

House Bill 3030

Sponsored by Representative BRUUN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Reduces rate of tax imposed on capital gains of personal income and corporate income and excise taxpayers. Phases in reduction.

Applies to tax years beginning on or after January 1, 2008, for personal income taxpayers and January 1, 2010, for corporate income and excise taxpayers.

Makes conforming changes to implement constitutional amendment repealing corporate surplus "kicker" proposed in _____ Joint Resolution _____ (2007) (LC 1346).

Does not take effect unless constitutional amendment proposed in _____ Joint Resolution _____ (2007) (LC 1346) is approved by people at next primary election. Takes effect on effective date of proposed constitutional amendment.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 291.349, 291.351, 305.792, 316.037,
3 316.122, 317.061 and 318.020; repealing ORS 316.045 and 317.063; and prescribing an effective
4 date.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. (1) For the tax year of the taxpayer beginning on or after January 1, 2008,**
7 **and before January 1, 2009, notwithstanding ORS 316.037 (1), any gain that is treated as net**
8 **capital gain for federal tax purposes and that is included in taxable income in this state shall**
9 **be taxed at the lesser of the rate applicable under ORS 316.037 (1) or 8.5 percent.**

10 **(2) For the tax year of the taxpayer beginning on or after January 1, 2009, and before**
11 **January 1, 2010, notwithstanding ORS 316.037 (1), any gain that is treated as net capital gain**
12 **for federal tax purposes and that is included in taxable income in this state shall be taxed**
13 **at the lesser of the rate applicable under ORS 316.037 (1) or 7.5 percent.**

14 **(3) For the tax year of the taxpayer beginning on or after January 1, 2010, and before**
15 **January 1, 2011, notwithstanding ORS 316.037 (1), any gain that is treated as net capital gain**
16 **for federal tax purposes and that is included in taxable income in this state shall be taxed**
17 **at the lesser of the rate applicable under ORS 316.037 (1) or 6.5 percent.**

18 **(4) For the tax year of the taxpayer beginning on or after January 1, 2011, and before**
19 **January 1, 2012, notwithstanding ORS 316.037 (1), any gain that is treated as net capital gain**
20 **for federal tax purposes and that is included in taxable income in this state shall be taxed**
21 **at the lesser of the rate applicable under ORS 316.037 (1) or 5.5 percent.**

22 **SECTION 2. ORS 316.037 is amended to read:**

23 316.037. (1)(a) A tax is imposed for each taxable year on the entire taxable income of every
24 resident of this state. The amount of the tax shall be determined in accordance with the following
25 table:
26 _____
27

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1	If taxable income is:	The tax is:
2		
3	Not over \$2,000	5% of
4		taxable
5		income
6	Over \$2,000 but not	
7	over \$5,000	\$100 plus 7%
8		of the excess
9		over \$2,000
10		
11	Over \$5,000	\$310 plus 9%
12		of the excess
13		over \$5,000

14
15

16 (b) For tax years beginning in each calendar year, the Department of Revenue shall adopt a
17 table that shall apply in lieu of the table contained in paragraph (a) of this subsection, as follows:

18 (A) The minimum and maximum dollar amounts for each rate bracket for which a tax is imposed
19 shall be increased by the cost-of-living adjustment for the calendar year.

20 (B) The rate applicable to any rate bracket as adjusted under subparagraph (A) of this para-
21 graph shall not be changed.

22 (C) The amounts setting forth the tax, to the extent necessary to reflect the adjustments in the
23 rate brackets, shall be adjusted.

24 (c) For purposes of paragraph (b) of this subsection, the cost-of-living adjustment for any calen-
25 dar year is the percentage (if any) by which the monthly averaged U.S. City Average Consumer
26 Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the
27 monthly averaged index for the second quarter of the calendar year 1992.

28 (d) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City
29 Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of
30 Labor Statistics of the United States Department of Labor.

31 (e) If any increase determined under paragraph (b) of this subsection is not a multiple of \$50,
32 the increase shall be rounded to the next lower multiple of \$50.

33 **(2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital**
34 **gain for federal tax purposes and that is included in taxable income in this state shall be**
35 **taxed at the rate of 4.5 percent.**

36 [(2)] (3) A tax is imposed for each taxable year upon the entire taxable income of every part-year
37 resident of this state. The amount of the tax shall be computed under [subsection (1)] **subsections**
38 **(1) and (2)** of this section as if the part-year resident were a full-year resident and shall be multi-
39 plied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources
40 within this state.

