

IN THE SUPREME COURT OF THE STATE OF OREGON

VILLAGE AT MAIN STREET
PHASE, II, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,
State of Oregon; and
CLACKAMAS COUNTY
ASSESSOR,

Defendants-Appellants.

Tax Court No. 5054

Supreme Court No. S061133
(Control)

VILLAGE AT MAIN STREET
PHASE, II, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,
State of Oregon; and
CLACKAMAS COUNTY
ASSESSOR,

Defendants-Appellants.

Tax Court No. 5055

Supreme Court No. S061137

Continued...

VILLAGE RESIDENTIAL, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,

State of Oregon; and
CLACKAMAS COUNTY
ASSESSOR,

Defendants-Appellants.

Tax Court No. 5056

Supreme Court No. S061138

VILLAGE RESIDENTIAL, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,

State of Oregon; and
CLACKAMAS COUNTY
ASSESSOR,

Defendants-Appellants.

Tax Court No. 5057

Supreme Court No. S061139

APPELLANT CLACKAMAS COUNTY ASSESSOR'S OPENING BRIEF

Direct Appeal from the limited judgments of the Oregon Tax Court entered
January 31, 2013,
The Honorable Henry C. Breithaupt.

Continued...

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APPELLANT'S OPENING BRIEF

I. STATEMENT OF THE CASE.

A. Nature of the Action and Relief Sought.

In 2011 the legislature passed House Bill 2572, effective September 29, 2011, which adds Oregon Revised Statutes Section 305.287 (the statute). Or Laws 2011 ch 379 § 2. The measure was passed to correct inequities in the property tax appeal system. The statute allows any party to an "appeal" to bring all components of value before the decision maker. The issue is whether the statute applies to Respondents' appeals.

Plaintiffs-Respondents Village at Main Street Phase II and Village Residential LLC (referred to collectively as Village) own apartment rental properties (the properties) in Clackamas County. Village appealed only the improvement (building) values; the cases were tried in the Magistrate Division of the Oregon Tax Court (the Magistrate Division) in August, 2011.¹

Village exercised its right to appeal under ORS 305.501(5)(a) to the Regular Division of the Oregon Tax Court (the Tax Court or Regular Division) on January 26, 2012. The parties filed motions to determine the applicability of the statute to the appeals. Appellant Clackamas County Assessor (the

¹ These cases are related to other cases which came before this court, and are described in the Department of Revenue's brief.

Assessor) also filed motions to amend its answers asserting his statutory rights, which the tax court denied. Appellants seek reversal of the judgment of the Tax Court denying the applicability of ORS 305.287, and an order allowing the Assessor's motions to amend the answers.

B. Nature of the Judgment.

The parties filed motions regarding the applicability of ORS 305.287, and the Assessor filed a motion to add a counterclaim asserting the Assessor's statutory right to a determination of all components of value on appeal. (ER 1-12; 27-35). The Tax Court entered limited judgments denying the Assessor's motions to amend, and certifying that judicial efficiency would be served by immediate appeal of the judgments. (ER 36-43). The Tax Court's rulings were provided in its written order to the parties' motions, which were incorporated into its limited judgments. (ER 13-26).

C. Basis of Supreme Court Jurisdiction.

This appeal is taken pursuant to ORS 305.445.

D. Dates of Entry of Judgment and Filing of Notice of Appeal.

The limited judgments were entered on January 31, 2013. (ER 36-43). Appellants timely filed their notices of appeal on February 27, 2013 and February 28, 2013; the cases are consolidated for appeal.

