**IN THE CIRCUIT COURT OF THE STATE OF OREGON**

**FOR THE COUNTY OF MARION**

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| Chad Mangum,<br>Plaintiff,<br><br>**-v-**<br><br>State of Oregon, acting by and through the State Board of Tax Practitioners,<br>Defendant. | ) | Case No. 25CV08937<br>JCB<br><br>PLAINTIFF'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT |

## I. INTRODUCTION

1.

Plaintiff Chad Mangum is a Utah-based tax professional who has long prepared Oregon state tax returns for clients without ever setting foot in Oregon. He brought this action to challenge the Defendant, Oregon Board of Tax Practitioners' (OBTP), attempt to enforce Oregon's tax preparer licensing requirements against him and other out-of-state practitioners. Oregon law (ORS 673.605–673.740) requires persons "in this state" who prepare personal income tax returns for a fee to be licensed by Defendant, but Plaintiff contends that this requirement, properly interpreted, applies only to individuals operating within Oregon's borders, not to those who live and work entirely outside Oregon. Defendant nevertheless interprets the

law to have virtually unlimited geographic reach – a construction that Plaintiff asserts is inconsistent with the statute's text, context, and history and which was never authorized by the legislature.

2.

This memorandum supports Plaintiff's Motion for Summary Judgment by detailing (1) the statutory framework governing tax preparers in Oregon; (2) the legislative intent behind that framework, as evidenced by the 1973 enactment history; (3) the proper interpretation of the key statutory phrases in light of Oregon's canons of construction (including those in the *Interpreting Oregon Law*, Oregon State Bar, Legal Publications, 2009 ed.); (4) the actions of Defendant in enforcing an unwritten rule beyond its authority; and (5) why, given the undisputed facts, Plaintiff is entitled to judgment as a matter of law. In sum, Oregon law should be construed narrowly to avoid regulating beyond the state's jurisdiction, and Defendant's broad enforcement policy – adopted without formal rulemaking – should be declared invalid. Plaintiff seeks declaratory and injunctive relief to confirm that he and others similarly situated need not obtain an Oregon license absent a physical presence in Oregon.

## II. STATUTORY BACKGROUND

3.

**Oregon's Tax Preparer Licensing Statutes (ORS 673.605–673.740).** In 1973, the Oregon Legislature enacted a regulatory scheme for "tax consultants" and "tax preparers" with the goal of protecting consumers who pay for tax preparation services. The law (originally 1973 c.387) created the State Board of Tax Service Examiners (now the State Board of Tax Practitioners, Defendant here) and empowered it to license and regulate individuals who prepare personal income tax returns for others. Two categories of licenses were established: "tax

preparer" (an entry-level licensee who must work under supervision) and "tax consultant" (a higher-level licensee who can practice independently). The operative licensing requirement is codified at ORS 673.615(1):

> "Except as otherwise provided in ORS 673.605 to 673.740: (1) A person may not prepare or advise or assist in the preparation of personal income tax returns for another and for valuable consideration…unless the person is licensed as a tax consultant under ORS 673.605 to 673.740."

4.

In plain terms, an individual who wants to prepare personal state income tax returns for compensation must be licensed as either a consultant or as a preparer working under a consultant's supervision, unless an exemption applies. The focus on "personal income tax returns" is explicit—the statutes do not require licensure for preparing other types of returns (e.g., corporate, fiduciary, or other business tax filings). Oregon thus chose to regulate the preparation of individual tax returns, which directly affect consumers, while excluding business tax work from this particular licensing mandate.

5.

**Exemptions and Scope Limitations.** ORS 673.610 enumerates several important exemptions from these licensing requirements. For example, ORS 673.610(2) exempts attorneys preparing taxes "in performance of the duties of an attorney at law," and ORS 673.610(4) exempts any Certified Public Accountant (CPA) with an active license from any state (and their employees). In other words, attorneys and CPAs – even if not licensed by Defendant – may prepare Oregon tax returns without violating the law. Similarly exempt are fiduciaries acting on behalf of an estate or trust, and employees preparing an employer's business returns (in-house

bookkeeping staff). These exemptions reflect a legislative judgment about the law's intended reach: it was meant to fill a gap by regulating commercial tax preparers who lack other professional credentials, not to double-regulate professionals overseen by other bodies (like the Bar or Accountancy Board) or to burden ordinary business activities. Notably, the exempted categories include persons who might be located outside Oregon (for instance, a CPA licensed in another state) – confirming that the statute was not designed as an all-encompassing dragnet but a targeted consumer protection measure.