41 [(3)] (4) A tax is imposed for each taxable year on the taxable income of every full-year non-
42 resident that is derived from sources within this state. The amount of the tax shall be determined
43 in accordance with [the table set forth in subsection (1)] **subsections (1) and (2)** of this section.

44 **SECTION 3.** ORS 316.122 is amended to read:

45 316.122. (1) If the federal taxable income of husband and wife (one being a part-year resident and

1 the other a nonresident) is determined on a joint federal return, their taxable income in this state
2 shall be separately determined, unless they elect to file a joint return, in which case their tax on
3 their joint income shall be determined in this state pursuant to ORS 316.037 [(3)] (4).

4 (2) If the federal taxable income of husband and wife (one being a full-year resident and the
5 other a part-year resident) is determined on a joint federal return, their taxable income in this state
6 shall be separately determined, unless they elect to file a joint return, in which case their tax on
7 their joint income shall be determined in this state pursuant to ORS 316.037 [(2)] (3).

8 (3) If the federal taxable income of husband and wife (one being a full-year resident and the
9 other a nonresident) is determined on a joint federal return, their taxable income in the state shall
10 be separately determined, unless they elect to file a joint return, in which case their tax on their
11 joint income shall be determined in this state pursuant to ORS 316.037 [(3)] (4).

12 (4) For purposes of computing the tax of a husband and wife under this section, if one of the
13 spouses is a full-year resident individual, then as used in ORS 316.037 [(2) or] (3) **or (4)**, that spouse's
14 taxable income derived from Oregon sources is that spouse's entire federal taxable income, defined
15 in the laws of the United States, with the modifications, additions and subtractions provided in this
16 chapter and other laws of this state applicable to personal income taxation.

17 (5) The provisions of ORS 316.367 with respect to joint returns apply if both husband and wife
18 are part-year residents or full-year nonresidents.

19 **SECTION 4. The amendments to ORS 316.037 and 316.122 by sections 2 and 3 of this 2007**
20 **Act apply to tax years beginning on or after January 1, 2012.**

21 **SECTION 5. (1) For the tax year of the taxpayer beginning on or after January 1, 2010,**
22 **and before January 1, 2011, notwithstanding ORS 317.061, the net capital gain subject to tax**
23 **under ORS 317.061 shall be taxed at the rate of 6.5 percent.**

24 **(2) For the tax year of the taxpayer beginning on or after January 1, 2011, and before**
25 **January 1, 2012, notwithstanding ORS 317.061, the net capital gain subject to tax under ORS**
26 **317.061 shall be taxed at the rate of 5.5 percent.**

27 **SECTION 6.** ORS 317.061 is amended to read:

28 317.061. (1) The rate of the tax imposed by and computed under this chapter is [*six and*
29 *six-tenths*] **6.6** percent.

30 **(2) Notwithstanding subsection (1) of this section, any gain that is treated as net capital**
31 **gain for federal tax purposes and that is included in taxable income in this state shall be**
32 **taxed at the rate of 4.5 percent.**

33 **SECTION 7. The amendments to ORS 317.061 by section 6 of this 2007 Act apply to tax**
34 **years beginning on or after January 1, 2012.**

35 **SECTION 8. ORS 316.045 and 317.063 do not apply to tax years beginning on or after**
36 **January 1, 2012.**

37 **SECTION 9. ORS 316.045 and 317.063 are repealed on January 2, 2015.**

38 **SECTION 10.** ORS 318.020 is amended to read:

39 318.020. (1) There hereby is imposed upon every corporation for each taxable year a tax at the
40 rate provided in ORS 317.061 upon its Oregon taxable income derived from sources within this state,
41 other than income for which the corporation is subject to the tax imposed by ORS chapter 317 ac-
42 cording to or measured by its Oregon taxable income.

43 (2) Income from sources within this state includes income from tangible or intangible property
44 located or having a situs in this state and income from any activities carried on in this state, re-
45 gardless of whether carried on in intrastate, interstate or foreign commerce.