E. Questions on Appeal.

The issues on appeal are: (1) did the Tax Court err in construing ORS 305.287 to apply only in the Magistrate Division and not to appeals before the Board of Property Tax Appeals (BOPTA) or the Regular Division; (2) did the Tax Court err when it concluded that Village filed only one “appeal” within the meaning of ORS 305.287, therefore concluding that the statute does not apply “retroactively” to their appeals; and (3) did the Tax Court err in deciding the Assessor lacks a right under ORS 305.287 to amend his answers to seek a determination of the total real market value of the properties on appeal?²

F. Summary of Arguments.

The legislature enacted ORS 305.287 to correct inequities in the property tax appeal process. Counties assess property tax accounts as a whole³, but a taxpayer can strategically appeal only one component of value, such as the improvements (known as a component appeal). See *Nepom v. Dept. of Revenue*, 272 Or 249, 536 P2d 496 (1975). A component appeal often results in an artificially low and inequitable value for the property, particularly after Measure 50 was enacted (which limits the amount and

² The first two assignments of error are related, but conceptually distinct.

³ *Flavorland Foods v. Washington County Assessor*, 334 Or 562, 574-75, 54 P3d 582 (2002) (“unit of property” in Article XI, section 11(1)(a) of the Oregon Constitution refers to all property, land and improvements, in a tax account); ORS 308.142(1).

timing of property tax increases). ORS 305.287 was specifically enacted to correct this inequity. The measure took effect on September 29, 2011.

By its plain language ORS 305.287 applies at all levels of property tax appeals. The statutory text authorizes a party to seek a determination “from the body or tribunal”, *i.e.* BOPTA or a court. Both the text and legislative history show that the legislature intended the statute to apply to multiple appeal bodies in the property tax system. Despite the plain text, the Tax Court erroneously concluded that the statute applies only to an appeal filed in the Magistrate Division. The Tax Court’s construction ignores the language “the body” to which an appeal can be made, and impermissibly narrows “tribunal” to only one level of tax court, frustrating the purpose of the statute.

In addition, an appeal of value to BOPTA or the Regular Division is an “appeal” within the meaning of ORS 305.287. The Village appeals are new appeals subject to ORS 305.287. The statute authorizes any party to an “appeal” to bring all of the components of value before the decision maker. The Tax Court erred in construing the statute to apply only at the Magistrate level. This is clear from context because an appeal from the Magistrate Division to the Regular Division is a new appeal; under ORS 305.425(1) it is an “original, independent proceeding” tried anew to the Tax Court. The

courts are separate appeal tribunals with different authorities.

The Tax Court then compounded its error by construing Village's appeals to the Regular Division as "one appeal" at both the Magistrate and Regular Division levels. The Tax Court used the filing date of Village's appeals filed in the Magistrate Division to conclude that ORS 305.287 does not apply "retroactively" to these appeals. This is not a retroactive application. Village's appeals to the Regular Division are "original, independent" appeals filed after the effective date of the statute. As such, these appeals are subject to the scope of matters on appeal created by the legislature in ORS 305.287.

For the same reasons, the Tax Court erred in denying the Assessor's motion to amend his answers to assert the right under ORS 305.287 to have the total real market value of the properties determined at trial.

G. Statement of Material Facts.

Village owns apartment rental properties in Clackamas County. (ER 2-3). Village appealed the real market value of the buildings for three tax lots for three tax years. (ER 2-4). The cases were consolidated and tried to the Magistrate Division in August, 2011. (ER 2; 4).

In 2011 the law changed to allow any party to an "appeal" to seek a determination of all components of value for the property. Or Laws 2011 ch

379 § 2 (codified as ORS 305.287). The legislation took effect September 29, 2011. *Id.*, Section 3. Village appealed the Magistrate's decisions to the Regular Division on January 26, 2012. (ER 4; 16). The parties filed motions to determine the applicability of the statute to the Village appeals. (ER 1-14). The Assessor also filed motions to amend his answers to add a counterclaim asserting the statutory right to have all components of value for the properties determined on appeal. (ER 27-35). The Tax Court denied the Assessor's motions and entered limited judgments in favor of Village, incorporating its reasoning on the parties' motions into the judgments. (ER 13-26; 36-43). Appellants appeal from those limited judgments.

II. ASSIGNMENTS OF ERROR.

A. First Assignment of Error.

The Tax Court erred as a matter of law in construing ORS 305.287 to apply only to an appeal filed in the Magistrate Division.

