

**A-Engrossed**  
**Senate Bill 329**

Ordered by the Senate May 23  
Including Senate Amendments dated May 23

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Finance and Revenue)

**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.

Modifies statutory corporate kicker provision to match amendment to Oregon Constitution by Ballot Measure 85 (2012). Retains excess corporate income and excise tax revenues in General Fund for use for kindergarten through 12th grade public education.  
*[Declares emergency, effective on passage.]*

**A BILL FOR AN ACT**

1  
2 Relating to state finance; creating new provisions; and amending ORS 291.349 and 305.792.

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

4 **SECTION 1.** ORS 291.349, as amended by section 22, chapter 107, Oregon Laws 2012, is  
5 amended to read:

6 291.349. (1) As soon as practicable after adjournment sine die of the odd-numbered year regular  
7 session of the Legislative Assembly, the Oregon Department of Administrative Services shall report  
8 to the Legislative Revenue Officer and the Legislative Fiscal Officer the estimate as of July 1 of the  
9 first year of the biennium of General Fund and State Lottery Fund revenues that will be received  
10 by the state during that biennium. The Oregon Department of Administrative Services shall base its  
11 estimate on the last forecast given to the Legislative Assembly before adjournment sine die of the  
12 odd-numbered year regular session on which the printed, adopted budget prepared in the Oregon  
13 Department of Administrative Services is based, adjusted only insofar as necessary to reflect  
14 changes in laws adopted at that session. The report shall contain the estimated revenues from cor-  
15 porate income and excise taxes separately from the estimated revenues from other General Fund  
16 sources. The Oregon Department of Administrative Services may revise the estimate if necessary  
17 following adjournment sine die of a special session or an even-numbered year regular session of the  
18 Legislative Assembly, but any revision does not affect the basis of the computation described in  
19 subsection (3) or (4) of this 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 Legislative Revenue Officer and the Legislative Fiscal Officer,  
22 or the Legislative Assembly if it is in session, the amount of General Fund revenues collected as  
23 of the last June 30 of the preceding biennium. The report shall contain the collections from corpo-  
24 rate income and excise taxes separately from 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 odd-numbered year regular session, by two percent or more, the total  
 2 amount of that excess shall be [*credited to corporate income and excise taxpayers in a percentage*  
 3 *amount of prior year corporate excise and income tax liability as determined under subsection (5) of*  
 4 *this section. However, no credit shall be allowed against tax liability imposed by ORS 317.090*] **re-**  
 5 **tained in the General Fund and used to provide additional funding for public education,**  
 6 **kindergarten through grade 12.**

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

15 (5)(a) If there is an excess to be credited under subsection [(3) or] (4) of this section, [*or both,*]  
 16 on or before October 1, following the end of each biennium, the Oregon Department of Administra-  
 17 tive Services shall determine and certify to the Department of Revenue the percentage [*amounts of*  
 18 *credit*] **amount of credits** for purposes of subsection [(3) or] (4) of this section. The percentage  
 19 [*amounts*] **amount** determined shall be **the** percentage [*amounts*] **amount** to the nearest one-tenth  
 20 of a percent that will distribute the excess to be credited [*either to corporate excise and income tax-*  
 21 *payees or*] to personal income taxpayers.

22 [(b) *The percentage amount applicable to subsection (3) of this section shall equal the amount dis-*  
 23 *tributed under subsection (3) of this section divided by the estimated total corporate income and excise*  
 24 *tax liability for all corporate income and excise taxpayers for tax years beginning in the calendar year*  
 25 *immediately preceding the calendar year in which the excess is determined.*]

26 [(c) *The amount of the surplus credit under subsection (3) of this section is determined by multi-*  
 27 *plying the percentage amount determined under paragraph (b) of this subsection by the total amount*  
 28 *of a corporate income or excise taxpayer's tax liability for the tax year beginning in the calendar year*  
 29 *immediately preceding the calendar year in which the excess is determined in order to calculate the*  
 30 *amount to be credited to the taxpayer.*]

31 [(d)] **(b)** The percentage amount applicable to subsection (4) of this section shall equal the  
 32 amount distributed under subsection (4) of this section divided by the estimated total personal in-  
 33 come tax liability for all personal income taxpayers for tax years beginning in the calendar year  
 34 immediately preceding the calendar year in which the excess is determined.

