

# Senate Bill 120

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## 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**.

Aligns direction to Department of Revenue to pay interest on certain tax refunds with other tax refund provisions and with current systems and processes. Provides for uniform 45-day grace period. Applies to tax refunds owing as of January 1, 2018.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to calculation of interest on refunds paid by Department of Revenue; creating new pro-  
3 visions; amending ORS 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) If the Department of Revenue determines pursuant to ORS 305.270 that the amount  
7 of the tax due is less than the amount theretofore paid, the excess shall be refunded by the depart-  
8 ment with interest at the rate established under ORS 305.220 for a period beginning 45 days after  
9 the due date of the return or [*or*] the date the tax was paid, or, in the case of a return filed under  
10 ORS 118.100, the date that the return is filed, whichever is later, and ending at the time the refund  
11 is made.

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

21 (b) The department may not make a refund if the tax owed, after offsets, is less than \$1.

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

25 (d) The department may not pay an employee interest on a refund of a tax withheld by an em-  
26 ployer if the interest would be for any period prior to the time the employee files a personal income  
27 tax return for the tax year involved or for any period prior to the day that is 45 days after the date  
28 when the employee's annual return for that year was filed or was due, whichever is later.

29 (e) The department may not pay interest on a refund of estimated tax paid under ORS 314.505

**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 to 314.525 or 316.557 to 316.589 if the interest would be for any period prior to the time the taxpayer  
2 files a tax return for the tax year involved or for any period prior to the day that is 45 days after  
3 the date when the tax return for that year was filed or was due, whichever is later.

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

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

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

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

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

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

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

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

42 (5)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating  
43 loss carryback or a net capital loss carryback, in lieu of the three-year period of limitation pre-  
44 scribed in subsection (2) of this section, the period shall be the period that ends three years after  
45 the time prescribed by law for filing the return (including extensions) for the taxable year of the

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

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

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

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

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

21 (6) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or this section, if  
22 the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension,  
23 or a renewal of an extension, of the period for proposing and assessing deficiencies in federal income  
24 tax for any year, the period within which a claim for credit or refund may be filed or credit or re-  
25 fund allowed or made if no claim is filed shall be the period provided within subsections (1) to (5)  
26 of this section or six months after the date of the expiration of the agreed period for assessing de-  
27 ficiency in federal income tax, whichever period expires later.

28 (7) If a joint return is filed, the department may make separate refunds at the request of either  
29 spouse. The separate refunds shall bear the same proportion to the total refund as the adjusted gross  
30 income of each spouse bears to the adjusted gross income of both spouses, or as otherwise deter-  
31 mined by the department.

32 (8) If a taxpayer entitled to a refund under subsection (1) of this section dies, the department  
33 may issue a draft for payment of such refund under the terms and conditions set out in ORS 293.490  
34 to 293.500 exercising the same powers and subject to the same restrictions pursuant to which the  
35 State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes.

36 **SECTION 2. The amendments to ORS 314.415 by section 1 of this 2021 Act apply to tax**  
37 **refunds owing as of January 1, 2018.**

38 **SECTION 3. This 2021 Act takes effect on the 91st day after the date on which the 2021**  
39 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**