1. Preservation of Error.

The Assessor filed motions to determine the applicability of ORS 305.287 to Village's appeals and to amend the answers to assert the statutory right to have the entire real market value of the property determined on appeal. (ER 1-12; 27-35).

2. Standard of Review.

The court reviews the Tax Court's decision for "errors or questions of law or lack of substantial evidence in the record to support the Tax Court's decision or order." ORS 305.445.

3. Argument.

The Tax Court erroneously concluded that the statute applies only to an appeal filed in the Magistrate Division. (ER 18-24). The plain language of the statute, and the legislative history and context, show that the legislature intended ORS 305.287 to apply to all levels of property tax appeals.

a) **The plain language of ORS 305.287 applies to more than one level of appeal in the tax court system.**

The legislature expanded the scope of issues in property tax appeals by enacting ORS 305.287, which provides:

"Whenever a party appeals the real market value of one or more components of a property tax account, any other party to the appeal may seek a determination **from the body or tribunal** of the total real market value of the property tax account, the real market value of any or all of the other components of the account, or both." (Emphasis added).

The statute was passed to close the strategic loophole created by *Nepom*, 272 Or 249, and Measure 50. See Audio Recording, Senate Committee on Finance and Revenue, HB 2572, May 25, 2011, at 36:04-38:32 (Representative Barnhart).

The statute authorizes any party to a component appeal to ask the decision maker to consider all components of value.⁴ *Id.* Before the statute, a taxpayer could strategically appeal only one component of value, such as the improvements, and the assessor or state could not raise the issue of the value of the other components, even if another component was undervalued (eg., land). Component appeals resulted in inequitably lower market and assessed values for the properties.⁵ *Id.* See also Summary of Testimony of Multnomah County. (ER 12). This inequity was compounded by Measure 50, which limits the Assessor or state's ability to add value to the tax roll (maximum assessed value cannot increase more than three percent per year.)⁶ Due to Measure 50, an assessor can only place the value of new improvements, such as the apartment buildings here, on the tax roll in the year the improvements were made, or the full value is lost forever.⁷ As discussed more fully in section (b), ORS 305.287 was specifically adopted

⁴ The Tax Court acknowledges the legislature expanded the potential issues on appeal when it enacted ORS 305.287. (ER 23).

⁵ The assessor is required to state the real market value of the land separately from the value of the buildings, structures and improvements on the tax roll. ORS 308.215(1)(e) and (f).

⁶ Article XI, section 11(1)(c); ORS 308.146(1).

⁷ Or Const, Art XI, section 11(1)(c)(A) and (d); ORS 308.146(3)(a) and ORS 308.153(1) (new property and new improvements added in year of improvement).

by the legislature to correct the unfairness of component appeals after Measure 50. Under ORS 305.287 when a taxpayer tries to limit its tax exposure by appealing only one component of value, another party to the appeal can ask the decision maker to consider all components of value (eg. land and buildings). ORS 305.287.

When construing a statute the court first considers the statutory text and context, and, if helpful, the legislative history. *State v. Mullins*, 352 Or 343, 349, 284 P3d 1139 (2012), citing *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). Text and context are primary, and are given primary weight. *Gaines*, 346 Or at 171. Where the language of the statute is clear, the court enforces the legislative intent as written. *Portland Gen. Elec. Co. v Bureau of Labor and Ind.*, 317 Or 606, 610, 859 P2d 1143 (1993).

ORS 305.287 authorizes a party to an appeal to seek a complete value determination “**from the body or tribunal.**” (Emphasis added). The plain text of the statute applies to more than one level of tax appeal. “[T]here is no more persuasive evidence of the intent of the legislature” than the statutory language. *Gaines*, 346 Or at 171.

“Body” and “tribunal” are not defined in ORS 305.287, but neither term is ambiguous. The court should give the terms their plain, natural meaning. *Colby v Gunson*, 349 Or 1, 5, 238 P3d 374 (2010) (internal citation omitted).

