

House Bill 3685

Sponsored by Representatives GARRETT, BARNHART, BAILEY, READ; Representatives BUCKLEY, CANNON, DEMBROW, GELSER, GREENLICK, HARKER, HOLVEY, HUNT, KOTEK, NOLAN, TOMEI

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 House Joint Resolution 47 (2011). Limits amount of excess personal income tax revenues returned to personal income taxpayers to \$500 per taxpayer. Transfers any remainder of excess to Oregon Fund. Transfers corporate kicker to Oregon Fund.

Changes statutory references to Oregon Rainy Day Fund to Oregon Fund. Repeals obsolete statutory provisions relating to Oregon Rainy Day Fund.

Allows tax credit against corporate taxes otherwise due to C corporation taxpayer with Oregon sales of less than \$5 million for tax year beginning on or after January 1, 2011.

Takes effect only if House Joint Resolution 47 (2011) is approved by people at next regular general election. Takes effect on effective date of constitutional amendment proposed in House Joint Resolution 47 (2011).

A BILL FOR AN ACT

1
2 Relating to state finance; creating new provisions; amending ORS 291.349, 293.146, 305.792, 317.853
3 and 318.074; repealing ORS 293.144 and 293.148; 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 **odd-numbered year** regu-
7 lar session of the Legislative Assembly, the Oregon Department of Administrative Services shall
8 report to the Emergency Board the estimate as of July 1 of the first year of the biennium of General
9 Fund and State Lottery Fund revenues that will be received by the state during that biennium. The
10 Oregon Department of Administrative Services shall base its estimate on the last forecast given to
11 the Legislative Assembly before adjournment sine die of the **odd-numbered year** regular session
12 on which the printed, adopted budget prepared in the Oregon Department of Administrative Services
13 is based, adjusted only insofar as necessary to reflect changes in laws adopted at that session. The
14 report shall contain the estimated revenues from corporate income and excise taxes separately from
15 the estimated revenues from other General Fund sources. The Oregon Department of Administrative
16 Services may revise the estimate if necessary following adjournment sine die of [*any special or*
17 *emergency*] **an even-numbered year regular session or special** session of the Legislative Assembly
18 but any revision does not affect the basis of the computation described in subsection (3) or (4) of this
19 section.

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

25 (3) If the revenues received from the corporate income and excise taxes during the biennium
26 exceed the amounts estimated to be received from such taxes for the biennium[, *as estimated after*

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 *adjournment sine die of the regular session, by two percent or more,]* **by two percent or more, as**
 2 **estimated after adjournment sine die of an odd-numbered year regular session,** the total
 3 amount of that excess shall be [*credited to corporate income and excise taxpayers in a percentage*
 4 *amount of prior year corporate excise and income tax liability as determined under subsection (5) of*
 5 *this section. However, no credit shall be allowed against tax liability imposed by ORS 317.090]*
 6 **transferred to the Oregon Fund established by section 15, Article IX of the Oregon Consti-**
 7 **tution, or the school capital matching fund created under section 4, Article XI-P of the**
 8 **Oregon Constitution, as provided in section 15 (5), Article IX of the Oregon Constitution.**

9 (4) If the revenues received from General Fund revenue sources, exclusive of those described in
 10 subsection (3) of this section, during the biennium exceed the amounts estimated to be received from
 11 such sources for the biennium, as estimated after adjournment sine die of the regular session[, by
 12 *two percent or more, there shall be refunded from personal income tax revenues an amount equal to the*
 13 *total amount of that excess, reduced by the cost certified by the Department of Revenue under ORS*
 14 *291.351 as being allocable to payments described under this subsection. The excess amount to be re-*
 15 *funded shall be paid to personal income taxpayers in a percentage amount of prior year personal in-*
 16 *come tax liability as determined under subsection (6) of this section.] **by two percent or more, as***

17 **estimated after adjournment sine die of an odd-numbered year regular session, an amount**
 18 **of the excess shall be returned to personal income taxpayers. The amount returned may not**
 19 **exceed \$500 per individual taxpayer. Any remaining amount of the excess shall be transferred**
 20 **to the Oregon Fund established by section 15, Article IX of the Oregon Constitution, or the**
 21 **school capital matching fund created under section 4, Article XI-P of the Oregon Constitu-**
 22 **tion, as provided in section 15 (5), Article IX of the Oregon Constitution.**