1 *[(3) Income that constitutes net long-term capital gain described in ORS 317.063 shall be taxed at*
 2 *the rate imposed under ORS 317.063.]*

3 **SECTION 11. The amendments to ORS 318.020 by section 10 of this 2007 Act apply to tax**
 4 **years beginning on or after January 1, 2012.**

5 **SECTION 12.** ORS 291.349 is amended to read:

6 291.349. (1) As soon as practicable after adjournment sine die of the regular session of the
 7 Legislative Assembly, the Oregon Department of Administrative Services shall report to the Emer-
 8 gency Board the estimate as of July 1 of the first year of the biennium of General Fund and State
 9 Lottery Fund revenues that will be received by the state during that biennium. The Oregon De-
 10 partment of Administrative Services shall base its estimate on the last forecast given to the Legis-
 11 lative Assembly before adjournment sine die of the regular session on which the printed, adopted
 12 budget prepared in the Oregon Department of Administrative Services is based, adjusted only insofar
 13 as necessary to reflect changes in laws adopted at that session. The report shall contain the esti-
 14 mated revenues from corporate income and excise taxes separately from the estimated revenues from
 15 other General Fund sources. The Oregon Department of Administrative Services may revise the es-
 16 timate if necessary following adjournment sine die of any special or emergency session of the Leg-
 17 islative Assembly but any revision does not affect the basis of the computation described in
 18 subsection (3) [*or (4)*] of this section.

19 (2) As soon as practicable after the end of the biennium, the Oregon Department of Adminis-
 20 trative Services shall report to the Emergency Board, or the Legislative Assembly if it is in session,
 21 the amount of General Fund revenues collected as of the last June 30 of the preceding biennium.
 22 The report shall contain the collections from corporate income and excise taxes separately from
 23 collections from other sources.

24 *[(3) If the revenues received from the corporate income and excise taxes during the biennium exceed*
 25 *the amounts estimated to be received from such taxes for the biennium, as estimated after adjournment*
 26 *sine die of the regular session, by two percent or more, the total amount of that excess shall be credited*
 27 *to corporate income and excise taxpayers in a percentage amount of corporate excise and income tax*
 28 *liability as determined under subsection (5) of this section. However, no credit shall be allowed against*
 29 *tax liability imposed by ORS 317.090.]*

30 [(4)] (3) If the revenues received from General Fund revenue sources, exclusive of [*those de-*
 31 *scribed in subsection (3) of this section*] **corporate income and excise tax revenues**, during the
 32 biennium exceed the amounts estimated to be received from such sources for the biennium, as esti-
 33 mated after adjournment sine die of the regular session, by two percent or more, there shall be re-
 34 funded from personal income tax revenues an amount equal to the total amount of that excess,
 35 reduced by the cost certified by the Department of Revenue under ORS 291.351 as being allocable
 36 to payments described under this subsection. The excess amount to be refunded shall be paid to
 37 personal income taxpayers in a percentage amount of prior year personal income tax liability as
 38 determined under subsection [(6)] (4) of this section.

39 [(5) If there is an excess to be credited under subsection (3) of this section, on or before October
 40 1, following the end of each biennium, the Oregon Department of Administrative Services shall deter-
 41 mine and certify to the Department of Revenue the percentage amount of credit for purposes of sub-
 42 section (3) of this section. The percentage amount determined shall be a percentage amount to the
 43 nearest one-tenth of a percent that will distribute the excess to be credited to corporate excise and in-
 44 come taxpayers for taxable years beginning in the calendar year during which the excess is determined.
 45 The credit shall be computed after the allowance of any other credit or offset against tax liability al-

1 *lowed or allowable under any provision of law of this state, and before the application of estimated tax*
 2 *payments, withholding or other advance tax payments.]*

3 [(6)(a)] (4)(a) If there is an excess to be refunded under subsection [(4)] (3) of this section, on
 4 or before September 15, following the end of each biennium, the Oregon Department of Administra-
 5 tive Services shall determine and certify to the Department of Revenue the percentage amount of
 6 refund payment for purposes of subsection [(4)] (3) of this section. The percentage amount so deter-
 7 mined shall be a percentage amount to the nearest one-hundredth of a percent that will distribute
 8 the excess to be refunded to personal income taxpayers under subsection [(4)] (3) of this section.
 9 The percentage amount shall equal the amount distributed under subsection [(4)] (3) of this section
 10 divided by the estimated total personal income tax liability for all personal income taxpayers for tax
 11 years beginning in the calendar year immediately preceding the calendar year in which the excess
 12 is determined.

13 (b) The Department of Revenue shall multiply the percentage amount determined under para-
 14 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the
 15 tax year beginning in the calendar year immediately preceding the calendar year in which the ex-
 16 cess is determined in order to calculate the amount of the refund to be made to the taxpayer.

17 (c) The refund described under this subsection shall be subject to the rules allowing setoff of
 18 refunds or sums due debtors of this state under ORS 293.250.

19 (d) The refund described under this subsection shall be mailed by the Department of Revenue
 20 to personal income taxpayers eligible for the payment on or before December 1 following the end
 21 of the biennium for which the payment described under this subsection is being made.

