

# House Bill 3049

Sponsored by COMMITTEE ON REVENUE

## 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**.

Modifies personal income tax kicker to be tax credit that may be claimed by taxpayer on taxpayer's return, rather than refund payment.

Applies to biennia beginning on or after July 1, 2007.

## A BILL FOR AN ACT

1  
2 Relating to surplus revenues; creating new provisions; and amending ORS 291.349, 291.351 and  
3 305.792.

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

5 **SECTION 1.** 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  
25 exceed the amounts estimated to be received from such taxes for the biennium, as estimated after  
26 adjournment sine die of the regular session, by two percent or more, the total amount of that excess  
27 shall be credited to corporate income and excise taxpayers in a percentage amount of corporate  
28 excise and income tax liability as determined under subsection (5) of this section. However, no credit  
29 shall be allowed against tax liability imposed by ORS 317.090.

30 (4) If the revenues received from General Fund revenue sources, exclusive of those described in  
31 subsection (3) of this section, during the biennium exceed the amounts estimated to be received from

**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 such sources for the biennium, as estimated after adjournment sine die of the regular session, by two  
 2 percent or more, there shall be *[refunded]* **credited** from personal income tax revenues an amount  
 3 equal to the total amount of that excess, reduced by the cost certified by the Department of Revenue  
 4 under ORS 291.351 *[as being allocable to payments described under this subsection]*. The excess  
 5 amount to be *[refunded]* **credited** shall be *[paid]* **credited** to personal income taxpayers in a per-  
 6 centage amount of prior year personal income tax liability as determined under subsection (6) of this  
 7 section.

8 (5) If there is an excess to be credited under subsection (3) of this section, on or before October  
 9 1, following the end of each biennium, the Oregon Department of Administrative Services shall de-  
 10 termine and certify to the Department of Revenue the percentage amount of credit for purposes of  
 11 subsection (3) of this section. The percentage amount determined shall be a percentage amount to  
 12 the nearest one-tenth of a percent that will distribute the excess to be credited to corporate excise  
 13 and income taxpayers for taxable years beginning in the calendar year during which the excess is  
 14 determined. The credit shall be computed after the allowance of any other credit or offset against  
 15 tax liability allowed or allowable under any provision of law of this state, and before the application  
 16 of estimated tax payments, withholding or other advance tax payments.

17 (6)(a) If there is an excess to be *[refunded]* **credited** under subsection (4) of this section, on or  
 18 before September 15, following the end of each biennium, the Oregon Department of Administrative  
 19 Services shall determine and certify to the Department of Revenue the percentage amount of *[refund*  
 20 *payment]* **credit** for purposes of subsection (4) of this section. The percentage amount so determined  
 21 shall be a percentage amount to the nearest one-hundredth of a percent that will distribute the ex-  
 22 cess to be *[refunded]* **credited** to personal income taxpayers under subsection (4) of this section. The  
 23 percentage amount shall equal the amount distributed under subsection (4) of this section divided  
 24 by the estimated total personal income tax liability for all personal income taxpayers for tax years  
 25 beginning in the calendar year immediately preceding the calendar year in which the excess is de-  
 26 termined.

27 (b) The *[Department of Revenue shall multiply]* **amount of the credit that may be claimed by**  
 28 **a personal income taxpayer is equal to** the percentage amount determined under paragraph (a)  
 29 of this subsection **multiplied** by the total amount of *[a]* **the** personal income taxpayer's tax liability  
 30 for the tax year beginning in the calendar year immediately preceding the calendar year in which  
 31 the excess is determined *[in order to calculate the amount of the refund to be made to the taxpayer]*.

32 (c) The *[refund]* **credit** described under this subsection shall be subject to the rules allowing  
 33 setoff of refunds or sums due debtors of this state under ORS 293.250.