23 [(5)(a) *If there is an excess to be credited under subsection (3) of this section, on or before October*
 24 *1, following the end of each biennium, the Oregon Department of Administrative Services shall deter-*
 25 *mine and certify to the Department of Revenue the percentage amount of credit for purposes of sub-*
 26 *section (3) of this section. The percentage amount determined shall be a percentage amount to the*
 27 *nearest one-tenth of a percent that will distribute the excess to be credited to corporate excise and in-*
 28 *come taxpayers.]*

29 [(b) *The percentage amount shall equal the amount distributed under subsection (3) of this section*
 30 *divided by the estimated total corporate income and excise tax liability for all corporate income and*
 31 *excise taxpayers for tax years beginning in the calendar year immediately preceding the calendar year*
 32 *in which the excess is determined.]*

33 [(c) *The amount of the surplus credit is determined by multiplying the percentage amount deter-*
 34 *mined under paragraph (b) of this subsection by the total amount of a corporate income or excise*
 35 *taxpayer's tax liability for the tax year beginning in the calendar year immediately preceding the cal-*
 36 *endar year in which the excess is determined in order to calculate the amount to be credited to the*
 37 *taxpayer.]*

38 [(d) *The credit shall be determined based on the tax liability as shown on the return of the taxpayer*
 39 *or as corrected by the Department of Revenue.]*

40 [(e) *The credit shall be computed after the allowance of a credit provided under ORS 316.082,*
 41 *316.131 or 316.292, but before the allowance of any other credit or offset against tax liability allowed*
 42 *or allowable under any provision of law of this state, and before the application of estimated tax pay-*
 43 *ments, withholding or other advance tax payments.]*

44 [(f) *If a credit applied against tax liability as described in paragraph (e) of this subsection reduces*
 45 *tax liability to zero and an amount of the credit remains unused, the remaining unused amount shall*

1 *be carried forward and applied against tax liability as prescribed in paragraph (e) of this subsection*
 2 *in the succeeding tax year. Following application of the credit against tax liability in a succeeding tax*
 3 *year, any amount continuing to remain unused shall be carried forward and applied against tax li-*
 4 *ability in a succeeding tax year until all remaining amounts of unused credit are offset against tax li-*
 5 *ability.]*

6 *[(g) Notwithstanding paragraph (e) of this subsection, if an excess is credited under subsection (3)*
 7 *of this section for a tax year and an unused credit amount from a prior tax year is carried forward*
 8 *to the tax year as prescribed under paragraph (f) of this subsection, the amount of the carryforward*
 9 *credit shall be applied against tax liability prior to applying the new credit.]*

10 *[(h) The Department of Revenue may prescribe by rule the manner of calculating and claiming a*
 11 *credit if the filing status of a corporation changes between the tax year described in paragraph (b) of*
 12 *this subsection and the succeeding tax year.]*

13 **[(6)(a)] (5) Subject to the \$500 limit in subsection (4) of this section:**

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

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

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

31 **(B)** Before the allowance of any other credit or offset against tax liability allowed or allowable
 32 on the return for the tax year; and

33 **(C)** Before the application of estimated tax payments, withholding or other advance tax pay-
 34 ments.

35 **(c)** 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 15 following the end
 37 of the biennium for which the payment described under this subsection is being made.

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

45 **[(8)] (7)** For purposes of ORS chapters 305 and 314 to 318, refunds issued under subsection **[(6)]**

(5) of this section are refunds of an overpayment of tax imposed under ORS chapter 316, but do not bear interest.

SECTION 2. ORS 293.146 is amended to read:

293.146. (1) As used in this section:

(a) “Ending balance” means the difference between the amount of General Fund revenues collected during a biennium and the amount of General Fund appropriations for the biennium.

(b) “General Fund appropriations” means the amount of moneys appropriated from the General Fund for a biennium in the legislatively approved budget for the biennium, minus the amount of any General Fund appropriation balances for that biennium that revert to the General Fund under ORS 293.190.

(c) “Legislatively approved budget” has the meaning given that term in ORS 291.002.

(2) Except as provided in [ORS 293.148] **section 15 (5), Article IX of the Oregon Constitution**, as soon as possible after the ending balance for a biennium is determined, an amount equal to one percent of the amount of General Fund appropriations for that biennium shall be transferred to the [Oregon Rainy Day Fund established by ORS 293.144] **Oregon Fund established by section 15, Article IX of the Oregon Constitution**. If the ending balance does not equal or exceed one percent of the amount of General Fund appropriations, an amount equal to the ending balance shall be transferred to the [Oregon Rainy Day Fund] **Oregon Fund**.

