tax on net income. *Tyler Pipe Industries v. Dept. of Revenue*, 105 Wn.2d 318 (1986), rev'd on other grounds 483 U.S. 232 (1987). Similar to the Michigan court's holding, the department held that appropriate nexus standards were the Commerce Clause standards set forth in *Complete Auto Transit*.

In both Michigan and Washington, the protections of P.L. 86-272 are not available to taxpayers simply because the tax base is something broader than net income.

## III. Problems in application

Corporate taxpayers are required to calculate their income using a three-pronged apportionment formula based on property, payroll and sales, or some combination of these factors. The safe harbors established by P.L. 86-272 had the potential to create "nowhere income," that is, sales income that is not taxed by either the origination or destination state. In response to this issue, certain states (including Oregon and California) require sales made from the state to a destination where the taxpayer does not have nexus to be "thrown back," or included in the numerator of the sales factor. Public Law 86-272 created a situation in which corporate taxpayers were able to claim a safe harbor for their sales into certain jurisdictions. That is, these sales were not taxable because the taxpayer did not have sufficient nexus to be taxed. Thus, in states with "throw back" rules, these sales should be included in the corporation's sales factor numerator.

Many states require or allow unitary combined reporting for multi-entity taxpayers. The application of P.L. 86-272 by corporate taxpayers, and subsequent interpretation by the courts, resulted in some confusion about "whose" sales were afforded protection within a unitary group. One of the major issues focused on whether the parent of a wholly-owned subsidiary making sales into a jurisdiction should be afforded P.L. 86-272 protection if the parent itself is not conducting the protected sales activity. The California State Board of Equalization ("SBE") promulgated two of the most influential decisions on this point: *In the Matter of the Appeal of Joyce, Inc.*, SBE 66-SBE-070 (Nov. 23, 1966) ("*Joyce*"), and *In the Matter of Finnegan Corporation I* and *II* (88-SBE-022 (Aug. 25, 88), 88-SBE-011-A (Jan. 24, 1990) ("*Finnegan*") Although a full discussion of the ramifications of *Joyce* and *Finnegan* is beyond the scope of this article, a summary of their holdings illustrates two models that the states have adopted to deal with the legacy of P.L. 86-272.

In *Joyce*, the SBE determined that receipts from sales by a corporation are not includable in the numerator of a State's sales factor, unless the corporation itself is taxable in the state, even other though members of a unitary group are taxable. Essentially, each corporation in the unitary group is treated as a "taxpayer" when determining whether sales will be thrown back to California when computing the sales factor. This means that, the income attributable to the California activities of a corporation that is protected under P.L. 86-272 is excluded from the sales factor numerator of the combined group.

In *Finnegan*, the SBE reversed its position and ruled that the term "taxpayer" means all the combined corporate entities found within a combined unitary group. Under this rule, the sales made in a foreign jurisdiction will not be thrown back and included in the California sales factor merely because the corporation making the sale does not have nexus with the jurisdiction, so long as other entities within the unitary group have nexus with the jurisdiction.

In *Appeal of Huffy Corporation*, 99-SBE-005 (April 22, 1999), the SBE concluded that Joyce was the better law based on the need to promote uniformity under the Uniform Division of Income for Tax Purposes Act, and to more clearly reflect the fundamental principles of combined reporting. Currently, most states employ the *Joyce* rule in determining whether to throw back outgoing sales. However, a minority of states have adopted the *Finnegan* rule.

## IV. Conclusion

As stated in the previous article, Public Law 86-272 provides a useful safe harbor for clients who have sales into non-domicile jurisdictions. However, a prudent practitioner should consider the nature of the potential tax in the sales destination jurisdiction. As we saw above, neither Michigan and Washington base their main corporate tax on "net income." Thus, the P.L. 86-272 safe harbors do not apply in those jurisdictions.

Additionally, a prudent practitioner should determine, not only whether a client's sales are entitled to the protections of P.L. 86-272, but also whether the sales' origination state will require the throw back of those sales. When advising potential unitary combined filers, a practitioner should also determine whether the origination state has adopted the rule in *Joyce* or the rule in *Finnegan*.