6.

**"In This State" – Jurisdictional Language:** The statutory provisions repeatedly use the phrase "in this state" when referring to tax practitioners or to the Board's authority. ORS 673.730(1), which outlines Defendant's powers, is particularly illustrative. It provides that the Board shall have power:

> "(1) To determine qualifications of applicants for licensing as a tax consultant or a tax preparer *in this state*; to cause examinations to be prepared… and to issue licenses to qualified applicants…" (Emphasis added.)

7.

Likewise, ORS 673.637 refers to licensing "in this state" and *not* "by this state". ORS 673.695 discusses "business done *by* the nonresident… *in this state."* (emphasis added). The statute does not define "in this state," but in ordinary usage, this phrase means within Oregon's geographical boundaries. ORS 174.100(7), a general definitions statute, defines "this state" to mean the State of Oregon for purposes of the Oregon Revised Statutes, and courts interpreting similar language have taken it as a geographic limitation. There is no hint in the text that the legislature intended to assert Oregon's licensing requirements upon persons or conduct outside

Oregon. Instead, the consistent inclusion of "in this state" indicates an assumption that the regulated conduct (preparing tax returns for pay) occurs within Oregon's jurisdiction. This point is central to Plaintiff's case: the law's own terms confine its scope to in-state activities, which, by implication, excludes purely out-of-state activities from its reach.

8.

**No Express Extraterritorial Provision:** It is worth noting what the statutes do not say. Unlike some regulatory schemes, ORS 673.605 to 673.740 contains no provision asserting authority over conduct beyond Oregon or requiring out-of-state practitioners to register. For example, Oregon's accountancy laws allow reciprocal licenses for out-of-state CPAs to practice in Oregon under certain conditions, but the tax preparer statutes have no similar mechanism. The absence of any reference to cross-jurisdictional practice ("whether or not the person is located in Oregon" or similar language) is telling. Under Oregon's rules of construction, the court "is not to insert what has been omitted, or to omit what has been inserted," (ORS 174.010) straight from the legislature themselves. If the legislature had intended to require licensure based on preparation of an Oregon return regardless of location, it could have included language to that effect—for example, requiring a license number to be furnished on any Oregon return prepared for a fee, which it did not. Instead, the statutory scheme reads most naturally as regulating those individuals and businesses operating within Oregon's borders in the tax preparation industry. In practice, until recently, Defendant itself appeared to operate under the same understanding. The Oregon Department of Revenue does not ask for a Defendant license number when tax returns are filed electronically (Ex. 15), meaning the state's tax collection agency has no mechanism to detect or police unlicensed out-of-state preparers. Additionally, Defendant's published mission statements in budget reports have described its role as ensuring that all tax

preparers “in the state” are properly trained and licensed (Ex. 16). This phrasing from the Defendant reflects an implicit acknowledgment that its mandate is confined to the state of Oregon. In short, nothing in the statutory text or longstanding practice suggests that someone who prepares Oregon tax returns from, say, Utah, or New Zealand, was meant to be under Defendant’s jurisdiction..

## III. LEGISLATIVE INTENT AND HISTORY

9.

When construing Oregon statutes, courts follow the analytical framework set out in *State v. Gaines*, 346 Or 160, 171–72, 206 P.3d 1042 (2009), looking first to text and context, and also considering legislative history to the extent useful. In this case, the legislative history of the 1973 Act (House Bill 2271) provides important context confirming the statute’s intended scope and purpose. In line with Gaines, the Oregon State Bar’s 2009 Interpreting Oregon Law handbook confirms that legislative history—while not always required to resolve ambiguity—can still illuminate legislative intent and aid in proper statutory interpretation. Here, the historical record leaves little doubt that the law was motivated by concerns about unqualified tax preparers in Oregon and was not driven by any intent to regulate out-of-state actors.

10.