SECTION 3. ORS 305.792 is amended to read:

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

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

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

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

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

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

[(4)] **(3)** After the determination that surplus refund payments are to be made under ORS 291.349 (4) and [(6)] **(5)**, the department shall determine the total amount of such payments for which an election to donate to public elementary and secondary education has been made and shall certify this amount to the State Treasurer. Following the department’s certification to the State Treasurer,

1 an election to donate that biennium's surplus refund payments under subsection (2) of this section
2 is irrevocable.

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

8 **SECTION 4.** ORS 317.853 is amended to read:

9 317.853. (1) **Except as provided in section 15 (5), Article IX of the Oregon Constitution,** for
10 tax years beginning on or after January 1, 2013, any revenue that is received as a result of a rate
11 of tax above six and six-tenths percent imposed under this chapter and that is in excess of the re-
12 venue that would be received under this chapter at a rate of six and six-tenths percent shall be
13 deposited into the [*Oregon Rainy Day Fund*] **Oregon Fund** established by [*ORS 293.144*] **section**
14 **15, Article IX of the Oregon Constitution.**

15 (2) Before the end of each biennium, beginning with the biennium ending on June 30, 2015, the
16 Department of Revenue shall estimate the revenue described in subsection (1) of this section that
17 is received during the biennium. **Except as provided in section 15 (5), Article IX of the Oregon**
18 **Constitution,** an amount equal to that estimate shall be transferred into the [*Oregon Rainy Day*
19 *Fund*] **Oregon Fund** established by [*ORS 293.144*] **section 15, Article IX of the Oregon Consti-**
20 **tution,** on or before June 30 of each odd-numbered year.

21 **SECTION 5.** ORS 318.074 is amended to read:

22 318.074. (1) **Except as provided in section 15 (5), Article IX of the Oregon Constitution,** for
23 tax years beginning on or after January 1, 2013, any revenue that is received as a result of a rate
24 of tax above six and six-tenths percent imposed under this chapter and that is in excess of the re-
25 venue that would be received under this chapter at a rate of six and six-tenths percent shall be
26 deposited into the [*Oregon Rainy Day Fund*] **Oregon Fund** established by [*ORS 293.144*] **section**
27 **15, Article IX of the Oregon Constitution.**

28 (2) Before the end of each biennium, beginning with the biennium ending on June 30, 2015, the
29 Department of Revenue shall estimate the revenue described in subsection (1) of this section that
30 is received during the biennium. **Except as provided in section 15 (5), Article IX of the Oregon**
31 **Constitution,** an amount equal to that estimate shall be transferred into the [*Oregon Rainy Day*
32 *Fund*] **Oregon Fund** established by [*ORS 293.144*] **section 15, Article IX of the Oregon Consti-**
33 **tution,** on or before June 30 of each odd-numbered year.

34 **SECTION 6.** Pursuant to section 15 (3), Article IX of the Oregon Constitution, once each
35 month, the Oregon Department of Administrative Services shall calculate the amount of
36 General Fund interest that is attributable to moneys in the Oregon Fund, exclusive of any
37 subaccount in the Oregon Fund. **Except as provided in section 15 (5), Article IX of the**
38 **Oregon Constitution,** the amount calculated under this section shall be transferred to the
39 Oregon Fund.

40 **SECTION 7.** Section 6 of this 2011 Act, the amendments to ORS 291.349, 293.146, 305.792,
41 317.853 and 318.074 by sections 1 to 5 of this 2011 Act and the repeal of ORS 293.144 and
42 293.148 by section 8 of this 2011 Act apply to biennia beginning on or after July 1, 2011.

43 **SECTION 8.** ORS 293.144 and 293.148 are repealed.

44 **SECTION 9.** The Oregon Fund established by section 15, Article IX of the Oregon Con-
45 stitution, is intended to be a continuation of the Oregon Rainy Day Fund established by ORS

1 293.144. Moneys contained on the effective date of this 2011 Act in the Oregon Rainy Day
2 Fund established by ORS 293.144 are considered to be moneys in the Oregon Fund established
3 by section 15, Article IX of the Oregon Constitution.

