

Senate Bill 303

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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**.

Limits receipt of surplus "kicker" revenue refunds to taxpayers who file returns for tax year on which distribution calculation is based within five calendar years of original due date of returns. Applies to biennia beginning after June 30, 2009. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to surplus revenue refunds; creating new provisions; amending ORS 291.349; and prescribing an effective date.

3
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 prior year
28 corporate excise and income tax liability as determined under subsection (5) of this section. How-
29 ever, no credit shall be allowed against 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) If the revenues received from General Fund revenue sources, exclusive of those described in
2 subsection (3) of this section, during the biennium exceed the amounts estimated to be received from
3 such sources for the biennium, as estimated after adjournment sine die of the regular session, by two
4 percent or more, there shall be refunded from personal income tax revenues an amount equal to the
5 total amount of that excess, reduced by the cost certified by the Department of Revenue under ORS
6 291.351 as being allocable to payments described under this subsection. The excess amount to be
7 refunded shall be paid to personal income taxpayers in a percentage amount of prior year personal
8 income tax liability as determined under subsection (6) of this section.

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

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

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

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

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

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

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

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

44 (6)(a) If there is an excess to be refunded under subsection (4) of this section, on or before
45 September 15, following the end of each biennium, the Oregon Department of Administrative Ser-

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

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

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

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

17 (C) Before the application of estimated tax payments, withholding or other advance tax pay-
 18 ments.

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

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

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

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

27 (7) No refund shall be made to a taxpayer if,]:

28 (a) After making the calculation described under subsection (6) of this section, the amount cal-
 29 culated is less than \$1[.]; or

30 (b) **The taxpayer fails to file a return for the tax year described in subsection (6) of this**
 31 **section within five calendar years of the original date on which the return was due.**

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

35 **SECTION 2. The amendments to ORS 291.349 by section 1 of this 2011 Act apply to**
 36 **biennia beginning after June 30, 2009.**

37 **SECTION 3. This 2011 Act takes effect on the 91st day after the date on which the 2011**
 38 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**