

Senate Bill 511

Sponsored by Senator WALKER

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**.

Eliminates corporate surplus revenue "kicker." Applies to biennia beginning on or after July 1, 2005.

Takes effect only if amendment to Oregon Constitution proposed by Senate Joint Resolution 14 (2007) is approved by people at special election to be held on May 15, 2007.

Takes effect on effective date of constitutional amendment proposed by Senate Joint Resolution 14 (2007).

A BILL FOR AN ACT

1
2 Relating to surplus revenues from corporate taxes; creating new provisions; amending ORS 291.349,
3 291.351 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 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.]*

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

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

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

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

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

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

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

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

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

43 [(7)] (5) No refund shall be made to a taxpayer if, after making the calculation described under
 44 subsection [(6)] (4) of this section, the amount calculated is less than \$1.

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

1 291.351. If, based on the report made under ORS 291.349 (2), refund will be made under ORS
 2 291.349 [(4)] (3), the Department of Revenue shall certify the costs that are incurred in calculating
 3 and making the refunds under ORS 291.349 [(4)] (3). Costs shall be certified by the department within
 4 15 days of the date the report under ORS 291.349 (2) is made. As used in this section, "costs" means
 5 and is limited to those costs that, absent the requirement of making a refund under ORS 291.349
 6 [(4)] (3), would not be incurred by the 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
 13 under ORS 291.349 to public elementary and secondary school education. The taxpayer may make
 14 the election by checking the appropriate checkoff box on the taxpayer's return indicating the tax-
 15 payer's intention to donate the surplus refund payment to public elementary and secondary educa-
 16 tion.

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

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

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

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

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

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

41 **SECTION 4.** The amendments to ORS 291.349, 291.351 and 305.792 by sections 1 to 3 of this
 42 2007 Act apply to biennia beginning on or after July 1, 2005.

43 **SECTION 5.** This 2007 Act does not take effect unless the amendment to the Oregon
 44 Constitution proposed by Senate Joint Resolution 14 (2007) is approved by the people at a
 45 special election held throughout this state on the date specified in chapter ___, Oregon Laws

1 **2007 (Enrolled Senate Bill 512). This 2007 Act takes effect on the effective date of that con-**
2 **stitutional amendment.**

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