

House Bill 2149

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on 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 **as introduced**.

Provides for delayed accrual of interest on tax refund if taxpayer willfully and knowingly makes overpayment of income tax or if taxpayer claims refund based on transferred tax credit.

Applies to claims for credit or refund made on or after effective date of Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to interest paid by the Department of Revenue on refunds; creating new provisions;
3 amending ORS 305.305 and 314.415; and prescribing an effective date.

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

5 **SECTION 1.** ORS 314.415 is amended to read:

6 314.415. (1)(a) If the Department of Revenue determines pursuant to ORS 305.270 that the
7 amount of the tax due is less than the amount theretofore paid, the excess shall be refunded by the
8 department with interest at the rate established under ORS 305.220, for each month or fraction of
9 a month during a period beginning 45 days after the due date of the return or the date the tax was
10 paid, or, in the case of a return filed under ORS 118.100, the date that the return is filed, whichever
11 is [*the*] later, to the time the refund is made.

12 **(b) Notwithstanding paragraph (a) of this subsection, if the taxpayer willfully and know-**
13 **ingly makes an overpayment of tax, the refund shall bear interest only during the period**
14 **beginning on the date that the taxpayer files a correct return or claim of refund, or the date**
15 **specified in paragraph (a) of this subsection, whichever is later.**

16 (2)(a) The department may not allow or make a refund after three years from the time the return
17 was filed, or two years from the time the tax (or a portion of the tax) was paid, whichever period
18 expires later, unless before the expiration of this period a claim for refund is filed by the taxpayer
19 in compliance with ORS 305.270. In any case, if the original return is not filed within three years
20 of the due date, excluding extensions, of the return, the department may allow or make a refund only
21 of amounts paid within two years from the date of the filing of the claim for refund. If a refund is
22 disallowed for the tax year during which excess tax was paid for any reason set forth in this sub-
23 section, the department may not allow the excess as a credit against any tax occurring on a return
24 filed for a subsequent year.

25 (b) The department may not make a refund if the tax owed after offsets for all amounts owed
26 the state, or a county pursuant to a judgment obtained under ORS 169.151, is less than \$1.

27 (c) If a taxpayer would qualify under section 6511(h) of the Internal Revenue Code for a sus-
28 pension of the running of the periods specified for filing a claim for refund of federal income tax,
29 the period specified in paragraph (a) of this subsection shall also be suspended.

30 (d) The department may not pay an employee interest on a refund of a tax withheld by an em-

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 payer if the interest would be for any period prior to the time the employee files a personal income
2 tax return for the tax year involved or for any period prior to the day that is 45 days after the date
3 when the employee's annual return for that year was filed or was due, whichever is later.

4 (e) The department may not pay interest on a refund of estimated tax paid under ORS 314.505
5 to 314.525 or 316.557 to 316.589 if the interest would be for any period prior to the time the taxpayer
6 files a tax return for the tax year involved or for any period prior to the day that is 45 days after
7 the date when the tax return for that year was filed or was due, whichever is later.

8 (f) The amount of the refund, exclusive of interest on the refund, may not exceed the portion
9 of the tax paid during the period preceding the filing of the claim or, if no claim is filed, then during
10 the period preceding the allowance of the refund during which a claim might have been filed. Where
11 there has been an overpayment of any tax imposed, the amount of the overpayment and interest on
12 the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer,
13 and only the balance shall be refunded.

14 (g) Except as provided in ORS 305.265 (12), if, pursuant to a notice of deficiency or assessment,
15 the taxpayer pays the amount specified in the notice, or any part thereof, and if, upon appeal, the
16 Oregon Tax Court or the Oregon Supreme Court orders that all or any part of the deficiency amount
17 specified in the notice and paid by the taxpayer be refunded, the amount so ordered to be refunded
18 shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed
19 from the date of payment to the department. Nothing in this subsection shall require that interest
20 be paid upon any amount for any period for which interest upon the same amount for the same pe-
21 riod is required to be paid under ORS 305.419.