- Certain Business Property. Many exemptions have been included over the years to protect agricultural interests or to promote or incent various business or industrial activities. Examples are the exemptions for crops (including nursery stock and Christmas trees),[15] farm machinery and equipment,[16] inventory,[17] certain pollution control facilities of cooperatives or corporations,[18] ethanol production facilities,[19] environmentally sensitive logging equipment,[20] and cargo containers. [21]
- Construction in Progress. There is a limited exemption available for certain commercial facilities under construction. The maximum duration of the exemption is two years. This exemption typically benefits only manufacturing facilities, as nonmanu facturing property is eligible for the exemption only if the facility will be first used or occupied not less than one year from commencement of construction.[22]
- Veterans and Their Survivors. Disabled low-income war veterans are allowed an exemption of up to $8,750 of the assessed value of a homestead or personal property.[23] The maximum exemption amount increases to $11,670 if the gross income of the veteran is below a specified dollar amount for the year. A surviving spouse of a veteran of the Civil War or the Spanish-American War, if "remaining unmarried," is entitled to an additional exemption of $2,000.[24]

## Eligibility for the Charitable Exemption

The Department of Revenue has described in detail the standard by which county assessors are to review applications for exemption in the "charitable" category.[25] Case law indicates that the criteria applicable to the property owner often overlap with, but are not identical to, the criteria for federal exemption pursuant to section 501(c)(3) of the Code. To qualify for the charitable property tax exemption:

1. The organization must have charity as its primary, if not sole, object;
2. The organization must perform in a manner that furthers that object; and
3. The performance must involve a gift or giving.[26]

However, as the administrative rule points out, federal exemption is not determinative, and the assessor is free to make a determination based on all of the facts, independently of whether the Internal Revenue Service has recognized the entity as exempt for federal income tax purposes.[27] Furthermore, there are additional requirements for the Oregon property tax exemption for charitable property, including:

- The organization must be incorporated. This is a major difference with the Code, which expressly extends the exemption to "[c]orporations, and any community chest, fund, or foundation."[28] Consider the following scenarios:
  - ❑ An organization exempt under section 501(c)(3) of the Code forms a limited liability company ("LLC") together with a business corporation for the purpose of holding a low-income housing project. Pursuant to the federal check-the-box regulations, the LLC is classified as a partnership.[29] For income tax purposes, the partnership is a pass-through entity and its income is not taxable. Rent passed through to the exempt entity also is not subject to income tax or to unrelated business income tax.[30] Query whether the property is subject to Oregon property tax because it is owned by a partnership, not a corporation.[31]
  - ❑ A trust is recognized as exempt from federal income tax under section 501(c)(3) of the Code.[32] Query whether property held by the trust is exempt from Oregon property tax if the trust is not classified as a corporation pursuant to the check-the-box regulations.
- The property for which exemption is sought must be used primarily for charitable purposes. The administrative rule states that use primarily as a bingo parlor to raise funds for the entity is not sufficient for property tax exemption.[33] Property may be taxable in part and exempt in part, depending on its actual use.[34]

## Eligibility for Leased Property

Until 1977, leased property was taxable even if the property would have been exempt if the lessee had owned the property. A classic example involved the administration building of the Medford School District, which was determined to be taxable because it was built on land rented from a private owner.[35] In an even more counterintuitive example, a portion of a hospital building that was used by the Linn County Health Department to vaccinate preschool children and provide alcohol counseling was taxable because the county was the lessee of the property.[36] The fact that the lessor in that case was a charitable, nonprofit hospital made no difference. These two situations were presented to the Oregon Legislative Assembly during the same session in 1977, but by two different groups. One group decided to begin its lobbying efforts in the House, while the other sought relief in the Senate. The result was two separate statutory provisions that are similar but not identical. As former Judge Byers of the Oregon Tax Court stated, "[T]his is an instance where the ambidextrous legislature failed to coordinate its handiwork."[37]

**Know Your Owner: Differences Between Property Leased from a *Taxable vs. Exempt Owner***

After some amendments, today ORS 307.112 applies to property of a taxable owner, while ORS 307.166 applies to property of an exempt owner. Noticeable differences

remain between the two lessee exemption statutes, which do not appear to be based on any policy differences. For example:

