

Larry's Tax Law

## What House Bill 4212 and Chief Justice Order No. 20-027 Mean for Oregon Taxpayers

By Larry Brant and Peter Evalds on 7.28.20 | Posted in Legislation, State and Local Tax, Tax Laws

During the first special session of 2020, the Oregon legislature passed House Bill 4212 (“HB 4212”). Governor Kate Brown (the “Governor”) signed HB 4212 into law on June 30, 2020.

HB 4212 extends the time periods that apply to court proceedings, including those in the Oregon Tax Court (“Tax Court”), to provide relief to litigants who may be impacted by the COVID-19 pandemic.

On July 21, 2020, the Chief Justice of the Oregon Supreme Court (the “Chief Justice”) issued Order No. 20-027 (the “Order”) to facilitate the implementation of HB 4212. In this post, we address the impact that HB 4212 and the Order may have on Tax Court cases.

Taxpayers with cases pending in either the magistrate or regular division of the Tax Court may be able to utilize these extended time periods. Additionally, taxpayers may still have the ability to initiate or continue Tax Court proceedings if they missed the time period for doing so originally, including appealing adverse determinations to the magistrate division, regular division, or even the Oregon Supreme Court.

**Practice Alert:** HB 4212 is a two-way avenue. The taxing authorities (e.g., the counties in the case of property taxes and the Oregon Department of Revenue (the “Department”) in the case of other taxes) are equally entitled to take advantage of the extended periods for appealing adverse determinations by the magistrate division to the regular division, or by the regular division to the Oregon Supreme Court. So, just because a taxpayer thought that it had prevailed in a tax matter and the time for appealing had lapsed, the taxing authority may still be able to resurrect its appeal.

### HB 4212

As it relates to matters in the Tax Court, HB 4212 provides that, for the period a state of emergency declared by the Governor related to COVID-19 (including extensions thereof) is pending and for 60 days thereafter, the Chief Justice may extend or suspend any of the following time periods or time requirements:

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- The time periods that apply in any Tax Court case after the case is filed;
- The time periods that apply to the initiation of a case in the magistrate division of the Tax Court, or from an appeal from the magistrate division to the regular division of the Tax Court; and
- The time periods that apply to the initiation of any case in the Oregon Supreme Court.

HB 4212 further provides that the Chief Justice may provide retroactive relief by extending or suspending a time period or time requirement even if the date thereof passed prior to June 30, 2020 (the date HB 4212 became effective). Additionally, HB 4212 authorizes the Chief Justice to direct or permit electronic appearances before a court or magistrate. Lastly, HB 4212 expressly allows the Chief Justice to delegate the exercise of any of the powers discussed above to the presiding judge of a court.

### The Order

The Order extends, during the COVID-19 state of emergency and for 60 days thereafter, all time periods and time requirements limiting the period for commencing the following:

- Appeals to the magistrate division subject to the time periods or time requirements imposed by ORS 305.280 (including appeals from the Department, a county board of property tax appeals and a county assessor);
- Other appeals to the magistrate division under any statute that imposes a time limitation or time requirement for the commencement of the action; and
- Any appeals of a magistrate division decision to the regular division subject to the time periods or time requirements imposed by ORS 305.501(5)(a) (appeal within 60 days of a written decision) and ORS 305.501(7) (final decision if no appeal taken within 60 days).

The Order further provides retroactive relief so that any time period or time requirement with which a party failed to comply before July 21, 2020 (the effective date of the Order), but on or after March 8, 2020 (the date the Governor by executive order declared a state of emergency relating to COVID-19), is extended during the COVID-19 state of emergency and for 60 days following the end of the state of emergency.

The Order also authorizes the Tax Court to extend any statutory time periods and time requirements that apply after the initiation of a case during the COVID-19 state of emergency and for 60 days following the end of the state of emergency, including holding cases in abeyance.

The Order permits the Tax Court Judge to delegate authority granted to the Tax Court by the Order.

**Practice Alert:** Perhaps recognizing that the state of emergency may continue indefinitely, the Order permits a party to file a motion requesting that the Tax Court impose a reasonable time period or time requirement that ends on a date certain. The Tax Court may impose a shorter time period or requirement upon the determination of “a need to proceed, imminent harm, or other good cause.” In no event, however, may the shorter period or requirement be less than it would be absent the Order. **Taxpayers and tax practitioners should pay close attention to their dockets in the event such motions get filed! At the end of a case in which the taxpayer prevails, the taxpayer may wish to ask the court for an order specifically prescribing the time limitation for appeal in order to have some certainty. Keep in mind, if the taxing authority prevails, it may ask the court for the same type of order. Again, HB 4212 is a two-way avenue.**

**Practice Alert:** While HB 4212 and the Order may be good news for taxpayers or tax practitioners who have missed deadlines or who may be struggling to meet upcoming deadlines, the knife cuts both ways. Taxpayers who may have breathed a sigh of relief from the lapse of a deadline may need to be on the lookout for revived motions, appeals or other actions filed by the taxing authorities.

#### Conclusion

Taxpayers who missed a deadline to initiate a case, file an appeal or take other actions in cases pending in either division of the Tax Court (as well as appeals from the regular division of the Tax Court to the Oregon Supreme Court) during the Governor’s state of emergency have been granted a second chance, as those deadlines have effectively been reopened. Additionally, further time frames may have been extended for taxpayers to meet upcoming deadlines in cases pending before the Tax Court. While this may be good news, procrastination is never a good tactic. As Sir Thomas More is quoted as saying: *“What is deferred is not avoided.”*

**Tags:** Coronavirus, COVID-19, Governor Kate Brown, House Bill 4212 (HB 4212), Oregon, Oregon Department of Revenue, Oregon DOR, Oregon Supreme Court, Oregon Taxpayers, Tax Court, tax practitioner, Taxpayer