**Legislative Purpose:** Protecting Oregonians from Incompetent Preparers. The following descriptions reflect paraphrased and summarized testimony from various 1973 legislative sessions (referenced specifically in context). Legislators expressed concern that Oregon taxpayers were being harmed by untrained individuals offering tax preparation services without any formal education or oversight. One legislator summarized the nature of the unregulated tax preparer class as follows: many were neither CPAs nor public accountants and often had only

bookkeeping experience. These individuals, he explained, were the focus of the bill—"what this is is really an attempt to upgrade them" (Ex. 20; 02:25:28–02:25:37). The Legislature's proposed remedy was to impose baseline competence requirements, including 80 hours of classroom instruction and a qualifying examination, before an individual could charge for tax preparation (Ex. 21; 01:10:54–01:11:40). These measures were aimed at improving the quality of service provided by those already practicing in Oregon, not at creating a nationwide licensing mandate. This reflects a clear remedial intent: the law was designed to protect Oregon's public by improving Oregon professionals, not to impose standards nationwide.

11.

**Deliberate Exemptions Underscore Focus on Oregon Practitioners.** This section summarizes a legislator's remarks during the June 8th/12th, 1973 Joint Ways and Means Committee hearing (Ex. 20). The Legislature made clear that the bill would not apply to attorneys, CPAs, district attorneys, or employees working on a company's payroll. The legislator explained—not as a stray comment but as part of a categorical framework—that "DAs, CPAs, lawyers, people who are working on the payroll of a company… they're out." (02:25:43–02:26:10). This demonstrates that the Legislature's focus was on a narrow class of independent preparers operating in Oregon, not all persons engaged in any form of tax-related work.

12.

**Voluntary Licensure of Nonresidents—Not a Mandate.** The following analysis is based on the statutory text enacted as Section 19 of HB 2271 (1973), codified at ORS 673.695. That provision established how Oregon courts could serve process on a nonresident licensee in actions "arising out of any business done by him… in this state." This language is quoted verbatim from the bill. The fact that this clause applies only to nonresident licensees—those who

have voluntarily entered Oregon's regulatory framework—strongly supports the interpretation that Oregon licensure was not mandatory for every out-of-state preparer. Rather, it was anticipated that some would choose to become licensed if they intended to do business within Oregon. The procedural mechanism exists for that reason.

13.

**Absence of Legislative Intent to Regulate Nationwide.** There is no testimony, discussion, or language in the March 20 or April 6, 1973 hearings indicating an intent to require licensure of all out-of-state preparers. The only references to nonresidents pertain to voluntary licensure and process service. This silence is not neutral—it confirms that such an expansive interpretation was not contemplated. If the Legislature had intended to impose a regulatory requirement on anyone preparing Oregon returns, regardless of location, that would have warranted some acknowledgment or debate. None exists. The language of the bill and the discussion in committee consistently presuppose that the scope of regulation is confined to activity occurring in this state.

14.

**Contemporaneous Technological and Practical Context (1970s):** It's informative to consider the practical context in 1973, as allowed under ORS 174.020(3) (which permits consideration of the "circumstances under which [the statute] was enacted"). In the early 1970s, tax preparation was generally a local service. Clients would meet a preparer in person or deliver documents locally. While it was possible even then to exchange paperwork by mail, it was likely not common for an Oregon taxpayer to hire a distant preparer solely by correspondence. There was no e-filing, no internet, no facsimile, and interstate business in tax return preparation was minimal.

15.

Accordingly, the legislature had no pressing reason to address, for example, an accountant in Boise preparing an Oregon return. Such scenarios were rare outliers. Instead, legislative concern focused squarely on the proliferation of local storefront tax preparers and the varying quality of service provided to Oregon residents. As one legislator explained during the March 27, 1973 House Revenue Committee hearing (Ex. 22):

> "I know **in my area** you can find shingles on houses of people you've never heard of, tax returns prepared **here**. And I just question what kind of a job **the public** really gets **from these people**. And if you set this board up and **these people** have to be licensed, at least the **common man on the street** can assume he's getting a certain amount of professionalism when he gets his return done **by these individuals**. **And these are the people this bill speaks to.**" (emphasis added) (0:46:51--0:47:17).

This comment illustrates the clear presumption that those preparing Oregon tax returns would themselves be located in Oregon (unless exempt, such as CPAs or attorneys). The legislature's focus was on raising professional standards within the state, not creating an extraterritorial enforcement regime targeting out-of-state preparers.

16.