- ORS 307.112 applies only to lessees that are exempt pursuant to certain specifically enumerated statutes, while ORS 307.166 applies to lessees that are exempt under any provision in ORS chapter 307.
- ORS 307.166 explicitly extends the exemption to sublessees, while ORS 307.112 contains no such provision. The Tax Court discussed this issue last year in *Erickson v. Department of Revenue*,[39] but did not decide whether property held pursuant to a sublease is entitled to exemption if the owner is a taxable owner. In that case, the sublessee was ineligible for exemption in any case because it had failed to apply. In dicta, the court noted that an argument could be made that the term "lessee" necessarily includes a sublessee, but that a counterargument also could be made that the legislature knows how to distinguish between a lessee and a sublessee and chose not to do so in ORS 307.112. The court also noted, however, that neither the Department of Revenue nor the county had objected to the idea that property that is the subject of a sublease can be exempt pursuant to ORS 307.112, if a new application is filed.
- The administrative rule under ORS 307.112 defines a "Lease" as a contract of at least one year and excludes a month-to-month tenancy.[40] The rule under ORS 307.166, however, states that a lease "means any written document that communicates the terms and conditions of tenancy" and excludes only oral contracts.[41]

## Below-Market Rent Requirements

Both lessee exemption statutes require the filing of an exemption application. In addition to the timing requirements discussed below, the lessee exemption statutes require the lessee to disclose the terms of the lease and to describe the lessee's use of the property. Both statutes require that the rent be established to reflect the savings from below market rent. In the case of property owned by a taxable owner, ORS 307.112 requires that the lease itself contain an express provision that the rent is below market. Even though an express provision arguably is not required for a lease from an exempt owner, such a provision enables the applicant to more easily satisfy the assessor that the exemption should be allowed.

The Department of Revenue's administrative rule under ORS 307.112 provides guidance on the below-market rent requirement and applies to both statutes.[42] A requirement in the lease that the lessee pay any property tax is not sufficient proof that the lessee gets the benefit of the exemption, although a lease that charges market rent, recites that the rent is established at market rates, acknowledges that the lessee intends to seek exemption, and requires the lessee to pay any property tax should suffice. The administrative rule requires the applicant to include with the application proof that the lease passes the tax savings to the lessee. Proof may include a comparison to the current rental rates for nonexempt tenants at the same location, historic rental data for the property that is the subject of the application, an appraisal, or a rent study of comparable or similar properties.

*Practice Tip*: Because of the below-market rent requirement and the proof required in the application, it is best to begin working on the exemption application as soon as it appears that the lease transaction will actually close. If a realtor or broker is involved, that is also the best time to request a study of rents for comparable properties. Also, time permitting, assessors often are willing to review lease language and proof of market rent before a final application is submitted.

## Filing Requirements for Exemption

Most property tax exemptions require that an application be filed with the assessor's office.[43] The period for filing generally is from January 1 through April 1.[44] If approved, the exemption will be granted for the following property tax year, which begins July 1.

*Example*: On October 31, 2004, Betty Benefactress donates her small Northwest Portland bungalow to the newly founded Museum of Modest Art ("MOMA"). MOMA's mission is to promote the works of local artists of average talent. The board of MOMA, having raised only a few small donations, repaints Betty's house, hangs its meager collection (including most of Betty's own oeuvre), and opens its doors to the public in mid-January 2005. MOMA files an application for exemption with the county assessor on March 31, 2005. The assessor determines that all of MOMA's property is entitled to the exemption pursuant to ORS 307.130. On the property tax statement mailed in late October 2005, MOMA's property is shown as exempt. No tax is due on the usual due date of November 15, 2005.

**Property Acquired March 1 Through June 30**

The deadline to apply for exemption for property acquired during the months of March, April, May, or June is 30 days after the "date of acquisition"[45] or, in the case of leased property, 30 days after the lease is "entered into."[46]

*Practice Tip*: The terms "date of acquisition" and "entered into" are not defined by statute or in the administrative rules. An express effective date generally will begin the running of the 30 day period, even if that date precedes the signing of the lease.[47] Some assessors take the position that the earliest date shown on the relevant documents begins the running of the 30-day period. Thus, for example, it is easy to miss the deadline for a lease that recites that it is "entered into effective as of" March 1 but is not signed (and therefore cannot be filed with the assessor) until April 1.

