

# House Bill 2051

Introduced and printed pursuant to House Rule 12.00. Pre-session 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**.

Modifies methodology for determining amount of surplus tax credit received by personal income taxpayers under statutory kicker provision. Requires excess kicker revenues be credited to taxpayers in equal amounts instead of as percentage of personal income tax liability.

Provides for expedited review by Supreme Court upon petition by adversely affected party.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to disposition of revenue in excess of revenue estimate; creating new provisions; amending  
3 ORS 291.349; and prescribing an effective date.

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 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  
27 adjournment sine die of the odd-numbered year regular session, by two percent or more, the total  
28 amount of that excess shall be retained in the General Fund and used, in the manner described in  
29 ORS 291.345, to provide additional funding for public education, kindergarten through grade 12.

**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 odd-numbered year  
 4 regular session, by two percent or more, there shall be credited to personal income taxpayers an  
 5 amount equal to the total amount of that excess, reduced by the cost certified by the Department  
 6 of Revenue under ORS 291.351 as being allocable to credits described under this subsection. The  
 7 excess amount to be credited shall be credited to personal income taxpayers *[in a percentage amount*  
 8 *of prior year personal income tax liability]* as determined under subsection (5) of this section.

9 (5)(a) If there is an excess to be credited under subsection (4) 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 amounts of]* **amount of the**  
 12 credit for purposes of subsection (4) of this section. *[The percentage amounts determined shall be*  
 13 *percentage amounts to the nearest one-tenth of a percent that will distribute the excess to be credited*  
 14 *to personal income taxpayers.]*

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

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

24 *[(d) The credit shall be determined based on the tax liability as shown on the return of the taxpayer*  
 25 *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 pay-*  
 29 *ments, withholding or other advance tax payments.]*

30 **(b) The amount of the surplus credit under subsection (4) of this section shall equal the**  
 31 **amount distributed under subsection (4) of this section divided by the total number of indi-**  
 32 **viduals and spouses filing a return for the tax year beginning in the calendar year imme-**  
 33 **diately preceding the calendar year in which the excess is determined. Each individual and**  
 34 **spouse shall receive a surplus credit in an equal amount.**

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

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

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

45 (7) Not later than October 15 following the end of the biennium, the Department of Revenue

1 shall provide information and guidance to taxpayers relating to the calculation of the credit. The  
2 department may make the information and guidance available electronically or otherwise.

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

6 **SECTION 2. (1) Jurisdiction is conferred on the Supreme Court to determine in the**  
7 **manner provided by this section whether the amendments to ORS 291.349 by section 1 of this**  
8 **2017 Act violate any provision of the Oregon Constitution or are invalid for any other reason.**

9 (2) A person who is adversely affected by the amendments to ORS 291.349 by section 1  
10 of this 2017 Act may institute a proceeding for review by filing with the Supreme Court a  
11 petition that meets the following requirements:

12 (a) The petition must be filed within 60 days after the effective date of the amendments  
13 to ORS 291.349 by section 1 of this 2017 Act.

14 (b) The petition must include the following:

15 (A) A statement of the basis of the challenge; and

16 (B) A statement and supporting affidavit showing how the petitioner is adversely af-  
17 fected.

18 (3) The petitioner shall serve a copy of the petition by registered or certified mail upon  
19 the Director of the Department of Revenue, the Attorney General and the Governor.

20 (4) Proceedings for review under this section shall be given priority over all other mat-  
21 ters before the Supreme Court.

22 **SECTION 3. The amendments to ORS 291.349 by section 1 of this 2017 Act apply to cal-**  
23 **culations made under ORS 291.349 on or after the effective date of this 2017 Act.**

24 **SECTION 4. This 2017 Act takes effect on the 91st day after the date on which the 2017**  
25 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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