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JUDGE



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Before the Public Officials Compensation Commission  
Comments of Henry C. Breithaupt  
Judge, Oregon Tax Court

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Thank you for allowing me to present information regarding the Oregon Tax Court and its place and function in the Oregon Judicial Department.

This Commission deals with important and sensitive issues relating to the expenditure of public funds. Equally important and sensitive in our state are questions relating to the obligations of citizens and businesses to pay the taxes that fund government services. In our constitutional democracy, questions inevitably arise as to whether the legislature has acted within constitutional limits in defining the tax obligations of taxpayers and whether the executive branch of government, through the Department of Revenue or a county official, has properly applied the statutes enacted by the legislature. Since 1961, the Oregon Tax Court has had the exclusive jurisdiction to make the initial judicial determinations as to these questions. The work of the court is primarily in the areas of income taxation and property taxation. The Oregon Tax Court was the first judicial branch state tax court created in the nation. Today it is one of three such courts, the others being in Indiana and New Jersey.

From 1961 until 1997, the Tax Court heard cases after an initial dispute resolution proceeding that occurred within the Department of Revenue. In 1997, the initial dispute resolution proceeding was transferred to the newly created Magistrate Division of the Tax Court. Currently three Magistrates, who are appointed judicial officers, make the initial decisions on most tax disputes. They do their job well, as evidenced by the fact that an appeal is taken to the Regular Division of the Tax Court – my division – in fewer than ten percent of the

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cases. The decisions of the Magistrate Division and the Regular Division are in writing and set forth the analysis leading to the outcome. That method of decision is important because the analysis can serve as guidance to other taxpayers and their advisors as well as government officials. Any party dissatisfied with a decision of the Regular Division may appeal that decision to the Oregon Supreme Court. While the Tax Court is a trial court, its proceedings and decisions often appear to be similar to those of an intermediate court of appeal.

The Judge of the Tax Court, with whose compensation you are concerned, is the presiding judge of the court with administrative authority over and responsibility for the Magistrates and staff of the Court. These matters can include promulgation and review of the procedural rules for the court, budget preparation, personnel issues, training, and public relations. The judge must, of course, discharge these responsibilities within the rules and context of the Judicial Department as a whole. During my tenure on the court, the job has also included downsizing the court from 21 persons to 11 persons as a result of decrease in the court's docket.

There have been six judges in the history of the Tax Court. Most of those had substantial experience in the private practice of tax law or as lawyers for the Department of Revenue prior to their appointments or elections to judicial office. The statute creating the Tax Court authorizes a Governor with an appointment opportunity to request recommendations from the Oregon State Bar as to persons particularly experienced in the area of tax law. Of the six judges who have served on the court, most also ended their legal and judicial careers with that service.

Thank you again for this opportunity to appear before you. I would be happy to answer any questions you have.