

# Senate Bill 40

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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**.

Requires that calculation of surplus revenue credits or refunds to taxpayers be made after allowance of credit for taxes imposed by another state.

Applies to biennia beginning on or after July 1, 2009.

## A BILL FOR AN ACT

1 Relating to surplus revenue refunds; creating new provisions; and amending ORS 291.349.

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

3 **SECTION 1.** ORS 291.349 is amended to read:

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

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

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

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

**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 from personal income tax revenues an amount equal to the  
3 total amount of that excess, reduced by the cost certified by the Department of Revenue under ORS  
4 291.351 as being allocable to payments described under this subsection. The excess amount to be  
5 refunded shall be paid to personal income taxpayers in a percentage amount of prior year personal  
6 income tax liability as determined under subsection (6) of this section.

7 (5)(a) If there is an excess to be credited under subsection (3) of this section, on or before Oc-  
8 tober 1, following the end of each biennium, the Oregon Department of Administrative Services shall  
9 determine and certify to the Department of Revenue the percentage amount of credit for purposes  
10 of subsection (3) of this section. The percentage amount determined shall be a percentage amount  
11 to the nearest one-tenth of a percent that will distribute the excess to be credited to corporate ex-  
12 cise and income taxpayers.

13 (b) The percentage amount shall equal the amount distributed under subsection (3) of this sec-  
14 tion divided by the estimated total corporate income and excise tax liability for all corporate income  
15 and excise taxpayers for tax years beginning in the calendar year immediately preceding the calen-  
16 dar year in which the excess is determined.

17 (c) The amount of the surplus credit is determined by multiplying the percentage amount de-  
18 termined under paragraph (b) of this subsection by the total amount of a corporate income or excise  
19 taxpayer's tax liability for the tax year beginning in the calendar year immediately preceding the  
20 calendar year in which the excess is determined in order to calculate the amount to be credited to  
21 the taxpayer.

22 (d) The credit shall be determined based on the tax liability as shown on the return of the tax-  
23 payer or as corrected by the Department of Revenue.

24 (e) The credit shall be computed **after the allowance of a credit provided under ORS 316.082,**  
25 **316.131 or 316.292, but** before the allowance of any other credit or offset against tax liability al-  
26 lowed or allowable under any provision of law of this state, and before the application of estimated  
27 tax payments, withholding or other advance tax payments.

28 (f) If a credit applied against tax liability as described in paragraph (e) of this subsection re-  
29 duces tax liability to zero and an amount of the credit remains unused, the remaining unused amount  
30 shall be carried forward and applied against tax liability as prescribed in paragraph (e) of this sub-  
31 section in the succeeding tax year. Following application of the credit against tax liability in a  
32 succeeding tax year, any amount continuing to remain unused shall be carried forward and applied  
33 against tax liability in a succeeding tax year until all remaining amounts of unused credit are offset  
34 against tax liability.

35 (g) Notwithstanding paragraph (e) of this subsection, if an excess is credited under subsection  
36 (3) of this section for a tax year and an unused credit amount from a prior tax year is carried for-  
37 ward to the tax year as prescribed under paragraph (f) of this subsection, the amount of the  
38 carryforward credit shall be applied against tax liability prior to applying the new credit.

39 (h) The Department of Revenue may prescribe by rule the manner of calculating and claiming  
40 a credit if the filing status of a corporation changes between the tax year described in paragraph  
41 (b) of this subsection and the succeeding tax year.

42 (6)(a) If there is an excess to be refunded under subsection (4) of this section, on or before  
43 September 15, following the end of each biennium, the Oregon Department of Administrative Ser-  
44 vices shall determine and certify to the Department of Revenue the percentage amount of refund  
45 payment for purposes of subsection (4) of this section. The percentage amount so determined shall

1 be a percentage amount to the nearest one-hundredth of a percent that will distribute the excess to  
 2 be refunded to personal income taxpayers under subsection (4) of this section. The percentage  
 3 amount shall equal the amount distributed under subsection (4) of this section divided by the esti-  
 4 mated total personal income tax liability for all personal income taxpayers for tax years beginning  
 5 in the calendar year immediately preceding the calendar year in which the excess is determined.

6 (b) The Department of Revenue shall multiply the percentage amount determined under para-  
 7 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the  
 8 tax year beginning in the calendar year immediately preceding the calendar year in which the ex-  
 9 cess is determined in order to calculate the amount of the refund to be made to the taxpayer. For  
 10 purposes of this paragraph, the taxpayer's tax liability is the amount as shown on the return of the  
 11 taxpayer or as corrected by the Department of Revenue, and is determined:

12 **(A) After the allowance of a credit provided under ORS 316.082, 316.131 or 316.292;**

13 [(A)] **(B)** Before the allowance of any other credit or offset against tax liability allowed or al-  
 14 lowable on the return for the tax year; and

15 [(B)] **(C)** Before the application of estimated tax payments, withholding or other advance tax  
 16 payments.

17 (c) The refund described under this subsection shall be mailed by the Department of Revenue  
 18 to personal income taxpayers eligible for the payment on or before December 15 following the end  
 19 of the biennium for which the payment described under this subsection is being made.

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

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

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

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

27 (8) For purposes of ORS chapters 305 and 314 to 318, refunds issued under subsection (6) of this  
 28 section are refunds of an overpayment of tax imposed under ORS chapter 316, but do not bear in-  
 29 terest.

30 **SECTION 2. The amendments to ORS 291.349 by section 1 of this 2009 Act apply to**  
 31 **biennia beginning on or after July 1, 2009.**

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