22 (3)(a) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or subsection (1)
23 or (2) of this section, if, prior to the expiration of the period prescribed in subsection (2) of this
24 section, the department and the taxpayer consent in writing to the refund of tax after the expiration
25 of the period prescribed:

26 (A) The department shall make the refund prior to the expiration of the period agreed upon; and

27 (B) The department may not make or allow a refund after the expiration of the period agreed
28 upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed
29 upon in compliance with the manner prescribed by the department. The period so agreed upon may
30 be extended by subsequent agreements in writing made before the expiration of the period previ-
31 ously agreed upon.

32 (b) The department may consent to extend the period during which a refund may be made only
33 if the taxpayer has consented to the assessment of additional tax, if additional taxes are determined
34 upon audit, after the expiration of the applicable period prescribed in ORS 314.410 (1) to (3).

35 (4)(a) If the claim for credit or refund relates to an overpayment on account of the deductibility
36 by the taxpayer, or by a partnership, of the worthlessness of a share of stock in a corporation, of
37 the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the
38 three-year period of limitation prescribed in subsection (2) of this section, the period shall be seven
39 years from the date prescribed by law for the filing of the return for the year with respect to which
40 the claim is made.

41 (b) If the claim described in paragraph (a) of this subsection is made after the expiration of the
42 three-year period prescribed in subsection (2) of this section, the department may not allow interest
43 with respect to any credit or refund determined to be due upon the claim for the period beginning
44 at the close of the three-year period prescribed in subsection (2) of this section and ending at the
45 expiration of six months after the date on which the claim is filed.

1 (5)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating
 2 loss carryback or a net capital loss carryback, in lieu of the three-year period of limitation pre-
 3 scribed in subsection (2) of this section, the period shall be the period that ends three years after
 4 the time prescribed by law for filing the return (including extensions) for the taxable year of the
 5 net operating loss or net capital loss that results in such carryback. In the case of such a claim, the
 6 amount of the credit or refund may exceed the portion of the tax paid within the period provided
 7 in subsection (1), (2) or (3) of this section, whichever is applicable, to the extent of the amount of
 8 the overpayment attributable to the carryback. If the allowance of a credit or refund of an over-
 9 payment of tax attributable to a net operating loss carryback or a net capital loss carryback is
 10 otherwise prevented by the operation of any law or rule of law other than ORS 305.150, relating to
 11 closing agreements, the credit or refund may be allowed or made if the claim for credit or refund
 12 is filed within the period provided in this subsection. To the extent that the carryback was not an
 13 issue in any proceeding in which the determination of a court, including the Oregon Tax Court, has
 14 become final, the claimed credit or refund applicable to that carryback may be allowed or made
 15 under this subsection.

16 (b) For purposes of subsection (1) or (2) of this section, if any overpayment of tax results from
 17 a carryback of a net operating loss or net capital loss, the overpayment shall be deemed not to have
 18 been made prior to the later of:

19 (A) The due date of the return for the taxable year in which such net operating loss or net
 20 capital loss arises;

21 (B) The date the return for the year in which the net operating loss or net capital loss arises
 22 is filed; or

23 (C) The date of filing of the return for the year to which the net operating loss or net capital
 24 loss is carried back.

25 **(6) If the claim for credit or refund relates to an overpayment on account of the use of**
 26 **a transferred tax credit, the overpayment shall be deemed to have been made on the date**
 27 **on which the taxpayer obtained the credit, or the date specified in subsection (1)(a) of this**
 28 **section, whichever is later.**

29 [(6)] (7) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or this section,
 30 if the taxpayer has agreed with the United States Commissioner of Internal Revenue for an exten-
 31 sion, or a renewal of an extension, of the period for proposing and assessing deficiencies in federal
 32 income tax for any year, the period within which a claim for credit or refund may be filed or credit
 33 or refund allowed or made if no claim is filed shall be the period provided within subsections (1) to
 34 (5) of this section or six months after the date of the expiration of the agreed period for assessing
 35 deficiency in federal income tax, whichever period expires later.