4 **SECTION 10.** (1) The credit against taxes described in this section is allowed only if the
5 revenues received from the corporate income and excise taxes during the biennium exceed
6 the amounts estimated to be received from such taxes for the biennium by two percent or
7 more, as estimated under ORS 291.349 after adjournment sine die of an odd-numbered year
8 regular session.

9 (2) A taxpayer that is a C corporation as defined in ORS 314.730 and that has Oregon
10 sales for the tax year of less than \$5 million shall be allowed a credit against taxes that
11 would otherwise be due under ORS chapter 317 or 318. The amount of the credit shall be
12 determined under subsection (3) of this section.

13 (3)(a) If the revenues received from the corporate income and excise taxes during the
14 biennium exceed the amounts estimated to be received from such taxes for the biennium by
15 two percent or more, as described in subsection (1) of this section, the Oregon Department
16 of Administrative Services shall determine and certify to the Department of Revenue, on or
17 before October 1, following the end of each biennium, a percentage amount for purposes of
18 computing a credit pursuant to subsection (2) of this section. The percentage amount de-
19 termined shall be a percentage amount to the nearest one-tenth of a percent.

20 (b) The percentage amount shall equal the amount of revenues received from the corpo-
21 rate income and excise taxes during the biennium that exceed the amounts estimated to be
22 received from such taxes for the biennium, divided by the estimated total corporate income
23 and excise tax liability for all corporate income and excise taxpayers for the tax year begin-
24 ning in the calendar year immediately preceding the calendar year in which the excess is
25 determined.

26 (c) The amount of the credit is determined by multiplying the percentage amount deter-
27 mined under paragraph (b) of this subsection by the total amount of the tax liability of the
28 taxpayer that is described in subsection (2) of this section for the tax year beginning in the
29 calendar year immediately preceding the calendar year in which the excess is determined in
30 order to calculate the amount to be credited to the taxpayer.

31 (d) The credit shall be determined based on the tax liability as shown on the return of
32 the taxpayer or as corrected by the Department of Revenue.

33 (e) The credit shall be computed after the allowance of a credit provided under ORS
34 316.082, 316.131 or 316.292 but before the allowance of any other credit or offset against tax
35 liability allowed or allowable under any provision of law of this state and before the applica-
36 tion of estimated tax payments, withholding or other advance tax payments.

37 (f) If a credit applied against tax liability as described in paragraph (e) of this subsection
38 reduces tax liability to zero and an amount of the credit remains unused, the remaining un-
39 used amount shall be carried forward and applied against tax liability as prescribed in para-
40 graph (e) of this subsection in the succeeding tax year. Following application of the credit
41 against tax liability in the succeeding tax year, any amount continuing to remain unused
42 shall be carried forward and applied against tax liability in succeeding tax years until all re-
43 maining amounts of unused credit are offset against tax liability.

44 (g) Notwithstanding paragraph (e) of this subsection, if a credit is allowed under this
45 section for a tax year and an unused credit amount from a prior tax year is carried forward

1 to the tax year as prescribed under paragraph (f) of this subsection, the amount of the
2 carryforward credit shall be applied against tax liability prior to applying the new credit.

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

6 (4) As used in this section, "Oregon sales" means:

7 (a) If the taxpayer apportions business income under ORS 314.650 to 314.665 for Oregon
8 income tax purposes, the total sales of the taxpayer in this state during the tax year, as
9 determined for purposes of ORS 314.665;

10 (b) If the taxpayer does not apportion business income for Oregon income tax purposes,
11 the total sales in this state during the tax year that the taxpayer would have had, as deter-
12 mined for purposes of ORS 314.665, if the taxpayer were required to apportion business in-
13 come for Oregon income tax purposes; or

14 (c) If the taxpayer apportions business income using a method different from that pre-
15 scribed by ORS 314.650 to 314.665, Oregon sales as defined by the Department of Revenue by
16 rule.

17 **SECTION 11.** Section 10 of this 2011 Act is added to and made a part of ORS chapter 317.

18 **SECTION 12.** Section 10 of this 2011 Act first applies to tax years beginning on or after
19 January 1, 2011.

20 **SECTION 13.** This 2011 Act does not become effective unless the amendment to the
21 Oregon Constitution proposed by House Joint Resolution 47 (2011) is approved by the people
22 at the regular general election held in November 2012. This 2011 Act takes effect on the ef-
23 fective date of that amendment.