The legislature created BOPTA as the body which hears an initial challenge to real market or assessed value.⁸ If a party wishes to appeal from a BOPTA determination, an appeal may be filed at the Magistrate level. ORS 305.275. An appeal from the Magistrate Division can be filed in the Regular Division, which is an “original, independent” proceeding. ORS 305.425. See *also* ORS 305.501(5)(a) (any party “may appeal” to the Regular Division). The legislature created three statutory levels of appeal. BOPTA is the “body”, and both the Magistrate Division and Regular Division are “tribunals” to which an appeal may be taken. The plain language of the statute addresses all levels of tax appeals.

In addition, the use of both “body” and “tribunal” suggests the legislature intended the statute to apply to more than one level of appeal. See *State v. Stallcup*, 341 Or 93, 101, 138 P3d 9, 15 (2006) (legislature intends different meanings when it uses different terms in statute) (internal citation omitted).

Moreover, an appeal to the Regular Division is an appeal to a new

⁸ A property owner contesting real market or assessed value must first file an appeal with BOPTA; the filing is jurisdictional. See ORS 309.026(2); ORS 305.275(3) (unless the appeal involves industrial property assessed under ORS 305.403). Thus, the Tax Court errs when it states the legislature expressed a “goal” that tax disputes be first addressed in the Magistrate Division. (ER 21). Moreover, the court’s citations are not on point, and ignore the purpose and jurisdictional aspect of BOPTA, as noted here.

tribunal. See eg. ORS 305.404, which provides “as used in ORS 305.404 to 305.560 and other revenue and tax laws, ‘tax court’ or ‘Oregon Tax Court’ means the Oregon Tax Court created under ORS 305.405” [...].⁹ See also ORS 305.425 (appeal to Regular Division is an original, independent proceeding). The context of the property tax statutes suggests “tribunal” refers to **both** an appeal in the Magistrate Division and in the Regular Division. *Fresk v. Kraemer*, 337 Or 513, 520-21, 99 P3d 282 (2004) (context includes other related statutes).

By ignoring “body or tribunal” the Tax Court omits what the legislature has put in, violating ORS 174.010, and makes “the body” surplusage. The Tax Court’s interpretation further limits “tribunal”, i.e. the applicability of ORS 305.287, to an appeal filed only in the Magistrate Division. This interpretation is not supported by the statutory language. This court must construe the statute to give effect to all of its provisions. ORS 174.010.

Moreover, the legislature’s use of “**whenever** a party appeals” also suggests that the statute is not limited to one level of appeal. (Emphasis added). The Tax Court’s construction reads “whenever” out of the statute, and in effect replaces it with “when”, causing the phrase to mean “when a

⁹ This statute also provides “‘tax court’ may include either the regular division or the magistrate division of the Oregon Tax Court, or both.”

party appeals to the Magistrate Division”.¹⁰ The Tax Court’s construction is contrary to the plain language of the statute and its intended purpose, violating ORS 174.010.

To adopt the Tax Court’s interpretation this court has to find that the legislature intended ORS 305.287 to apply to only one level of appeal in the Oregon property tax system, despite the text which expressly addresses multiple appeal levels. The text and context (as well as legislative history discussed *infra*) show the legislature intended the statute to apply to more than one level of appeal.¹¹ The tax court erred as a matter of law in construing ORS 305.287 to apply only in the Magistrate Division.

b) The legislative history confirms the legislature intended the statute to apply to more than one level of appeal.

Legislative history may be used to confirm the plain meaning of the statutory language. *Gaines*, 346 Or at 173. The legislative history confirms the legislature intended the statute to apply to all levels of property tax

¹⁰ The term “whenever” is not ambiguous in the context of how it is used, as noted by the Department of Revenue in its brief. Thus, the real import of the Tax Court’s decision is its rewriting of the statutory terms “whenever” to mean “when a party appeals to the Magistrate Division.”