36 [(7)] (8) If a joint return is filed, the department may make separate refunds at the request of
 37 either spouse. The separate refunds shall bear the same proportion to the total refund as the ad-
 38 justed gross income of each spouse bears to the adjusted gross income of both spouses, or as oth-
 39 erwise determined by the department.

40 [(8)] (9) If a taxpayer entitled to a refund under subsection (1) of this section dies, the depart-
 41 ment may issue a draft for payment of such refund under the terms and conditions set out in ORS
 42 293.490 to 293.500 exercising the same powers and subject to the same restrictions pursuant to
 43 which the State Treasurer is authorized to pay the amounts of warrants, checks or orders under
 44 those statutes.

45 **SECTION 2.** ORS 305.305 is amended to read:

1 305.305. (1) As used in this section, “appeal” means an appeal to the Internal Revenue Service
 2 or any federal court or an appeal to another state’s taxing authority or any state court having ju-
 3 risdiction over the other state’s tax matters that are the subject of the appeal.

4 (2) If a deficiency is based wholly or in part upon an Internal Revenue Service revenue agent’s
 5 report made upon any audit or adjustment of the person’s federal income tax return or upon an audit
 6 report of another state’s taxing authority, the following procedures shall apply:

7 (a) If the person has filed a timely appeal from the deficiency asserted by the service or other
 8 state taxing authority, the person may file proof of the appeal with the Department of Revenue. If
 9 proof of the appeal is received before the tax is assessed, the deficiency shall be assessed without
 10 penalty for failure to pay the tax at the time the tax became due.

11 (b) If the department assesses the deficiency before receipt of proof of the filing of a timely ap-
 12 peal, the person may file the proof with the department. If the proof is filed after the tax has been
 13 assessed with a penalty for failure to pay the tax at the time the tax became due, the penalty shall
 14 not be waived.

15 (3) Notwithstanding any other provision of law, filing of proof of a timely appeal under sub-
 16 section (2) of this section shall extend the time for filing a complaint or petition with the tax court
 17 in accordance with this subsection. The person shall notify the department in writing within 30 days
 18 after the appeal is finally resolved. The department shall review the issues raised by the appeal and
 19 shall make a determination of the effect upon the person’s state income or excise tax liabilities. The
 20 department shall then issue a refund, notice of denial of refund or notice of assessment, as appro-
 21 priate, to the person. If the person disagrees with the department’s action, the person may file a
 22 complaint or petition with the tax court within 90 days after the date of the department’s action as
 23 provided under ORS 305.404 to 305.560. Notwithstanding ORS 314.835 or any other law relating to
 24 confidentiality, the department may notify the magistrate division of the tax court if proof of a
 25 timely appeal is filed with the department or if the department determines that an appeal has been
 26 finally resolved.

27 (4) Except as provided in ORS 314.440 (2), when the department receives proof of a timely ap-
 28 peal, the department shall suspend action to collect the deficiency until the issues are resolved.

29 (5) If interest imposed by the federal government on a federal deficiency or partnership settle-
 30 ment agreement has been suspended under section 6601(c) of the Internal Revenue Code, interest
 31 imposed on a corresponding deficiency determined under ORS 305.265 and this section shall also be
 32 suspended. The suspension of interest imposed under ORS 305.265 shall be effective as of the date
 33 the federal interest is suspended and for the duration for which the federal interest is suspended.

34 (6) Except as provided in ORS 314.415 [(6)] (7), the provisions of this section shall constitute the
 35 exclusive remedy of a person whose notice of deficiency is based wholly or in part upon a federal
 36 revenue agent’s report or the audit report of another state’s taxing authority.

37 **SECTION 3. The amendments to ORS 314.415 by section 1 of this 2015 Act apply to claims**
 38 **for credit or refund made on or after the effective date of this 2015 Act.**

39 **SECTION 4. This 2015 Act takes effect on the 91st day after the date on which the 2015**
 40 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**