Indeed, Defendant's own recent rulemaking notice in 2025 acknowledges that circumstances have changed: "Changes in technology… have led Oregon tax preparation businesses to reach out…to tax preparation businesses located outside of the State of Oregon—[whose] employees have no training or expertise in…Oregon personal income taxes and as such pose a significant consumer protection risk to unwitting Oregon taxpayers." (Ex. 17). This statement is an admission that back in 1973, and for many years thereafter, the paradigm was

different. Only now, with modern electronic communication, is the cross-border preparation of state returns "more than occasional." The legislature in 1973 did not and likely could not fully anticipate this development. Under Oregon's interpretive principles, statutes should be construed in light of their evident purpose and not extended to situations the lawmakers did not contemplate, especially if doing so would depart from that purpose.

17.

**Legislative Recognition of Nonresidents, Yet No Extraterritorial Mandate:** The original 1973 enactment included a provision in ORS 673.695 addressing nonresident licensees, providing that service of process could be made on such individuals through the Director of Commerce in any action arising from business conducted "in this state." This language confirms that the Legislature expressly contemplated the existence of out-of-state preparers and the possibility that they might voluntarily seek licensure. Importantly, however, there is no indication in the legislative history that the Legislature intended to require licensure from such nonresidents. Had Oregon intended to compel out-of-state preparers to obtain licenses—despite having no physical presence in Oregon—it would have had to grapple with enforcement questions such as extraterritorial jurisdiction, due process, and service of process mechanisms for unlicensed individuals. Yet no such discussion known by Plaintiff appears in the unofficial transcripts or committee audio logs.

18.

The Legislature's inclusion of service provisions for voluntary nonresident licensees, paired with its omission of any enforcement framework for regulating unlicensed individuals beyond Oregon's borders, reflects a deliberate choice not to extend the licensing requirement extraterritorially. Rather than evidencing silence, this structure reflects affirmative legislative

restraint, consistent with a reading that limits the statute's application to preparers operating within Oregon.

19.

In summary, the legislative history confirms that Oregon's tax preparer law was a response to an in-state problem requiring an in-state solution. The legislature's intent was to protect Oregon consumers by regulating those who hold themselves out as tax return preparers in Oregon. While the statute acknowledged that nonresidents might voluntarily seek licensure, it included no indication that licensure was required for those operating entirely outside the state. The law was not designed to erect a regulatory regime binding every tax practitioner in the country who might incidentally prepare an Oregon return. The Court should interpret ORS 673.605–673.740 in line with that intent, as the Oregon Supreme Court instructs that the goal of statutory construction is to "pursue the intention of the legislature" (ORS 174.020(1)(a)).

## IV. ANALYSIS

20.

Having established the relevant text and context of the statutes and the evident legislative intent, we turn to applying Oregon's interpretive canons to the dispute at hand. The question is whether ORS 673.605 to 673.740 require licensure for an out-of-state person (like Plaintiff) who prepares Oregon tax returns solely from outside Oregon. Based on the text, context, and intent discussed, the answer is "no." Additionally, we analyze the nature of Defendant's actions enforcing a contrary interpretation and why those actions violate Oregon administrative law.

21.

**"In This State" Means Physical Presence Within Oregon.** The linchpin of this case is the meaning of the phrase "in this state" as used in the tax preparer statutes. Statutory terms are

given their plain, natural meaning in context. Here, the context includes the statutory scheme and Oregon law generally. The ordinary meaning of "in this state" is straightforward – within the state of Oregon.[1] If a person is not within Oregon, then by common usage one would say they are "out of state" or "not in the state." This is *not* a technical *term of art*, but a simple geographic descriptor. Nothing in ORS 673.605–673.740 suggests a special definition that would treat someone working in Utah (for example) as being "in" Oregon. On its face, therefore, the requirement that a person be licensed to prepare returns applies to persons preparing returns while "in" Oregon.

22.

To further support the plain reading of the statute—when viewed alongside legislative intent and historical context—we turn to the 1973 Webster's New Collegiate Dictionary. Page 578 of that edition defines the word "in" as it was commonly understood at the time the Defendant's governing statutes were enacted, shedding light on the legislature's intended geographic limitation. As shown in Exhibit 24, it lists the first and primary meaning of "in" (used as a preposition) as: "inclusion, location, or position within limits < ~ the lake> <wounded ~ the leg> < ~ the summer>." The phrase "position within limits" aptly and *unambiguously* captures the ordinary geographic sense of the word—a sense entirely consistent with Plaintiff's interpretation and fatal to Defendant's extraterritorial reading.