¹¹ The only level of appeal not subject to ORS 305.287 is an appeal to this court, whose scope of review is limited by ORS 305.445 to “errors or questions of law or lack of substantial evidence in the record to support the tax court’s decision or order”, and does not include new claims.

appeals.¹² Representative Barnhart, who carried the bill, testified that HB 2572 would allow a party to bring all components of value before the “various appeal bodies”, which was necessary to fix the problem created by component appeals after Measure 50. See Audio Recording, Oregon House Chamber Session, HB 2572, May 16, 2011, at 39:48 (Representative Barnhart). He referred to a party’s right to get the “local appeals board” and “tax court” to consider all components of the property, not just the component challenged by the taxpayer. See Audio Recording, Senate Committee on Finance and Revenue, HB 3572, May 25, 2011, at 36:04-38:32 (Representative Barnhart). This history shows the legislature intended the statute to apply at all levels of a tax appeal.

In addition, an exhibit provided to the Senate Finance and Revenue Committee by the Association of Oregon Counties discussed an appeal to a “magistrate or judge”. See Ex. DD to the Senate Finance and Revenue Committee, HB 2572, May 25, 2011. (App 1). “Judge” is a term used only in the Regular Division. See ORS 305.404; ORS 305.498. The legislative history confirms that the legislature intended the statute to apply at BOPTA and both levels of tax court when it used the terms “body or tribunal”.

¹² Some legislative history was provided to the Tax Court, but it did not rely on the history to construe the statutory terms. (ER 7-12; ER 13-26).

c) The Tax Court's construction frustrates the purpose of the statute.

Finally, the Tax Court's construction frustrates the purpose of the statute, and leads to unintended results. The legislature specifically enacted ORS 305.287 to provide a remedy for strategic component appeals. See Audio Recording, Senate Committee on Finance and Revenue, HB 2572, May 25, 2011, at 36:04-38:32 (Rep. Barnhart); House Revenue Committee Hearing, HB 2572, February 8, 2011, Exhibit C (Revenue Impact Statement, avoid "strategic appeals") (ER 10); Senate Finance and Revenue Committee Hearing, HB 2572, May 25, 2011, 572, Exhibit P (ER 11); Senate Finance and Revenue Committee Hearing, HB 2572, May 25, 2011, Ex. DD (Gil Riddell of Association of Oregon Counties) (App 1); Senate Finance and Revenue Committee Hearing, HB 2572, May 25, 2011, Ex. EE (Oregon State Association of County Assessors) (App 2-3).¹³

The Tax Court reasons that ORS 305.287 applies only to an appeal in the Magistrate Division. This construction of the statute frustrates the legislature's intent, and has unintended consequences. First, a party to a component appeal in the Magistrate Division can raise all components of

¹³ The Assessors are responsible for most of the day-to-day application of Oregon tax law. Their exhibits provided to the legislature show the Assessors' belief that the proposed legislation applies from BOPTA through the Regular Division. (App 2-3).

value pursuant to the statute, but loses that right under the Tax Court's reasoning if the Magistrate decision is appealed to the Regular Division, since in the Tax Court's view the statute does not apply in the Regular Division.

In addition, the Tax Court's construction has the additional unintended consequence of denying a party's right under ORS 305.287 to have all components of value determined when the case is specially designated to go directly to the Regular Division, as permitted by ORS 305.501 and Tax Court Rule 1. TCR 1¹⁴

Such results under the Tax Court's construction are contrary to the statutory language and the legislature's express intent to limit strategic component appeals by bringing all components of value before the decision maker on appeal. This court should avoid a construction of the statute which leads to a result inconsistent with the legislature's intent to correct the inequities in the property tax appeal system. *State v. Vasquez-Rubio*, 323 Or 275, 282, 917 P2d 494 (1996) (court should avoid a result inconsistent with the apparent policy of the legislation).

¹⁴ A taxpayer could raise only one component of value in its complaint at the Magistrate level, then petition the Regular Division to specially designate the case under ORS 305.501. If granted, the case moves directly to the Regular Division, and the other parties to the appeal could not, under the Tax Court's reasoning, ask the court to consider all components of value under ORS 305.287.

