

1  
2  
3 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
4 **FOR THE COUNTY OF MARION**  
5

6	<u>Chad Mangum,</u>	)	Case No. 25CV08937
	Plaintiff,	)	JCB
7		)	
	-v-	)	PLAINTIFF'S MOTION FOR SUMMARY
8		)	JUDGMENT
9		)	
	State of Oregon, acting by and through the	)	
10	<u>State Board of Tax Practitioners,</u>	)	NO ORAL ARGUMENT REQUESTED
	Defendant.	)	UNLESS NECESSARY TO INTRODUCE
11		)	AUDIO EVIDENCE TO THE COURT
12		)	

13  
14 If the court decides it necessary for oral arguments for the introduction of auditory  
15 evidence, Pursuant to UTCR 5.050, Plaintiff Chad Mangum respectfully requests permission to  
16 appear remotely at the hearing on Plaintiff's Motion for Summary Judgment. No court reporting  
17 services are requested. The party served with this request is Seth T. Karpinski, Senior Assistant  
18 Attorney General; Email: Seth.T.Karpinski@doj.oregon.gov; Phone: (503) 947-4700.

19 **MOTION**

20 Pursuant to Oregon Rule of Civil Procedure (ORCP) 47, Plaintiff Chad Mangum moves  
21 this Court for summary judgment against Defendant Oregon Board of Tax Practitioners (OBTP).  
22 No genuine issue of material fact exists, and Plaintiff is entitled to judgment as a matter of law.

1 This motion is supported by the accompanying Memorandum, the declarations and exhibits in  
2 the record, and the pleadings on file.

### 3 **UNDISPUTED MATERIAL FACTS**

4 The following material facts are undisputed, as supported by the record, filings, and  
5 evidence:

6 a) **Parties and Background:** Plaintiff Chad Mangum is a tax professional residing  
7 outside of the state of Oregon. Through *Oregon* statutes, Defendant is an Oregon state  
8 agency charged with regulating tax preparers under ORS 673.605 to 673.740.

9 b) **Defendant's Licensing Requirement:** Defendant requires that any individual who  
10 prepares even a single Oregon personal income tax return be licensed through  
11 Defendant, regardless of whether that individual resides or physically conducts  
12 business in Oregon. Defendant has communicated this requirement through its  
13 official website FAQ (Ex. 1) stating that “anyone residing within the State of Oregon  
14 or outside of the State must be licensed to prepare any Oregon personal returns”, as  
15 well as through statements by its Executive Director and counsel confirming that even  
16 out-of-state practitioners must obtain an Oregon license. The intent is also reiterated  
17 in their newly proposed rules (Ex. 17).

18 c) **Statutory Authority (or Lack Thereof):** No statute expressly extends Defendant's  
19 licensing authority to tax preparers without a physical presence in Oregon. The  
20 governing statutes (ORS 673.605–673.740) contain no provision *explicitly* mandating  
21 that out-of-state persons obtain licensure, and Defendant has promulgated no  
22 administrative rule defining “in this state” to include persons located entirely outside  
23 Oregon. (By “explicitly,” Plaintiff clarifies no statute directly states substantially to

1 the effect of, “the Board has power to force licensure over individuals in other  
2 states.”)

3 d) **Plaintiff’s Compliance and Harm:** In light of Defendant’s policy, Plaintiff obtained  
4 an Oregon tax preparer license (and paid associated fees) to avoid penalties and for  
5 fear of enforcement and reprisal, despite operating exclusively outside Oregon.  
6 Plaintiff continues to be subject to Defendant’s enforcement of out-of-state licensing  
7 mandate.

8 e) **Scope of Regulation – Exceptions:** Under Oregon law, Defendant’s licensing  
9 requirements apply only to the preparation of personal income tax returns, and not to  
10 city, county, business, estate, or other types of tax returns. Moreover, ORS 673.610  
11 explicitly exempts certain persons from Defendant’s regulation, including attorneys  
12 licensed in any state, Certified Public Accountants (CPAs) licensed in any state, and  
13 the employees of those CPAs. Thus, Defendant does not require licensure for (a)  
14 individuals preparing only business or other non-personal returns, and (b) attorneys,  
15 CPAs, CPA firm staff, or other exempt professionals—even if those individuals are  
16 located out of state. These undisputed facts illustrate that Oregon’s tax preparer  
17 regulatory scheme has *never* encompassed *every* person preparing an Oregon tax  
18 return, but, historically, only those non-exempt individuals preparing personal returns  
19 in the course of business in Oregon.