[1] Exhibit 18 is a full grammatical breakdown of relevant portions of ORS 673.730, which the Board relies on for justification of its ultra vires actions.

23.

Defendant has argued, in effect, that "in this state" should be read to infer: if the work affects or has effect within Oregon (solely because it's an "Oregon" tax return), then the preparer is "in this state" for purposes of the law. That reading tortures the phrase beyond its plain meaning. If the legislature meant to base the requirement on the location of the taxpayer or the situs of the tax obligation, it could have said so (for example: "any person who, for compensation, prepares an Oregon personal income tax return shall be licensed…"). It did not. It chose the phrasing "tax preparer in this state," which is naturally read as a preparer located in Oregon. Courts are not permitted to rewrite statutes under the guise of interpretation; they must "declare what is, in terms or in substance, contained therein." (ORS 174.010). Here, "in this state" is an express limitation. It is not meaningless surplusage; it was inserted intentionally. Paraphrased, the original bill's summary stated, "This bill establishes a State Board of Tax Service Examiners within the Department of Commerce…," reinforcing that the entire regulatory apparatus was conceived as an Oregon-centered program). The Court should give effect to that limitation by construing the licensing requirement as applicable only to in-state conduct.

24.

Moreover, Oregon courts often apply the canon that statutes should be interpreted, if possible, to avoid unreasonable or absurd results. Defendant's interpretation leads to results the legislature could not have intended. Consider: under Defendant's view, an individual living in New York who helps her adult child in Oregon by preparing the child's Oregon tax return (for a small fee) would be committing a violation unless she somehow obtained an Oregon license. Yet, an Oregonian next door could help the same taxpayer without a license if doing so for free (or if the helper works for a CPA or if that helper is an attorney). And Defendant would

presumably never know about the New York helper unless it scoured tax filings for clues. The legislature did not set up enforcement machinery for out-of-state violations, underscoring that such far-flung scenarios were not within the ambit of concern. The more sensible construction is that the law governs those practicing the trade or business of tax preparation *in* Oregon's communities and market. That interpretation not only flows from the text but also avoids turning the statute into an impractical and likely unenforceable interstate regulation.

25.

**Oregon Law Presumes Against Extraterritorial Application Absent Clear Statement.** While Oregon courts have not expressly adopted a federal-style "presumption against extraterritoriality," the principle of state sovereignty nonetheless supports interpreting Oregon statutes as operating within the state's geographic boundaries unless a contrary intent is clearly expressed. The Oregon Supreme Court has recognized that, in construing statutes, courts presume the Legislature acted within the traditional scope of state power, and that extraordinary assertions of extraterritorial authority require clear textual support.

26.

Regulating the conduct of individuals entirely outside Oregon—who neither reside in the state nor conduct business within its borders—is a significant expansion of authority that the Legislature would be expected to state explicitly if intended. Yet nothing in the statute or its history suggests such an intent. To the contrary, the inclusion of a provision addressing service of process on nonresident licensees confirms that the Legislature contemplated the existence of out-of-state preparers but deliberately limited the statute's reach to those who voluntarily sought licensure or conducted business within the state (ORS 673.695).

27.

Interpreting "in this state" according to its plain geographic meaning avoids unnecessarily implicating constitutional concerns. A broader reading—one that imposes licensure obligations on all nonresident preparers who prepare Oregon returns—would raise serious questions under the Commerce Clause and Due Process Clause. The canon of constitutional avoidance therefore applies: where one plausible interpretation of a statute would raise constitutional doubts and another would not, courts should adopt the latter. Here, Plaintiff's reading—limiting the statute to preparers operating within Oregon—is consistent with the text, avoids constitutional friction, and aligns with legislative intent. Defendant's reading, by contrast, invites constitutional complications without clear legislative authorization. This is yet another reason to adopt the narrower, geographically limited construction.

28.