B. Second Assignment of Error.

The Tax Court erred when it construed the Village appeals to the Regular Division as “one appeal” in both the Magistrate and Regular Division levels, thereby concluding the statute does not apply “retroactively” to their appeals.

1. Preservation of Error.

The Assessor filed motions to determine the applicability of ORS 305.287 to the Village appeals and to amend his answers to assert the statutory right to have the entire value of the property determined on appeal. (ER 1-12; 27-35).

2. Standard of Review.

The court reviews the Tax Court’s decision for “errors or questions of law or lack of substantial evidence in the record to support the tax court’s decision or order.” ORS 305.445.

3. Argument.

ORS 305.287 authorizes any party to an “appeal” to bring all components of value before the court. An appeal to BOPTA or to the Regular Division is an “appeal” within the meaning of the statute. Accordingly, the Village appeals, filed after the effective date of ORS 305.287, are subject to the statute.

a) An “appeal” to BOPTA or to the Regular Division is an appeal within the meaning of ORS 305.287.

The Tax Court acknowledges that a proceeding in BOPTA is an “appeal” (ER 19), but concludes that ORS 305.287 does not apply to an appeal filed with BOPTA or in the Regular Division. (ER 24). ORS 305.287 authorizes any party to an “appeal” to have the entire value of the property determined. The triggering act in the statute is the filing of an “appeal”: “Whenever a party appeals the real market value [...]” The statute does not distinguish between forums in which the appeal is filed, nor is the text limited to one body.

The legislature created three levels of appeal for most challenges to property values, which operate independently. BOPTA is the first level of appeal. The next level is the Magistrate Division. The Magistrate Division differs substantively from the Regular Division. The Magistrate Division is not a court of record and does not follow the rules of evidence. See ORS 305.501(4)(a); ORS 305.430(1). The legislature intended to create an informal process for appeal to BOPTA and to the Magistrate level to enable taxpayers to easily challenge their property tax values. See The Preface to the *Magistrate Division Court Rules: Magistrate Rules*. See also *Dept. of Rev. v. Froman*, 14 OTR 543 (1999).

By contrast, the legislature created the Regular Division as a court of record, with general jurisdiction and the same powers as a circuit court. ORS 305.405. Appeal to the Regular Division is an “**original, independent**” proceeding which is tried *de novo*, meaning new issues may be raised for the first time on appeal. ORS 305.425(1)¹⁵. (Emphasis added). The Regular Division is a court of record. ORS 305.430(1). Some matters go directly to the Regular Division. See *eg.* ORS 305.580. The parties must be represented by counsel in the Regular Division, but not in the Magistrate Division. See Tax Court Rule 1(F)(1). TCR. In addition, the rules for the Regular Division are fashioned after the Oregon Rules of Civil Procedure, while the rules governing the Magistrate Division are less detailed.¹⁶ See the Preface to the Tax Court Rules. TCR.

An appeal filed in the Regular Division is an “appeal” which is separate and distinct from an appeal to the Magistrate Division. Despite the statutory tri-level appeal system created by the legislature, under the Tax Court’s reasoning there is only one “appeal” from BOPTA through the Regular

¹⁵ While the legislature provided for “appeal” to the Regular Division, the court does not sit as an appellate court performing review of the Magistrate’s decision, which makes sense since there is no record to review.

¹⁶ Compare: Magistrate Rules with Regular Division Rules.

Division, and the statute does not apply at BOPTA or in the Regular Division levels.

