



# Oregon

Theodore R. Kulongoski, Governor

## Office of Administrative Hearings

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October 2, 2007

ESA NW, Inc.  
c/o Chet E. Davis  
P.O. Box 2110  
Clackamas, OR 97015

Sean Barnhart  
Oregon Department of Revenue  
955 Center St NE  
Salem, OR 97301-2555

Michael Grant  
Dept. of Justice  
1162 Court St. NE  
Salem, OR 97301

RE: *In the Matter of ESA NW Inc.*  
OAH#: 700156  
ODR#: 1101041-6

Dear Sirs:

On October 2, 2007, the Office of Administrative Hearings mailed a Notice of In-Person Hearing scheduling a hearing in this matter on November 9, 2007 at 9:00 a.m.

This hearing will be conducted in person. It is expected to last approximately two hours. Any witnesses you wish to testify on your behalf must be available at that time. Be aware that if the witness is not available at the time of the hearing, then the testimony will not be taken.

Any motions **must** be sent to the other parties and the ALJ via the addresses listed on the Notice of Hearing no later than **October 22, 2007**.

Accompanying this letter is a copy of ORS 305.230. This statute specifies who can represent a corporation in Oregon tax proceedings. Please be aware that the other applicable rules require corporations to be represented by an attorney licensed in Oregon, while ORS 305.230 allows additional possible representatives. ESA NW **must** provide written confirmation of representation, demonstrating compliance with this statute no later than **October 22, 2007**. Be aware that failure to arrange for proper representation will result in ESA NW being unable to present its case at the hearing.

The parties **must** provide me and the other parties with a list of all witnesses the party intends to call, and a copy of all exhibits, no later than **October 31, 2007**. Failure to identify

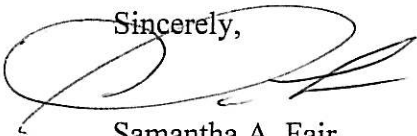
a witness or to submit an exhibit by that date may result in the exhibit or witness being excluded from the hearing. Exhibits must be marked with "A" for the agency ODR and "C" for claimant ESA NW followed by a hyphen and the exhibit number (i.e. A-1). Each page of the exhibit should indicate which page it is of how many pages (i.e. A-1, page 2 of 6).

Hearing memorandum **must** be sent to the other parties and the ALJ via the addresses listed on the Notice of Hearing no later than **November 2, 2007** or by fax no later than **November 5, 2007**.

It is strongly advised that parties calendar these dates, comply with all deadlines, and appear at the hearing. Accompanying this letter is another copy of the Notice to Parties of Rights, previously sent by DOR on June 22, 2007. This Notice contains significant information regarding your rights and the hearing procedures.

If you have any questions prior to the hearing, please contact our office at 1-888-577-2422 or 503-378-2329 in the Salem area. I look forward to working with you both at the hearing.

Sincerely,



Samantha A. Fair  
Administrative Law Judge  
Office of Administrative Hearings.

This form provided to: ESA NW Inc. with cover letter dated: June 22, 2007.

**NOTICE TO PARTIES OF RIGHTS UNDER ORS 183.413  
(BILL OF RIGHTS FOR FINAL ORDERS)**

Oregon Revised Statutes (ORS) 183.413 and Oregon Administrative Rule (OAR) 137-003-0501 to 137-003-0700 require that you are given the following information about the hearing that you requested.

- (1) **The hearing will be conducted by an administrative law judge of the Office of Administrative Hearings.** The Office of Administrative Hearings is not part of the Department of Revenue. The administrative law judge will rule on all matters presented at the hearing and had authority to make a final independent determination. Subject to review for legal sufficiency by the Office of Administrative Hearings. You may appeal the final order as provided in section (12) below.
- (2) **The hearing will be conducted in this order:**
  - a. Introduction of jurisdictional documents.
  - b. Department's statement and evidence in support of its action.
  - c. Your statement and evidence disputing the department's action.
  - d. Closing argument.
- (3) **Four kinds of evidence are admissible:**
  - a. Knowledge of agency. The administrative law judge may take "official notice" of commonly known facts and of facts and conclusions developed from experience in a specialized field of activity. This includes notice of technical or scientific facts. You will be informed at the hearing if the agency takes "official notice" of any fact so that you have the opportunity to contest those facts.
  - b. Testimony of witnesses. This includes your own testimony.
  - c. Writings. This includes letters, bank statements, checks, and other written material offered as evidence.
  - d. Experiments, demonstrations, and similar means used to prove a fact.
- (4) Objections to the introduction of evidence may be made on one of the following grounds:
  - a. **Irrelevant.** The evidence has no tendency to prove or disprove any issue involved in the proceeding.
  - b. **Immaterial.** The evidence is offered to prove something that is not an issue in the proceeding.
  - c. **Unduly Repetitious.** The evidence merely repeats what had already been offered and admitted.

ORS 183.450(1) provides in part that:

"...evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible..."

