

# Senate Bill 48

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## 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**.

Implements repeal of corporate surplus "kicker" refund proposed in Senate Joint Resolution 3 (2007), and transfers corporate income and excise tax revenues that exceed estimate of corporate income and excise taxes to school capital matching subaccount of education stability fund.

Does not take effect unless voters approve Senate Joint Resolution 3 (2007). Takes effect on effective date of constitutional amendments proposed in resolution.

## A BILL FOR AN ACT

1  
2 Relating to corporate tax revenues in excess of estimates; creating new provisions; amending ORS  
3 291.349 and 305.792; and prescribing an effective date.

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 excise*  
28 *and income tax liability as determined under subsection (5) of this section. However, no credit shall*

**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 *be allowed against tax liability imposed by ORS 317.090* **transferred to the education stability**  
 2 **fund school capital matching subaccount created under section 4 (8), Article XV of the**  
 3 **Oregon Constitution.**

4 (4) If the revenues received from General Fund revenue sources, exclusive of those described in  
 5 subsection (3) of this section, during the biennium exceed the amounts estimated to be received from  
 6 such sources for the biennium, as estimated after adjournment sine die of the regular session, by two  
 7 percent or more, there shall be refunded from personal income tax revenues an amount equal to the  
 8 total amount of that excess, reduced by the cost certified by the Department of Revenue under ORS  
 9 291.351 as being allocable to payments described under this subsection. The excess amount to be  
 10 refunded shall be paid to personal income taxpayers in a percentage amount of prior year personal  
 11 income tax liability as determined under subsection (6) of this section.

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

23 (6)(a) If there is an excess to be refunded under subsection (4) of this section, on or before  
 24 September 15, following the end of each biennium, the Oregon Department of Administrative Ser-  
 25 vices shall determine and certify to the Department of Revenue the percentage amount of refund  
 26 payment for purposes of subsection (4) of this section. The percentage amount so determined shall  
 27 be a percentage amount to the nearest one-hundredth of a percent that will distribute the excess to  
 28 be refunded to personal income taxpayers under subsection (4) of this section. The percentage  
 29 amount shall equal the amount distributed under subsection (4) of this section divided by the esti-  
 30 mated total personal income tax liability for all personal income taxpayers for tax years beginning  
 31 in the calendar year immediately preceding the calendar year in which the excess is determined.

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

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

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

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

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

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

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

3 **SECTION 2. The amendments to ORS 291.349 by section 1 of this 2007 Act apply to**  
 4 **biennia beginning on or after July 1, 2007.**

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

6 305.792. (1) The Department of Revenue shall cause a checkoff box to be printed on the personal  
 7 income [*and corporate income or excise*] tax returns for the appropriate tax year, by which a tax-  
 8 payer may indicate that a surplus refund payment [*or credit*] that the taxpayer may otherwise be  
 9 entitled to under ORS 291.349 shall instead be used for funding education.

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

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

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

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

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

28 [(4)] (3) After the determination that surplus refund payments are to be made under ORS 291.349  
 29 (4) and (6), the department shall determine the total amount of such payments for which an election  
 30 to donate to public elementary and secondary education has been made and shall certify this amount  
 31 to the State Treasurer. Following the department's certification to the State Treasurer, an election  
 32 to donate that biennium's surplus refund payments under subsection (2) of this section is irrevocable.

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

38 **SECTION 4. The amendments to ORS 305.792 by section 3 of this 2007 Act apply to tax**  
 39 **years beginning on or after January 1, 2009.**

40 **SECTION 5. This 2007 Act does not take effect unless the amendment to the Oregon**  
 41 **Constitution proposed by Senate Joint Resolution 3 (2007) is approved by the people at the**  
 42 **next regular general election held throughout this state. This 2007 Act takes effect on the**  
 43 **effective date of that constitutional amendment.**