22 (e) Notwithstanding paragraph (d) of this subsection, the Department of Revenue shall mail the
 23 refund at the earliest date of practicable convenience in the case of a return:

24 (A) For a tax year beginning in the calendar year immediately preceding the calendar year in
 25 which the excess is determined for which refund is being made; and

26 (B) That is first filed on or after August 15 after the end of the biennium.

27 [(7)] (5) No refund shall be made to a taxpayer if, after making the calculation described under
 28 subsection [(6)] (4) of this section, the amount calculated is less than \$1.

29 **SECTION 13.** ORS 291.351 is amended to read:

30 291.351. If, based on the report made under ORS 291.349 (2), refund will be made under ORS
 31 291.349 [(4)] (3), the Department of Revenue shall certify the costs that are incurred in calculating
 32 and making the refunds under ORS 291.349 [(4)] (3). Costs shall be certified by the department within
 33 15 days of the date the report under ORS 291.349 (2) is made. As used in this section, "costs" means
 34 and is limited to those costs that, absent the requirement of making a refund under ORS 291.349
 35 [(4)] (3), would not be incurred by the department.

36 **SECTION 14.** ORS 305.792 is amended to read:

37 305.792. (1) The Department of Revenue shall cause a checkoff box to be printed on the personal
 38 income [*and corporate income or excise*] tax returns for the appropriate tax year, by which a tax-
 39 payer may indicate that a surplus refund payment [*or credit*] that the taxpayer may otherwise be
 40 entitled to under ORS 291.349 shall instead be used for funding education.

41 (2)(a) A personal income taxpayer may elect to donate a surplus refund payment to be made
 42 under ORS 291.349 to public elementary and secondary school education. The taxpayer may make
 43 the election by checking the appropriate checkoff box on the taxpayer's return indicating the tax-
 44 payer's intention to donate the surplus refund payment to public elementary and secondary educa-
 45 tion.

1 (b) Once made, the election is irrevocable for any surplus refund payments received until a
 2 subsequent return is filed for a later tax year, and on which the checkoff box is not checked.

3 [(3)(a) A corporate excise or income taxpayer may elect to not claim a surplus refund credit that
 4 the taxpayer would otherwise be entitled to pursuant to ORS 291.349, in order to achieve a corre-
 5 sponding transfer of such moneys from the General Fund to the State School Fund for the support of
 6 public elementary and secondary school education. The taxpayer may make the election by checking the
 7 appropriate checkoff box on the taxpayer's return and by not using the surplus refund credit percentage
 8 to reduce the taxpayer's tax liability.]

9 [(b) A taxpayer that checks the appropriate checkoff box indicating that the credit will not be
 10 claimed but that nevertheless claims the credit in determining the taxpayer's tax liability shall be con-
 11 sidered to have not made the election under this subsection.]

12 [(c) The election to not claim a credit under this subsection may not be revoked by filing an
 13 amended return.]

14 [(4)] (3) After the determination that surplus refund payments are to be made under ORS 291.349
 15 (3) and (4) [and (6)], the department shall determine the total amount of such payments for which
 16 an election to donate to public elementary and secondary education has been made and shall certify
 17 this amount to the State Treasurer. Following the department's certification to the State Treasurer,
 18 an election to donate that biennium's surplus refund payments under subsection (2) of this section
 19 is irrevocable.

20 [(5) Following the determination to credit corporate income and excise taxes pursuant to ORS
 21 291.349 (3) and (5), the department shall annually certify the total amount of allowable credits that have
 22 not been claimed pursuant to an election made under subsection (3) of this section. The certification
 23 shall be made on or before December 31 of each year, until the tax year for which the credit would
 24 otherwise be claimed becomes a closed tax year.]

25 **SECTION 15. Section 16 of this 2007 Act is added to and made a part of ORS chapter 314.**

26 **SECTION 16. The Department of Revenue shall adjust any corporate income or excise tax
 27 return filed before the effective date of this 2007 Act to reflect the amendments to ORS
 28 291.349 by section 12 of this 2007 Act and the amendments to section 14, Article IX of the
 29 Oregon Constitution by _____ Joint Resolution _____ (2007) (LC 1346).**

30 **SECTION 17. This 2007 Act does not take effect unless the amendment to the Oregon
 31 Constitution proposed by _____ Joint Resolution _____ (2007) (LC 1346) is approved by the
 32 people at a special election held throughout this state on the same date as the next primary
 33 election. This 2007 Act takes effect on the effective date of that constitutional amendment.**

34