**Contextual Harmonization with Exemptions and Related Provisions.** Interpreting "in this state" to exclude out-of-state preparers creates a more coherent regulatory scheme. ORS 673.610(4) allows an out-of-state CPA with an active license elsewhere to prepare Oregon returns without Defendant's licensure. Under Defendant's interpretation, a non-CPA in another state must get an Oregon license, but a CPA in another state need not. Is there a rational reason the legislature would impose burdens on the presumably less-qualified person (the lay preparer) outside Oregon but not on the arguably more-qualified person? Yes—because the CPA is already credentialed. More relevantly, the legislature probably wasn't considering the case of either person being out-of-state; it was dividing Oregon practitioners into those who need this license (uncredentialed preparers) and those who don't (CPAs, attorneys, etc.). That logic holds true whether those individuals are in Medford or Manhattan. In other words, the exemption of out-of-

state CPAs is understandable because the legislature didn't want to require any CPA to get this specialized license. However, requiring out-of-state non-CPAs to be licensed when their CPA counterparts are not, does little to advance public protection—it mainly just favors one class of out-of-state practitioner over another. This inconsistency is avoided by interpreting the law as focused on Oregon's market: within Oregon, if you're a non-exempt person preparing returns, you need the license; outside Oregon, the statute does not apply. That way, Oregon isn't attempting to regulate non-CPAs in other states while giving CPAs a free pass; instead, Oregon simply regulates its domestic sphere and leaves other states to regulate theirs or leaves it to consumers to choose qualified help. This harmonizes with the notion that the Defendant license is meant to signify to Oregon consumers that a preparer in Oregon meets state standards. If an Oregonian nonetheless chooses to hire someone out-of-state (who by definition won't be listed in Defendant's licensee database), that becomes a matter of buyer beware or perhaps the other state's concern. They know what they're signing up for. Again, this approach aligns with legislative intent and common sense.

29.

In support of this reading, one can also point to Defendant's longstanding acquiescence in the status quo until recently. Despite being aware that some Oregon taxpayers use out-of-state preparers (H&R Block, for example, operates nationally and might route returns to centralized processing centers), Defendant for decades did not take action against such practices. It was only in the last few years—perhaps prompted by specific complaints or the rise of entirely virtual tax services—that Defendant began asserting that even preparers with no Oregon presence must comply. The absence of enforcement for so long could be seen as an administrative interpretation consistent with Plaintiff's view, though Defendant might characterize it as a lack of knowledge

or resources. In any event, the recent push to explicitly amend the rules in 2025 (Ex. 17) suggests *Defendant recognizes the current law did not clearly give it the tools to address out-of-state actors.* Courts often consider the practical construction of a statute by the agency, especially if consistent over time, as part of context. Here, Defendant's de facto historical position (not enforcing against out-of-state preparers, at least not via formal contested cases or rulemaking) aligns with Plaintiff's statutory interpretation. Defendant's abrupt change via FAQ cannot override the statute's meaning.

30.

For all these reasons, Plaintiff's interpretation of the statutes—that they do not impose a licensure requirement on persons who prepare Oregon returns while physically located outside Oregon—is the interpretation that best fits the text, context, and legislative intent. Under this correct interpretation, Plaintiff did not need to obtain an Oregon license to lawfully prepare Oregon returns from Utah. Thus, Defendant's contrary determination and threats of enforcement are based on an erroneous view of the law.

31.

**Defendant's Actions Violate the Administrative Procedures Act (ORS Chapter 183).** Even if there were any ambiguity in the statutes (and Plaintiff maintains there is not meaningful ambiguity here), Defendant's method of implementing its interpretation has been improper. Oregon's Administrative Procedures Act (APA) requires agencies to adopt rules for statements of general applicability that interpret the law (ORS 183.310(9), 183.335). Instead of engaging in rulemaking to formally define the scope of ORS 673.615, Defendant relied on an informal FAQ on its website to announce that everyone, in Oregon or out, must be licensed (Ex. 1). This FAQ

pronouncement constitutes a rule in substance—it sets out a binding norm governing all persons who prepare Oregon returns, expanding the reach of ORS 673.615. Yet Defendant did not go through the notice-and-comment process. This failure is a procedural defect under ORS 183.400(4)(c) (which calls for invalidation of rules adopted without compliance with rulemaking procedures).

32.

