

# Senate Bill 961

Sponsored by Senators KRUSE, FERRIOLI, BOQUIST; Senators BAERTSCHIGER JR, GIROD, HANSELL, KNOPP, OLSEN, THATCHER, THOMSEN, WHITSETT, WINTERS, Representatives ESQUIVEL, HACK, HUFFMAN, KRIEGER, NEARMAN, OLSON, POST, SMITH, SPRENGER, WHITSETT

## 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**.

Changes method by which surplus "kicker" refunds are made to personal income taxpayers from tax credit to refund payment.

Applies to biennia beginning on or after July 1, 2013.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to modification of method of return of surplus kicker amounts to individual taxpayers from  
3 tax credit to refund payment; creating new provisions; amending ORS 291.349, 291.351 and  
4 305.792; and prescribing an effective date.

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

6 **SECTION 1.** ORS 291.349 is amended to read:

7 291.349. (1) As soon as practicable after adjournment sine die of the odd-numbered year regular  
8 session of the Legislative Assembly, the Oregon Department of Administrative Services shall report  
9 to the Legislative Revenue Officer and the Legislative Fiscal Officer the estimate as of July 1 of the  
10 first year of the biennium of General Fund and State Lottery Fund revenues that will be received  
11 by the state during that biennium. The Oregon Department of Administrative Services shall base its  
12 estimate on the last forecast given to the Legislative Assembly before adjournment sine die of the  
13 odd-numbered year regular session on which the printed, adopted budget prepared in the Oregon  
14 Department of Administrative Services is based, adjusted only insofar as necessary to reflect  
15 changes in laws adopted at that session. The report shall contain the estimated revenues from cor-  
16 porate income and excise taxes separately from the estimated revenues from other General Fund  
17 sources. The Oregon Department of Administrative Services may revise the estimate if necessary  
18 following adjournment sine die of a special session or an even-numbered year regular session of the  
19 Legislative Assembly, but any revision does not affect the basis of the computation described in  
20 subsection (3) or (4) of this section.

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

26 (3) If the revenues received from the corporate income and excise taxes during the biennium  
27 exceed the amounts estimated to be received from such taxes for the biennium, as estimated after  
28 adjournment sine die of the odd-numbered year regular session, by two percent or more, the total  
29 amount of that excess shall be retained in the General Fund and used, in the manner described in

**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 ORS 291.345, to provide additional funding for public education, kindergarten through grade 12.

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

15 [(5)(a) *If there is an excess to be credited under subsection (4) of this section, on or before October*  
16 *1, following the end of each biennium, the Oregon Department of Administrative Services shall deter-*  
17 *mine and certify to the Department of Revenue the percentage amounts of credit for purposes of sub-*  
18 *section (4) of this section. The percentage amounts determined shall be percentage amounts to the*  
19 *nearest one-tenth of a percent that will distribute the excess to be credited to personal income*  
20 *taxpayers.*]

21 [(b) *The percentage amount applicable to subsection (4) of this section shall equal the amount dis-*  
22 *tributed under subsection (4) of this section divided by the estimated total personal income tax liability*  
23 *for all personal income taxpayers for tax years beginning in the calendar year immediately preceding*  
24 *the calendar year in which the excess is determined.*]

25 [(c) *The amount of the surplus credit under subsection (4) of this section is determined by multi-*  
26 *plying the percentage amount determined under paragraph (b) of this subsection by the total amount*  
27 *of a personal income taxpayer's tax liability for the tax year beginning in the calendar year imme-*  
28 *diately preceding the calendar year in which the excess is determined in order to calculate the amount*  
29 *to be credited to the taxpayer.*]

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

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

36 [(f) *For personal income taxpayers, if a credit applied against tax liability as described in para-*  
37 *graph (e) of this subsection reduces tax liability to zero and an amount of the credit remains unused,*  
38 *the remaining unused amount shall be refunded to the taxpayer. For purposes of ORS chapters 305,*  
39 *314, 315 and 316, refunds issued under this paragraph are refunds of an overpayment of tax imposed*  
40 *under ORS chapter 316.*]

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

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

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

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

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

17 (B) Before the allowance of any other credit or offset against tax liability allowed or al-  
 18 lowable on the return for the tax year; and

19 (C) Before the application of estimated tax payments, withholding or other advance tax  
 20 payments.