**Late Filing**

Upon payment of a fee, an exemption application may be filed on or before December 31.[48] The fee is the greater of $200 or one-tenth of 1 percent of the real market value of the property as determined by the assessor. Note that the property must have been held and used for the requisite exempt purpose on July 1. The status of property as exempt or taxable for a given property tax year may not be changed after July 1 of that tax year, even if the use or ownership of the property changes during that tax year. [49]

*Example*: On November 1, 2004, one day after the donation, MOMA board member Phyllis Steen receives the 2004-05 property tax statement for Betty's house. The statement shows a real market value of $450,000, an assessed value under Measure 50 of $180,000, and taxes due in the amount of $2,700. Aware of MOMA's meager budget, Phyllis files an exemption application by December 31, 2004. Phyllis correctly computes the late fee at $450 ($450,000 x 0.001). On January 20, 2005, however, the assessor properly issues a letter denying the application because the property was not held and used for exempt purposes on July 1, 2004.

FOOTNOTES:

1. C.W. Macy, "Some Legal and Administrative Aspects of the Property Tax in Oregon," 33 Or L Rev 179 (1954).
2. *The Tax Cases Under the Act of March, 1841, Chap. 23*, 12 G & J 117, 143 (Md 1841).
3. *See* General Laws of Oregon, ch 57, § 4 (Deady 1945-64).
4. *See 2 Oxford English Dictionary* at. 2149, 2866 (compact ed 1971).
5. *See, e.g., Hazelden Springbrook, Inc. v. Yamhill County Assessor*, No. TC-MD 031037D, 2004 WL 1237628 at *3 (Or Tax Mag Div May 11, 2004) (citation omitted).
6. *But see, e.g.*, ORS 285C.175 (property in regular Enterprise Zone), 65.855 (certain cemetery properties).
7. ORS 307.123.
8. ORS 307.111.
9. ORS 307.080.
10. ORS 307.241-.245 (for federal- or state-subsidized housing), 307.370-.385 (nonprofit rental housing for veterans and survivors).
11. ORS 307.515-.537, 307.540-.548, 307.092.
12. ORS 307.480-.510.
13. ORS 307.145.
14. ORS 307.460 (exemption from school and educational district taxes only).
15. ORS 307.315-.325.
16. ORS 307.390-.398.
17. ORS 307.400.
18. ORS 307.405-.430.
19. ORS 307.701.
20. ORS 307.824-.831.
21. ORS 307.835.
22. ORS 307.330.
23. ORS 307.250-.280.
24. ORS 307.300.
25. OAR 150 307.130 (A).
26. *See Hazelden Springbrook*, 2004 WL 12376289 (denying charitable exemption for nonprofit corporation that had obtained recognition of exemption pursuant to IRC § 501(c)(3)).
27. OAR 150 307.130 (A)(1)(b).
28. IRC § 501(c)(3).
29. Treas Reg § 301.7701 3(b)(1)(i).
30. IRC § 512(b)(3).
31. *Cf. Linn-Benton Housing Authority v. Linn County Assessor*, 17 OTR 1 (2003) (public property exemption under ORS 307.090 denied to partnership composed of public housing authority and others). Although there is no case law on point, property should be exempt if held by a single-member LLC of which the sole member is a corporation that otherwise is eligible for a property tax exemption, assuming that the LLC is a disregarded entity under the check-the-box regulations. The LLC should be disregarded for Oregon property tax purposes as well as for income tax purposes. See ORS 63.810.
32. Certain trusts are eligible for federal income tax exemption. *See generally, Tax-Exempt Organizations: Organizational and Operational Requirements*, BNA Tax Management Portfolio 869, text at n. 897.
33. OAR 150 307.130 (A)(4)(a).
34. OAR 150 307.130 (A)(4)(d)(B).
35. *See Mercy Health Promotion v. Dept. of Rev.*, 310 Or 123, 128 29, 795 P2d 1082 (1990), aff'g on different grounds 11 OTR 207 (1989).
36. *See Albany Gen. Hospital v. Dept. of Rev.*, 6 OTR 446 (1976), aff'd 277 Or 727, (1977).
37. *Mercy Health*, 11 OTR at 211.
38. The terms "taxable owner" and "exempt owner" are used for convenience, although it is the property that is either taxable or exempt, depending not only on the category of owner but also on the nature of the use.
39. 17 OTR 324 (2004).
40. OAR 150-307.112(11), (12).
41. OAR 150-307.166(6).
42. *See* OAR 150-307.112, 150-307.166(5).
43. *But see, e.g.*, ORS 307.175 (property equipped with alternative energy system).
44. ORS 307.162(1), 307.112(4).
45. ORS 307.162(1)(b).
46. ORS 307.112(4)(a)(A), 307.166(3)(A)(a).
47. *See American Lung Association v. Dept. of Rev.*, 14 OTR 92 (1997).
48. *E.g.*, ORS 307.162(2), 307.112(4)(a)(B). Other exemption statutes generally contain a similar late filing provision. In addition, note the discretionary availability of relief when failure to file timely was caused by "hardship," as defined. *See* ORS 307.475 (requiring application no later than December 15 of year in which hardship occurred).
49. ORS 311.410.