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

37 *[(e) Notwithstanding paragraph (d) of this subsection, the Department of Revenue shall mail the*  
 38 *refund at the earliest date of practicable convenience in the case of a return:]*

39 *[(A) For a tax year beginning in the calendar year immediately preceding the calendar year in*  
 40 *which the excess is determined for which refund is being made; and]*

41 *[(B) That is first filed on or after August 15 after the end of the biennium.]*

42 *[(7) No refund shall be made to a taxpayer if, after making the calculation described under sub-*  
 43 *section (6) of this section, the amount calculated is less than \$1.]*

44 **SECTION 2.** ORS 291.351 is amended to read:

45 291.351. If, based on the report made under ORS 291.349 (2), *[refund]* **credit** will be made under

1 ORS 291.349 (4), the Department of Revenue shall certify the costs that are incurred in calculating  
 2 and *[making the refunds]* **applying the credits** under ORS 291.349 (4). Costs shall be certified by the  
 3 department within 15 days of the date the report under ORS 291.349 (2) is made. As used in this  
 4 section, “costs” means and is limited to those costs that, absent the requirement of *[making a*  
 5 *refund]* **calculating and applying a credit** under ORS 291.349 (4), would not be incurred by the  
 6 department.

7 **SECTION 3.** ORS 305.792 is amended to read:

8 305.792. (1) The Department of Revenue shall cause a checkoff box to be printed on the personal  
 9 income and corporate income or excise tax returns for the appropriate tax year, by which a tax-  
 10 payer may indicate that a surplus refund *[payment or]* credit that the taxpayer may otherwise be  
 11 entitled to under ORS 291.349 shall instead be used for funding education.

12 *[(2)(a) A personal income taxpayer may elect to donate a surplus refund payment to be made under*  
 13 *ORS 291.349 to public elementary and secondary school education. The taxpayer may make the election*  
 14 *by checking the appropriate checkoff box on the taxpayer’s return indicating the taxpayer’s intention*  
 15 *to donate the surplus refund payment to public elementary and secondary education.]*

16 *[(b) Once made, the election is irrevocable for any surplus refund payments received until a sub-*  
 17 *sequent return is filed for a later tax year, and on which the checkoff box is not checked.]*

18 *[(3)(a)]* **(2)(a)** A *[corporate excise or income]* taxpayer may elect to not claim a surplus refund  
 19 credit that the taxpayer would otherwise be entitled to pursuant to ORS 291.349, in order to achieve  
 20 a corresponding transfer of such moneys from the General Fund to the State School Fund for the  
 21 support of public elementary and secondary school education. The taxpayer may make the election  
 22 by checking the appropriate checkoff box on the taxpayer’s return and by not using the surplus re-  
 23 fund credit percentage to reduce the taxpayer’s tax liability.

24 (b) A taxpayer that checks the appropriate checkoff box indicating that the credit will not be  
 25 claimed but that nevertheless claims the credit in determining the taxpayer’s tax liability shall be  
 26 considered to have not made the election under this subsection.

27 (c) The election to not claim a credit under this subsection may not be revoked by filing an  
 28 amended return.

29 *[(4) After the determination that surplus refund payments are to be made under ORS 291.349 (4)*  
 30 *and (6), the department shall determine the total amount of such payments for which an election to*  
 31 *donate to public elementary and secondary education has been made and shall certify this amount to*  
 32 *the State Treasurer. Following the department’s certification to the State Treasurer, an election to*  
 33 *donate that biennium’s surplus refund payments under subsection (2) of this section is irrevocable.]*

34 *[(5)]* **(3)** Following the determination to credit corporate income and excise taxes pursuant to  
 35 ORS 291.349 (3) and (5), **or personal income taxes pursuant to ORS 291.349 (4) and (6)**, the de-  
 36 partment shall annually certify the total amount of allowable credits that have not been claimed  
 37 pursuant to an election made under subsection *[(3)]* **(2)** of this section. The certification shall be  
 38 made on or before December 31 of each year, until the tax year for which the credit would otherwise  
 39 be claimed becomes a closed tax year.

40 **SECTION 4. The amendments to ORS 291.349, 291.351 and 305.792 by sections 1 to 3 of this**  
 41 **2007 Act apply to biennia beginning on or after July 1, 2007.**