35 [(e)] **(c)** The amount of the surplus credit under subsection (4) of this section is determined by  
 36 multiplying the percentage amount determined under paragraph [(d)] **(b)** of this subsection by the  
 37 total amount of a personal income taxpayer's tax liability for the tax year beginning in the calendar  
 38 year immediately preceding the calendar year in which the excess is determined in order to calcu-  
 39 late the amount to be credited to the taxpayer.

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

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

1        *[(h) For corporate income and excise taxpayers, if a credit applied against tax liability as described*  
 2 *in paragraph (g) of this subsection reduces tax liability to zero and an amount of the credit remains*  
 3 *unused, the remaining unused amount shall be carried forward and applied against tax liability as*  
 4 *prescribed in paragraph (g) of this subsection in the succeeding tax year. Following application of the*  
 5 *credit against tax liability in a succeeding tax year, any amount continuing to remain unused shall be*  
 6 *carried forward and applied against tax liability in a succeeding tax year until all remaining amounts*  
 7 *of unused credit are offset against tax liability.]*

8        *[(i) (f) For personal income taxpayers, if a credit applied against tax liability as described in*  
 9 *paragraph [(g)] (e) of this subsection reduces tax liability to zero and an amount of the credit re-*  
 10 *remains unused, the remaining unused amount shall be refunded to the taxpayer. For purposes of ORS*  
 11 *chapters 305, 314, 315 and 316, refunds issued under this paragraph are refunds of an overpayment*  
 12 *of tax imposed under ORS chapter 316.*

13        *[(j) Notwithstanding paragraph (g) of this subsection, if an excess is credited under subsection (3)*  
 14 *of this section for a tax year and an unused credit amount from a prior tax year is carried forward*  
 15 *to the tax year as prescribed under paragraph (h) of this subsection, the amount of the carryforward*  
 16 *credit shall be applied against tax liability prior to applying the new credit.]*

17        *[(k) (g) The Department of Revenue may prescribe by rule the manner of calculating and*  
 18 *claiming a credit if the filing status of a taxpayer changes between the tax year for which a credit*  
 19 *may be claimed and the succeeding tax year.*

20        (6) A refund may not be made under this section to a taxpayer if the amount of the refund is  
 21 less than \$1.

22        (7) Not later than October 15 following the end of the biennium, the Department of Revenue  
 23 shall provide information and guidance to taxpayers relating to the calculation of the credit. The  
 24 department may make the information and guidance available electronically or otherwise.

25        (8) The Department of Revenue may adopt rules specifying the manner for issuing refunds under  
 26 this section to taxpayers who filed returns in the tax year on which the credit is computed but who  
 27 are not required to file returns in the year in which the credit could be claimed.

28        **SECTION 2.** ORS 305.792 is amended to read:

29        305.792. (1) The Department of Revenue shall provide a means by which personal income [*and*  
 30 *corporate income or excise*] tax return filers may indicate that a surplus refund credit to which the  
 31 taxpayer may otherwise be entitled [*to*] under ORS 291.349 shall instead be used for funding educa-  
 32 tion.

33        (2)(a) A personal income [*or corporate excise or income*] taxpayer may elect not to claim a sur-  
 34 plus refund credit that the taxpayer would otherwise be entitled to pursuant to ORS 291.349, in or-  
 35 der to achieve a corresponding transfer of such moneys from the General Fund to the State School  
 36 Fund for the support of public elementary and secondary school education. The taxpayer may make  
 37 the election in the form and manner prescribed by the department by rule.

38        (b) A taxpayer that indicates that the credit will not be claimed but that nevertheless claims the  
 39 credit in determining the taxpayer's tax liability shall be considered to not have made the election  
 40 under this subsection.

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

43        (3) Following the determination to credit personal income [*or corporate income and excise*] taxes  
 44 pursuant to ORS 291.349, the department shall annually certify to the State Treasurer the total  
 45 amount of allowable credits that have not been claimed pursuant to an election made under sub-

1 section (2) of this section. The certification shall be made on or before December 31 of each year,  
2 until the tax year for which the credit would otherwise be claimed becomes a closed tax year.

3 **SECTION 3. The amendments to ORS 291.349 and 305.792 by sections 1 and 2 of this 2013**  
4 **Act apply to biennia beginning on or after July 1, 2013.**

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