# News From the Oregon Tax Court

## I. Rules of the Court

On January 1, 2005, the revised Rules of the Oregon Tax Court, Regular Division and Magistrate Division, took effect. The Tax Court reviewed most of those revisions in the Summer 2004 Taxation Section Newsletter. In addition to those, the Tax Court made a few other revisions. One important revision was the addition of a rule regarding the filing procedure for special designation petitions. *See* TCR 1 (C)(3). The rule states that, except upon the agreement of all parties, a petition for special designation may not be filed in a case if there is a mediation pending or within 30 days of a scheduled trial. Another addition covers media coverage in courtrooms. *See* TCR 3; TCR-MD 21. One more change adds a specific time element to the TCR-MD 10 exchange of exhibits rule, specifying that the end of the 10th day is "5:00 P.M. local time of the recipient."

The full text of those and all other revisions to the Rules, as well as information on our annual rules revision process, can be found on the Tax Court's website, www.ojd.state.or.us/tax, and in the Oregon Appellate Court Advance Sheets. As part of our annual rules revision process, the Tax Court accepts rule revision suggestions from the public. Comments regarding rule revisions should be made in writing and sent to Bridget Musgrave, 1163 State Street, Salem, Oregon 97301.

## II. Magistrates

There are now five magistrates in the Magistrate Division of the Tax Court. Magistrate Sally Kimsey left the Tax Court in October 2004. Jill Tanner continues to be the Presiding Magistrate.

## III. Roundtable: Part II

Building on the success of the Tax Court's 2003 Roundtable CLE, the Tax Court is currently planning its next Roundtable CLE. We are considering hosting three roundtable events from September 2005 through February 2006. The Tax Court is reviewing the format and considering whether to hold events with a format similar to that of the first Roundtable or with an open discussion format, perhaps focused on particular topics of interest to the Tax Court and participants of the program. Due to the successful turnout last year, one of those events will be held in Salem. Other possible sites include Portland, Medford, Bend, and/or Pendleton. We welcome your suggestions on the format, topics, and locations. Please send them to Bridget Musgrave, 1163 State Street, Salem, Oregon 97301, or *Bridget.P.Musgrave@ojd.state.or.us*.

## IV. Mediation – Magistrate Division

All Magistrates are trained and experienced mediators. Effective August 2004, some changes were made to the operation of the mediation program in the Magistrate Division. Under the new operating guidelines, the names of Magistrates who expressed an interest in mediating appeals were put in a mediating pool. Magistrates can decide to mediate appeals originally assigned to them. In the case where an originally assigned Magistrate does not want to mediate an appeal, the Presiding Magistrate will assign the appeal to one of the Magistrates in the mediating pool. The court expects these changes to further strengthen the already successful mediation program.

## Tax Humor

- Insanity comes from overtaxing a clever mind.
- There are two sides to every tax issue, until we take one.
- April 15 is the only day when blanks can kill.
- The path of civilization is paved with tax receipts.
- Nothing has so stimulated the writing of fiction as Schedule A.
- Patrick Henry should come back and see what taxation with representation is like.
- One hopeful note on hidden taxes is that there can't be that many more places to hide them.
- A certain Senator recently told us that "The average American is not tax conscious." That's very true. If he shows signs of coming to, he is immediately struck down with another tax.

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