



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

July 3, 2015

Senator Ted Ferrioli
Senate Republican Leader
900 Court Street NE S323
Salem OR 97301

Re: Effect of Senate Bill 567-B on the Kicker

Dear Senator Ferrioli:

You asked whether B-engrossed Senate Bill 567 would have any effect on the calculation of the personal income tax kicker under Article IX, section 14, of the Oregon Constitution. You note that Legislative Counsel has already opined, in an opinion addressed to you on May 15, 2015, that the A-engrossed version of Senate Bill 567 would not affect the method for calculating the kicker. You asked whether the House amendments to A-engrossed Senate Bill 567 change our opinion regarding the bill's effect on the kicker.

Short Answer

The answer is no. We believe that B-engrossed Senate Bill 567 would not affect the method for calculating the kicker. As with the A-engrossed version of the bill, we believe moneys diverted from unreceipted revenues into the Education Stability Fund would still count as General Fund revenues for purposes of calculating the kicker under Article IX, section 14. This is true even though the revenues would never actually be deposited in the General Fund. Therefore, B-engrossed Senate Bill 567 would not have the effect of preventing individual taxpayers from receiving tax credits, or of reducing the amount of any credit, under the kicker provisions of the Oregon Constitution.

Discussion

The legal issue with both the A-engrossed and B-engrossed versions of the bill is whether the diversion of personal income revenues from the General Fund to the Education Stability Fund would reduce General Fund revenues and change the basis for the calculation of the kicker. The House amendments to A-engrossed Senate Bill 567 do not change the legal analysis or conclusion with respect to the bill's effect on the kicker. The two versions contain identical provisions that direct the Department of Revenue to retain unreceipted revenue from personal income taxes and, when required under the bill, to transfer moneys to the Education Stability Fund out of this unreceipted revenue. Therefore, there is no difference between the A-engrossed and B-engrossed versions of the bill with respect to its effect on the calculation of the kicker.

From the Desk of
Senator Ted Ferrioli

The differences between the two versions involve the method for calculating the amount of excess capital gains revenue to be transferred to the Education Stability Fund. The A-engrossed version defines the method of calculating excess capital gains revenue as the difference between the average annual revenue over the two most recent tax years compared to average annual revenue in the two tax years immediately preceding those tax years. If the most recent annual revenue exceeds the annual revenue of the previous period, twice the amount of the excess is deposited in the Education Stability Fund.

The B-engrossed version defines the method of calculating excess capital gains revenue as the difference between the annual amount of tax liability over the two most recent tax years compared to annual tax liability in the three tax years immediately preceding those tax years. If the annual liability of the two most recent tax years exceeds the annual liability of the three tax years that preceded them, twice the amount of the excess is deposited in the Education Stability Fund.

The differences between the A-engrossed bill and the B-engrossed bill involve only the method for calculating the excess. The bills are identical regarding the diversion of the excess revenue from the General Fund to the Education Stability Fund. Therefore, our conclusion that the diversion of personal income tax revenues from the General Fund to the Education Stability Fund will not affect the calculation of the kicker remains the same for the both the A-engrossed and B-engrossed versions of Senate Bill 567. The legal conclusions expressed in the opinion dated May 15, 2015, apply to B-engrossed Senate Bill 567.

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel



By
Ted Reutlinger
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