Moreover, as explained above, the policy stated in the FAQ exceeds Defendant's statutory authority under ORS 183.400(4)(b) because it imposes requirements beyond what the legislature authorized. When an agency's rule or policy "departs from a legal standard expressed or implied in the law being administered, or contravenes some other applicable statute," it exceeds the agency's authority and is invalid as reaffirmed in City of Cornelius v. Department of Land Conservation and Development citing Planned Parenthood Ass'n v. Dept. of Human Res., 297 Or 562, 565, 687 P.2d 785 (1984)). Here, Defendant's interpretation departs from the legal standard implicit in ORS 673.605 to 673.740—that the Board regulates in-state preparers—and it also contravenes ORS 174.010's prohibition against adding requirements the legislature omitted. Therefore, under ORS 183.400(4), Defendant's out-of-state licensing mandate should be declared invalid on substantive grounds as well. Either one of these APA violations (procedural or substantive) is sufficient for the Court to grant relief in the form of a declaratory judgment against the policy.

33.

Additionally, Defendant's conduct surrounding this issue underscores why APA compliance is important. Plaintiff attempted to obtain the agency's legal rationale and any

supporting materials for its "within or outside Oregon must be licensed" edict via public records requests. Defendant's response was to demand an estimated $6,000 in fees to fulfill the request (Ex. 8), effectively stonewalling Plaintiff's inquiry—part of which action the Oregon Attorney General later found violated the Public Records Law, (Ex. 11). Such opaqueness deprived the public of transparency and input. Had Defendant proposed a rule change through proper channels, stakeholders could have commented, and the rule's validity would have been openly vetted. By instead springing a broad interpretation via an FAQ, Defendant bypassed those safeguards. The Court's intervention is now warranted to correct this and ensure that any future expansion of Defendant's regulatory reach occurs, if at all, through lawful means—ideally, through legislative amendment, as an issue of this significance should be decided by the legislature or through properly adopted rules, not agency fiat.

34.

It is notable that Defendant has now initiated rulemaking in 2025 to explicitly address out-of-state preparers. In that Notice of Proposed Rulemaking, Defendant essentially acknowledges that the current rules did not cover the scenario and that new rules are "made necessary" by technological changes (Ex. 17). While that rulemaking is a tacit concession, it does not moot Plaintiff's case—Plaintiff is entitled to relief for the period and actions taken under the unlawful policy that existed prior to any new rule, and there is no guarantee any proposed rule will be adopted or will pass judicial muster. As of now, Plaintiff remains subject to Defendant's enforcement posture based on the FAQ policy. The Court can and should declare that policy invalid.

35.

Since the commencement of litigation, Defendant has quietly removed the original FAQ from its website while simultaneously asserting that it is now undergoing rulemaking revisions—an implicit admission that the FAQ was intended to function as a public-facing statement of policy (Ex. 19). But retroactive cleanup cannot cure a procedural violation. The removal of the fabricated rule does not undo its publication, nor does it remedy the widespread confusion and harm it caused.

36.

Defendant has further doubled down on its position, stating unequivocally that *"anyone"* must be Oregon-licensed to prepare Oregon returns. Yet in its formal Answer to Plaintiff's complaint, Defendant made no effort to clarify or narrow this term, nor did it acknowledge any of the well-established statutory exemptions—such as those for CPAs, CPA firm employees, and attorneys. The absence of legal citations or qualifications in the original FAQ underscores the breadth and recklessness of the statement.

37.

This is not a harmless misstatement. It is precisely the type of unauthorized, overbroad agency action that the Oregon Administrative Procedures Act was designed to prevent.

38.

In summary, Defendant's enforcement of an unpromulgated, expansive interpretation of the law not only finds no support in the statute but also runs afoul of Oregon's administrative law requirements. The Court's ruling in favor of Plaintiff will uphold the rule of law by affirming

that agencies cannot unilaterally expand their powers beyond legislative intent or skip required rulemaking procedures without consequence.

## V. DEFENDANT'S ARGUMENTS ADDRESSED (AND REJECTED)

39.