21 (c) The refund described under this subsection shall be mailed by the Department of Re-  
 22 venue to personal income taxpayers eligible for the payment on or before December 15 fol-  
 23 lowing the end of the biennium for which the payment described under this subsection is  
 24 being made.

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

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

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

30 (6) A refund may not be made under this section to a taxpayer if, after making the calculation  
 31 described under subsection (5) of this section, the amount of the refund is less than \$1.

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

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

38 (7) For purposes of ORS chapters 305 and 314 to 318, refunds issued under subsection (5)  
 39 of this section are refunds of an overpayment of tax imposed under ORS chapter 316, but do  
 40 not bear interest.

41 **SECTION 2.** ORS 291.351 is amended to read:

42 291.351. If, based on the report made under ORS 291.349 (2), an amount will be [credited] re-  
 43 funded under ORS 291.349 (4), the Department of Revenue shall certify the costs that are incurred  
 44 in calculating and [administering the credits] making the refunds under ORS 291.349 (4). [The  
 45 amount of the costs certified by the department under this section may not exceed \$250,000.] Costs shall

1 be certified by the department within 15 days of the date the report under ORS 291.349 (2) is made.  
 2 As used in this section, "costs" means and is limited to those costs that, absent the requirement of  
 3 *[providing credits]* **making the refunds** under ORS 291.349 (4), would not be incurred by the de-  
 4 partment.

5 **SECTION 3. (1) The Surplus Kicker Cost Account is established in the General Fund of**  
 6 **the State Treasury.**

7 **(2) Upon cost certification by the Department of Revenue under ORS 291.351, an amount**  
 8 **equal to the total amount certified shall be credited from the General Fund to the Surplus**  
 9 **Kicker Cost Account. All moneys in the account are continuously appropriated to the De-**  
 10 **partment of Revenue for the purpose of carrying out the provisions of ORS 291.349.**

11 **SECTION 4.** ORS 305.792 is amended to read:

12 305.792. (1) The Department of Revenue shall provide a means by which personal income tax  
 13 return filers may indicate that a surplus refund *[credit]* **payment** to which the taxpayer may other-  
 14 wise be entitled to under ORS 291.349 shall instead be used for funding education.

15 *[(2)(a)]* **(2) A personal income taxpayer may elect *[not to claim]* to donate** a surplus refund  
 16 *[credit that the taxpayer would otherwise be entitled to pursuant to ORS 291.349, in order to achieve*  
 17 *a corresponding transfer of such moneys from the General Fund]* **payment to be made under ORS**  
 18 **291.349** to the State School Fund for the support of public elementary and secondary school educa-  
 19 tion. *[The taxpayer may make the election]* **A donation under this subsection must be made** in the  
 20 form and manner prescribed by the department by rule.

21 *[(b) A taxpayer that indicates that the credit will not be claimed but that nevertheless claims the*  
 22 *credit in determining the taxpayer's tax liability shall be considered to not have made the election un-*  
 23 *der this subsection.]*

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

26 *[(3) Following the determination to credit personal income taxes pursuant to ORS 291.349, the de-*  
 27 *partment shall annually certify to the State Treasurer the total amount of allowable credits that have*  
 28 *not been claimed pursuant to an election made under subsection (2) of this section. The certification*  
 29 *shall be made on or before December 31 of each year, until the tax year for which the credit would*  
 30 *otherwise be claimed becomes a closed tax year.]*

31 **(3) After the determination that surplus refund payments are to be made under ORS**  
 32 **291.349, the department shall determine the total amount of the payments for which an**  
 33 **election to donate to public elementary and secondary education has been made and shall**  
 34 **certify this amount to the State Treasurer. Following the department's certification to the**  
 35 **State Treasurer, an election to donate that biennium's surplus refund payments under sub-**  
 36 **section (2) of this section is irrevocable.**

37 **SECTION 5.** Section 3 of this 2015 Act and the amendments to ORS 291.349, 291.351 and  
 38 305.792 by sections 1, 2 and 4 of this 2015 Act apply to biennia beginning on or after July 1,  
 39 2013.

40 **SECTION 6.** This 2015 Act takes effect on the 91st day after the date on which the 2015  
 41 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.  
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