This provision in the statute will govern questions on the admissibility of evidence. Hearsay evidence (evidence based not on a witness's personal knowledge) may be admitted. An objection to hearsay evidence usually will affect the weight given to the evidence. The administrative law judge will rule on all objections and will make such rulings known at the time of the hearing or in the final

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order. The administrative law judge will only consider evidence that has been admitted in reaching a determination.

- (5) The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position. You must come to the hearing prepared to present the evidence to support your position that the money or asset garnished is exempt from garnishment. You have the right to present evidence through witnesses or documents and to testify on your own behalf about the matter in dispute. All witnesses must testify under oath or affirmation to the truth. Any witness who testified is subject to cross-examination and/or examination by the administrative law judge.
- (6) All hearings are tape recorded. The tape recording is made to keep the testimony and other evidence for any appeal from the final order. You may obtain a copy of the tape recording by submitting a request and the required fee to the office of Administrative Hearings.
- (7) You have the right to be represented by an attorney at your own expense. The department may be represented by an attorney at the hearing. You will be notified if the department will be represented by an attorney.
- (8) **Under OAR 137-003-0510 and 137-003-0550, if you are an agency, corporation, partnership, limited liability company, Trust, government body, or an unincorporated association you must be represented by an attorney licensed in Oregon unless statutes applicable to the contested case specifically provided otherwise.**
- (9) If you are not represented by an attorney at the time of hearing, you generally will not be granted a recess during the course of the hearing to hire or contact an attorney, unless you can show exceptional circumstances.
- (10) Upon request at the close of the hearing, the record may be left open if there is additional evidence, relevant to the issues that reasonably could not have been produced at the hearing. The administrative law judge may grant the request and establish a reasonable period for submission of such evidence.
- (11) There is no opportunity following the hearing and prior to the final determination and order for you to review and object to any findings of fact and conclusions of law of the administrative law judge presiding at the hearing.
- (12) If you choose to appeal the final order, you must file a petition for judicial review in the Oregon Court of Appeals and serve a copy of the petition to the department. You must file the petition within sixty (60) days after the date the final order is served.

In your petition you must state: (1) what kind of order you want the Court of Appeals to review; and (2) whether you were a party or were not permitted to be a party at the administrative hearing; or (3) whether you are seeking judicial review because you have been adversely affected or aggrieved by the final order of the department. You must furnish an affidavit with your petition that states facts showing how the final order of the department has adversely affected or aggrieved you.

**305.230 Qualifications of persons representing taxpayer; procedure for designating representative; rules.** (1) Notwithstanding ORS 9.320:

(a) Any person who is qualified to practice law or public accountancy in this state, any person who has been granted active enrollment to practice before the Internal Revenue Service and who is qualified to prepare tax returns in this state or any person who is the authorized employee of a taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer before a tax court magistrate or the Department of Revenue in any conference or proceeding with respect to the administration of any tax.

(b) Any person who is licensed by the State Board of Tax Practitioners or who is exempt from such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(c) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, 2004, may represent the corporation in any proceeding before a tax court magistrate or the department in the same manner as if the shareholder were a partner and the S corporation were a partnership. The S corporation must designate in writing a tax matters shareholder authorized to represent the S corporation.

(d) Any person who is licensed as a real estate broker or principal real estate broker under ORS 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310 or is a registered appraiser under ORS 308.010 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any ad valorem property tax.

(e) A general partner who has been designated by members of a partnership as their tax matters partner under ORS 305.242 may represent those partners in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(f) Any person authorized under rules adopted by the department may represent a taxpayer before the department in any conference or proceeding with respect to any tax. Rules adopted under this paragraph, to the extent feasible, shall be consistent with federal law that governs representation before the Internal Revenue Service, as federal law is amended and in effect on December 31, 2004.

(g) Any person authorized under rules adopted by the tax court may represent a taxpayer in a proceeding before a tax court magistrate.

(2) A person may not be recognized as representing a taxpayer pursuant to this section unless there is first filed with the magistrate or department a written authorization, or unless it appears to the satisfaction of the magistrate or department that the representative does in fact have authority to represent the taxpayer. A person recognized as an authorized representative under rules or procedures adopted by the tax court shall be considered an authorized representative by the department.

(3) A taxpayer represented by someone other than an attorney is bound by all things done by the authorized representative, and may not thereafter claim any proceeding was legally defective because the taxpayer was not represented by an attorney.

(4) Prior to the holding of a conference or proceeding before the tax court magistrate or department, written notice shall be given by the magistrate or department to the taxpayer of the provisions of subsection (3) of this section. [1969 c.97 §1; 1973 c.681 §3; 1979 c.596 §1; 1985 c.761 §40; 1985 c.802 §35; 1987 c.468 §6; 1989 c.414 §3; 1991 c.5 §19; 1995 c.79 §106; 1995 c.556 §30; 1995 c.650 §12; 1997 c.839 §41; 1999 c.90 §28; 1999 c.224 §4; 1999 c.322 §36; 2001 c.300 §59; 2001 c.660 §23; 2003 c.46 §4; 2003 c.77 §1; 2003 c.704 §14a; 2005 c.345 §4; 2005 c.346 §1; 2005 c.832 §13]