## 20 LEGAL STANDARD

21 ORCP 47 C provides that summary judgment shall be granted if “there is no *genuine*  
22 issue as to any material fact and the moving party is entitled to prevail as a matter of law”  
23 (emphasis added) (*Two Two and Fodge v. Fujitec America, Inc.*, 355 Or. 319, 325, 325 P.3d 707

(2014).) When the material facts are agreed upon, as they are here, and the dispute turns on a pure question of law, summary judgment is an appropriate and *efficient* means of resolution, as in *Eckles v. State of Oregon*, 306 Or. 380, 760 P.2d 846 (1988) (wherein the Supreme Court dealt exclusively with questions of law. Specifically, constitutional interpretation—Contract Clause, takings, due process, etc.) The court must view the record in the light most favorable to the non-moving party, but if no reasonable trier of fact could find for the non-movant on the facts as presented, summary judgment should be entered, as discussed in *Jones v. General Motors Corp.*, 325 Or. 404, 939 P.2d 608 (1997). In this case, the material facts are established by official records and are not subject to contradiction, so the remaining issues are legal in nature.

## **ARGUMENT**

Plaintiff is entitled to declaratory relief as a matter of law, grounded in ORS 28.020, which provide that any person, “whose rights, status or other legal relations are affected by a constitution, *statute*, municipal charter, ordinance, contract or franchise” may seek “a declaration of rights, status or other legal relations thereunder.” (emphasis added) This includes questions of statutory construction, administrative rule validity, or governmental overreach, as in the present case. Defendant’s attempt to enforce its licensing statutes against out-of-state tax preparers (with no in-state presence) is contrary to the plain reading of text, context, and legislative intent of the statutes, and because Defendant’s actions to that effect are ultra vires and procedurally improper under Oregon’s Administrative Procedures Act (ORS chapter 183). Plaintiff reaffirms he is entitled to a judicial interpretation as a matter of law and statute. The arguments supporting summary judgment are summarized below and explained fully, and supported by, the accompanying Memorandum in Support of Summary Judgment and Exhibits to Motion for Summary Judgment.

1           a) **The Statutory Phrase “in this state” Limits Defendant’s Licensing Authority**

2           **to Oregon:** ORS 673.615(1) makes it unlawful for a person to prepare personal  
3           income tax returns for compensation unless licensed as an Oregon tax consultant,  
4           but the scope of this requirement must be read in context. ORS 673.730(1), which  
5           enumerates Defendant’s powers, explicitly authorizes the Board “to determine  
6           qualifications of applicants for licensing as a tax consultant or a tax preparer *in*  
7           *this state*” (emphasis added). By terms of its plain reading, “in this state” confines  
8           the Board’s licensing jurisdiction to persons within Oregon’s geographic  
9           boundaries, specifically those physically present in Oregon. The plain and natural  
10          meaning of “in this state” refers to someone within Oregon’s borders, i.e., a  
11          person physically present in Oregon. Nothing in ORS 673.605–673.740 purports  
12          to regulate individuals or businesses operating wholly outside Oregon. To  
13          interpret “in this state” as Defendant does—to reach anyone, anywhere, who  
14          prepares an Oregon return—would insert words that the legislature omitted,  
15          contrary to ORS 174.010’s directive that a court shall not “insert what has been  
16          omitted” from a statute. Oregon courts must presume the legislature meant what  
17          it said; here it said, “in this state,” not “in any location so long as an Oregon  
18          return is prepared.”

19          b) **Statutory Context and Legislative Intent Confirm a Limited Geographic**

20          **Scope:** The broader statutory context and legislative history demonstrate that the  
21          tax preparer licensing law was intended to regulate tax preparation within  
22          Oregon—enhancing the quality of local preparers—not to police practitioners in  
23          other states. When enacting ORS 673.605–673.740 in 1973 (via House Bill 2271),

1 the legislature focused on ensuring that individuals presenting themselves as tax  
2 preparers to Oregon consumers meet minimum competency standards through  
3 testing and education (Ex. 20, 21, 22). Legislators discussed instances of  
4 negligent tax preparation and the need to protect Oregonians by licensing  
5 preparers, who were often untrained “bookkeepers” rather than CPAs or attorneys  
6 (Ex. 20, 21, 22). They expressly excluded professionals like attorneys and CPAs,  
7 as well as in-house company staff, from the licensing mandate, acknowledging  
8 that many qualified individuals (and those already regulated) should not be  
9 subject to this new Oregon-specific license. The legislative record contains no  
10 indication that the law should extend beyond Oregon’s borders to individuals with  
11 no presence in the state. In 1973, the concept of an individual in another state  
12 preparing numerous Oregon returns was not considered; tax preparation was  
13 understood as a local service performed “in this state” or not at all. (Indeed, as  
14 recently as 2025, Defendant acknowledged that modern technology has enabled  
15 Oregon firms to outsource work to out-of-state preparers (Ex. 17)—a scenario the  
16 1973 legislature did not address.) Given this context, the statute is reasonably  
17 construed as narrowly regulating Oregon-based tax preparation activity. Adopting  
18 Defendant’s interpretation would not only conflict with legislative intent but also  
19 raise serious constitutional questions by attempting to extend Oregon’s regulatory  
20 power extraterritorially—a result the Court should avoid absent a clear statutory  
21 mandate.