The Tax Court acknowledges that a challenge of value filed with BOPTA is an “appeal”. (ER 19). Even so, the Tax Court finds a conflict based on the “one-sided” nature of an appeal to BOPTA. (ER 19). However, proceedings at BOPTA are not “one-sided”. Rather, the legislature created a right in an “interested” party to appear at the BOPTA hearing. See ORS 309.025(3). Moreover, the board is authorized to lower the value of one component of value (eg., land) and raise the other component of value (buildings), so long as the total real market or assessed value is not increased. See Oregon Administrative Rule 150-309.026(3)(b). See *also* Ex. EE to the Senate Finance and Revenue Hearing, HB 2572, May 25, 2011 (Oregon State Association of County Assessors) (App 2-3). Thus, contrary to the Tax Court’s decision, there is no “conflict” in applying the statute at the BOPTA level. The Tax Court concedes that a petition filed with BOPTA is an “appeal”; ORS 305.287 applies at the BOPTA level.

Likewise, an appeal to the Regular Division is an “appeal” under ORS 305.287. “Appeal” is not defined in ORS 305.287. Nor is it defined in any of the other statutes in Title 29 governing property tax appeals, but the term is not ambiguous. “Appeal” is used throughout ORS 305.501 to refer to an

appeal to the Regular Division. See, eg. ORS 305.570(1)(a).¹⁷ Under ORS 305.501(5)(a) and ORS 305.425(1) an “appeal” from the Magistrate Division to the Regular Division is a new, independent proceeding which differs substantively from an appeal filed in the Magistrate Division.¹⁸ There is no basis to conclude that an appeal filed in the Regular Division is not an “appeal” within the meaning of ORS 305.287.

The Tax Court opined that achieving the legislature’s goal of reversing the strategic advantage of component appeals “does not require” that a party be allowed to raise all components of value for the first time on appeal to the Regular Division, and therefore limits the application of the statute to the Magistrate Division. (ER 24). However, the language of the statute and the legislative history show no such legislative intent to limit the scope of the statute in this way.

The legislature created an “original, independent” proceeding in the Regular Division, where the issues can vary from the issues raised in the

¹⁷ Under 305.570(1)(a) “Any person...aggrieved by and affected by a written decision of a tax court magistrate...may appeal to the regular division of the Oregon Tax Court [...]”

¹⁸ ORS 305.501(5)(a) provides: “Any party dissatisfied with a written decision of a magistrate may **appeal** the decision to the judge of the tax court by filing a **complaint** in the regular division of the tax court within 60 days after the date of entry of the written decision”. (Emphasis added).

Magistrate Division. ORS 305.425(1). The Tax Court's interpretation contradicts the nature of the proceedings created by the legislature in ORS 305.425(1), and eliminates a party's statutory right under ORS 305.287 to bring all components of value before the court on appeal. This court should reject a construction of the statute that leads to an unreasonable result, contrary to its language and purpose. *PGE*, 317 Or at 612.

There is no conflict in applying ORS 305.287 to an appeal filed in the Regular Division, and no basis to conclude that an "appeal" to the Regular Division is not an appeal under ORS 305.287. Moreover, the Tax Court's conclusion is contrary to its own view of the proceedings in these different courts. See *Allen v. Dept. of Revenue*, 17 OTR 427, 431-32 (2004) (proceeding in Magistrate Division separate from proceeding in Regular Division when applying attorneys' fee statute).

The Tax Court erred as a matter of law when it concluded that Village filed "one appeal" from BOPTA through the Regular Division.

b) ORS 305.287 applies to the Village appeals.

The Tax Court extended its error by concluding that ORS 305.287 does not apply "retroactively" to the Village appeals, by using the filing dates of their Magistrate appeals. (ER 24-26). This conflation of courts and filing dates was necessary to support the Tax Court's conclusion that the Village

appeals were filed before the effective date of ORS 305.287. However, the application of the statute to these appeals is not a “retroactive” application because the Village appeals filed on January 26, 2012 are “original, independent” appeals filed after the effective date of the statute.

To adopt the Tax Court’s reasoning requires this court to find that a property tax appeal is one “appeal” from BOPTA through the Regular Division. There is no authority for this conclusion, and it contradicts the legislature’s creation of an “original, independent” proceeding in the Regular Division. See ORS 305.425(1).