For completeness, we briefly address what we anticipate may be Defendant's counterarguments and why they do not prevail:

(a) Defendant may argue that the phrase "for another and for valuable consideration" in ORS 673.615(1) implies a focus on the transaction (preparing a return for pay) rather than location, and that the harm (bad returns) is the same whether the preparer is in Oregon or elsewhere. This argument misses the mark. The legislature certainly cared about the transaction, but only within the sphere of Oregon's regulatory interest. Oregon has a legitimate interest in protecting its citizens from unqualified preparers; that interest is strongest when the preparer operates within Oregon (soliciting Oregon clients, etc.). When an Oregonian chooses an out-of-state preparer, different considerations come into play, including the regulatory framework of the other state and the practical limitations of enforcement. The legislature chose a reasonable boundary—regulating the practice occurring "in this state." That doesn't eliminate all risk (nothing ever does), but it addresses the core problem as the legislature perceived it. Defendant's policy might arguably provide marginal additional protection (by theoretically ensuring even out-of-state preparers know Oregon law), but that sort of policy expansion is for the legislature, or at least formal rulemaking, not for post-hoc justification of an ultra vires interpretation. The judicial task is to interpret the statute as enacted, not to rewrite it to achieve an agency's ideal vision of consumer protection.

(b) Defendant might point to ORS 673.730(5) and (6) (provisions allowing the Board to issue cease and desist orders and assess civil penalties up to $5,000 for violations of ORS 673.615 and related statutes) and argue that the evil to be prevented—improper returns—exists regardless of where the preparer sits, implying the law intended to reach all preparers of Oregon returns. This is a stretch. ORS 673.730 outlines enforcement mechanisms that apply only after a violation of the licensing requirement is established; it does not expand who must be licensed in the first place. In fact, it underlines that Defendant's concern is that any person preparing returns in Oregon does so competently. If someone is outside Oregon and unlicensed, Defendant's remedy is not to discipline or penalize them (it cannot, since they are not subject to the licensing requirement as written), but rather to educate the public to use licensed in-state professionals or otherwise exercise caution. Defendant's attempt to penalize out-of-state preparers—who by definition are not licensees and have not consented to Defendant's jurisdiction—would likely exceed its statutory and constitutional authority. The statute doesn't provide for that, and the Court should not read it as if it did.

(c) Finally, Defendant might invoke general statements of purpose, such as protecting the integrity of Oregon's tax system, arguing that unlicensed out-of-state preparers pose a threat to that integrity. Even if that were so, agencies are confined to the tools given by the legislature. The integrity of the tax system is also affected by, say, unqualified relatives helping each other or commercial tax software that might mislead unsophisticated users, but Defendant has no mandate to police those areas—and clearly so, because the law draws lines. The line here is "in this state." Oregon's tax system has functioned for decades with many returns prepared by out-of-state individuals (including

taxpayers themselves or third-party preparers), and the Department of Revenue has mechanisms to deal with incorrect returns (audit, adjustment, penalties on taxpayers for negligence, etc.). Defendant's role is circumscribed to licensing those who set up shop under the title of tax preparer or consultant in Oregon. That role is significant but not unlimited.

(d) In short, none of Defendant's likely policy arguments overcome the compelling evidence of legislative intent and statutory text that limit its authority. If broader regulation is desirable, it must come via proper legal channels, not by contorting the existing law.

## VI. CONCLUSION

40.

Oregon law, properly interpreted, does not require Plaintiff, and others similarly situated out-of-state, to obtain a license to prepare Oregon tax returns. The phrase "in this state" in ORS 673.615 and ORS 673.730 means what it says – within Oregon. Plaintiff has never been "in this state" while preparing returns for his clients, and therefore falls outside the class of persons the legislature intended to license. Defendant's contrary interpretation finds no support in the statutory text or history. Moreover, Defendant imposed its interpretation through an invalid, unpromulgated rule (the FAQ policy) that exceeds its authority. Under ORCP 47, there are no genuine issues of material fact precluding summary judgment: the content of the statutes, the legislative history, and Defendant's actions are matters of record. The purely legal questions should be resolved in Plaintiff's favor.

41.

Plaintiff respectfully asks this Court to grant the motion for summary judgment and to issue declaratory and injunctive relief as outlined in the Motion. Such a ruling will confirm the proper reading of Oregon's tax licensing law, restore the balance of regulatory authority between the legislature and Defendant, and prevent the enforcement of an ultra vires rule against individuals who live and work beyond Oregon's borders. Oregon's laws will continue to protect consumers within Oregon, as intended, without overreach.

DATED this 21st day of April, 2025.

RESPECTFULLY SUBMITTED,

CHAD MANGUM
Plaintiff