22 **c) Defendant’s Expansive Interpretation of the Law is Unlawful and Ultra**

23 **Vires:** Agencies possess only the powers granted by statute, and actions

1 exceeding those grants are ultra vires and void. Here, Defendant’s enforcement of  
2 licensure against out-of-state preparers lacks support in ORS 673.605–673.740.  
3 The Board’s authority extends to regulating tax preparers and tax preparation “in  
4 this state,” not the entire nation. Nor the entire world, as claimed by Defendant’s  
5 “anywhere” statements. An administrative rule or policy that “departs from the  
6 statutory policy directive,” it exceeds the agency’s statutory authority and is  
7 invalid (*City of Cornelius v. Dep’t of Land Conservation & Dev.*, 331 Or. App.  
8 349 (2024)). Defendant’s interpretation deviates from the statutory standard  
9 (which limits its reach to preparers in Oregon) by imposing new requirements on  
10 individuals outside Oregon, thereby contravening the statute’s intent and implicit  
11 limits. Oregon courts have invalidated agency rules that overreach in this manner.  
12 Accordingly, Defendant’s policy is unlawful as an agency action exceeding its  
13 jurisdiction (ORS 183.400(4)(a)-(c)).

14 d) **Defendant’s Unapproved Rule Requiring Out-of-State Licensure Violates**

15 **ORS Chapter 183:** Oregon’s Administrative Procedures Act (APA) mandates  
16 that agencies adopt rules through proper notice-and-comment rulemaking if they  
17 seek to impose generally applicable standards or interpretations. Defendant,  
18 however, never adopted an administrative rule defining “preparer...in this state”  
19 to include persons with no Oregon presence. Instead, it imposed this requirement  
20 via an FAQ on its website and through enforcement letters—without public  
21 rulemaking, a hearing, or publishing a rule in the Oregon Administrative Rules.  
22 Such a policy fits the definition of a “rule” (a directive of general applicability  
23 that interprets law, ORS 183.310(9)), and by enforcing it without following APA

1 procedures, Defendant acted “without compliance with applicable rulemaking  
2 procedures.” Under ORS 183.400(4), a court “*shall* declare the rule invalid”  
3 (emphasis added) if an agency rule exceeds the agency’s authority or was not  
4 adopted in compliance with rulemaking procedures. Here, Defendant’s de facto  
5 rule fails both tests: It exceeds statutory authority (as discussed above) and was  
6 never lawfully adopted. Therefore, it must be declared invalid pursuant to ORS  
7 183.400(4)(b) and (c). Notably, Defendant’s own recent actions underscore the  
8 absence of any valid existing rule: In 2025, Defendant initiated formal rulemaking  
9 to address the use of out-of-state tax preparers, citing “changes in...technology”  
10 and the consumer risks posed by unlicensed out-of-state preparers (Ex. 17) This  
11 late attempt to promulgate a rule highlights that, until now, no Oregon rule  
12 covered the situation—further evidence that Defendant’s past enforcement was an  
13 unauthorized ad hoc policy.

14 e) **No Genuine Factual Dispute Prevents Judgment:** The issues presented are  
15 primarily legal (statutory interpretation and the validity of Defendant’s actions  
16 under the APA). The material facts—such as Plaintiff’s residency and practice,  
17 Defendant’s interpretation as stated in its publications, and the content of the  
18 statutes and legislative history—are established through documents, admissions,  
19 and statutes that are before the Court. Defendant cannot point to any conflicting  
20 evidence on these points. Because the dispositive questions are how the law  
21 applies to these undisputed facts and whether Defendant acted lawfully, no trial is  
22 necessary. Courts routinely grant summary judgment in such circumstances when  
23 only legal questions remain.



1 **CONCLUSION**

2 For the foregoing reasons, and those set forth in the accompanying Memorandum,  
3 Exhibits, and all other pleadings filed in the case, Plaintiff respectfully requests that this Court  
4 grant summary judgment in his favor and enter an order providing the following relief:

- 5 a) Declaratory Judgment: Declaring that ORS 673.605–673.740 applies only to persons  
6 physically present and conducting business within Oregon, and that Defendant’s contrary  
7 interpretation exceeds its statutory authority.
- 8 b) Invalidation of Unlawful Policy: Declaring that Defendant’s requirement that wholly out-  
9 of-state preparers obtain Oregon licensure constitutes an invalid rule under ORS 183.400,  
10 as it was not lawfully adopted and exceeds statutory limits.
- 11 c) Injunctive Relief: Permanently enjoining Defendant from enforcing any licensure or  
12 disciplinary requirements against Plaintiff or similarly situated out-of-state preparers  
13 based solely on the preparation of Oregon tax returns.
- 14 d) Costs and Attorney Fees: Awarding Plaintiff costs and reasonable attorney fees under  
15 ORS 183.497, ORS 28.100, or any other related section to this suit due to the matters at  
16 hand and the legally unsupported agency position(s).

17 Further Relief: Granting such other and further relief as the Court deems just and proper to  
18 ensure clarity and enforceability of the judgment.

19

20

21

22

23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

DATED this 21<sup>st</sup> day of April, 2025.

Respectfully Submitted,  
  
CHAD MANGUM  
Plaintiff  
  
/s/ Chad Mangum  
CHAD MANGUM  
Plaintiff