ORS 305.287, by its terms, applies to an “appeal” filed after its effective date of September 29, 2011. Or Laws 2011 ch 397 § 3. See *Cuff v. Dept. of Pub. Safety Stds and Training*, 345 Or 462, 470, 198 P3d 931 (2008) (use of present tense indicates prospective nature of statute). The Tax Court erred as a matter of law in concluding “all appeals were filed prior to the year 2011.” (ER 15). The Village appeals are “original, independent” appeals filed in the Regular Division on January 26, 2012, after the effective date of the legislation. The scope of issues on appeal created by the legislature in ORS 305.287 applies to these appeals.

C. Third Assignment of Error.

The Tax Court erred as a matter of law in denying the Assessor's motion to amend his answers to exercise his rights under ORS 305.287.

1. Preservation of Error.

The Assessor filed motions to determine the applicability of ORS 305.287 to the Village appeals, and to amend his answers to assert the statutory right to have the entire value of the property determined at trial. (ER 1-12; 27-35).

2. Standard of Review.

The court reviews the Tax Court's decision for "errors or questions of law or lack of substantial evidence in the record to support the Tax Court's decision or order." ORS 305.445.

3. Argument.

The legislature expanded the scope of issues on appeal by enacting ORS 305.287, which creates a statutory right in "any other party to the appeal" to have all components of value for the property considered by the body or court. The Tax Court's conclusion that ORS 305.287 does not apply in the Regular Division and to these cases denies the Assessor his statutory rights. The legislature specifically intended ORS 305.287 to correct the inequities of a component appeal by bringing all components of value before

the decision maker. See, *eg.* Audio Recording, Senate Committee on Finance and Revenue, HB 2572, May 25, 2011, at 36:04-38:32 (Representative Barnhart).

The Tax Court opines that nothing in the statutes “prior” to the addition of ORS 305.287 suggests a right to raise a claim for the first time in the Regular Division. (ER 20). This reasoning misses the point - ORS 305.287 was specifically enacted to correct a party’s inability under existing law to bring all components of value before the decision maker on appeal. The legislature did not limit its expansion of rights in ORS 305.287 to only one level of appeal, and the Tax Court’s reasoning is not consistent with the legislative creation of an “original, independent” proceeding in the Regular Division. Nor does the legislative history support the Tax Court’s limitations. By construing the Village appeals as one appeal from BOPTA through the Regular Division, the Tax Court deprived the Assessor of his statutory right to have the court review all components of value for the properties (land and improvements). The Village appeals are new appeals filed after the effective date of the statute. The Tax Court erred in denying the Assessor’s motion to amend his answers to have the total value of the properties determined on appeal under ORS 305.287.

III. Conclusion.

ORS 305.287 was expressly enacted to correct inequities in valuation in the Oregon property tax system compounded by Measure 50. The Tax Court erroneously construed the statute to apply to only one level of appeal in the property tax system, ignoring the plain text of the statute. The legislative history and statutory context confirm that the legislature intended the statute to apply at all levels of property tax appeals. The Tax Court also erroneously used the filing date of the Magistrate Division appeals to conclude that these appeals were filed before the effective date of the statute. The Village appeals are new appeals filed after the effective date of the statute, and are subject to the scope of issues on appeal created by the legislature in ORS 305.287. The court should reverse the judgments of the Tax Court, and allow the Assessor's motion to amend the answers to raise a counterclaim based on the statute.

Respectfully submitted this 18th day of July, 2013.

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CERTIFICATE OF COMPLIANCE

I certify that: (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b); and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 4994 words.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and the footnotes as required by ORAP 5.05(4)(f).

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing APPELLANT
CLACKAMAS COUNTY ASSESSOR'S OPENING BRIEF, EXCERPT OF
RECORD AND APPENDIX on the attorneys of record for Respondent and
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I hereby certify that on this date I filed the foregoing APPELLANT
CLACKAMAS COUNTY ASSESSOR'S BRIEF, EXCERPT OF RECORD
AND APPENDIX by eFiling, addressed as follows:

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Dated this 18th day of July, 2013. /s/ Kathleen J. Rastetter
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