

**A-Engrossed**  
**House Bill 3543**

Ordered by the House April 20  
Including House Amendments dated April 20

Sponsored by Representative PARRISH; Representatives CONGER, JOHNSON, SHEEHAN, Senator OLSEN

**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.

Changes method by which surplus "kicker" refunds are made to personal income taxpayers from payment to credit. Specifies that if credit reduces tax liability of personal income taxpayer to zero and amount of credit remains unused, remaining amount is refunded to taxpayer. **Limits, for certification of costs incurred in calculating and administering credits, amount that Department of Revenue certifies.**

Applies to biennia beginning on or after July 1, 2011.

**A BILL FOR AN ACT**

1  
2 Relating to surplus refund methods; creating new provisions; amending ORS 291.349, 291.351 and  
3 305.792; and repealing ORS 291.353.

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 regular session of the  
7 Legislative Assembly, the Oregon Department of Administrative Services shall report to the Emer-  
8 gency Board the estimate as of July 1 of the first year of the biennium of General Fund and State  
9 Lottery Fund revenues that will be received by the state during that biennium. The Oregon De-  
10 partment of Administrative Services shall base its estimate on the last forecast given to the Legis-  
11 lative Assembly before adjournment sine die of the regular session on which the printed, adopted  
12 budget prepared in the Oregon Department of Administrative Services is based, adjusted only insofar  
13 as necessary to reflect changes in laws adopted at that session. The report shall contain the esti-  
14 mated revenues from corporate income and excise taxes separately from the estimated revenues from  
15 other General Fund sources. The Oregon Department of Administrative Services may revise the es-  
16 timate if necessary following adjournment sine die of any special or emergency session of the Leg-  
17 islative Assembly but any revision does not affect the basis of the computation described in  
18 subsection (3) or (4) of this section.

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

24 (3) If the revenues received from the corporate income and excise taxes during the biennium  
25 exceed the amounts estimated to be received from such taxes for the biennium, as estimated after  
26 adjournment sine die of the regular session, by two percent or more, the total amount of that excess

**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 shall be credited to corporate income and excise taxpayers in a percentage amount of prior year  
 2 corporate excise and income tax liability as determined under subsection (5) of this section. How-  
 3 ever, no credit shall be allowed against tax liability imposed by ORS 317.090.

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

17 (5)(a) If there is an excess to be credited under subsection (3) **or (4)** of this section, **or both**,  
 18 on or before October 1, following the end of each biennium, the Oregon Department of Administra-  
 19 tive Services shall determine and certify to the Department of Revenue the percentage *[amount]*  
 20 **amounts** of credit for purposes of subsection (3) **or (4)** of this section. The percentage *[amount]*  
 21 **amounts** determined shall be *[a]* percentage *[amount]* **amounts** to the nearest one-tenth of a percent  
 22 that will distribute the excess to be credited **either** to corporate excise and income taxpayers **or**  
 23 **to personal income taxpayers.**

24 (b) The percentage amount **applicable to subsection (3) of this section** shall equal the amount  
 25 distributed under subsection (3) of this section divided by the estimated total corporate income and  
 26 excise tax liability for all corporate income and excise taxpayers for tax years beginning in the  
 27 calendar year immediately preceding the calendar year in which the excess is determined.

28 (c) The amount of the surplus credit **under subsection (3) of this section** is determined by  
 29 multiplying the percentage amount determined under paragraph (b) of this subsection by the total  
 30 amount of a corporate income or excise taxpayer's tax liability for the tax year beginning in the  
 31 calendar year immediately preceding the calendar year in which the excess is determined in order  
 32 to calculate the amount to be credited to the taxpayer.

33 (d) **The percentage amount applicable to subsection (4) of this section shall equal the**  
 34 **amount distributed under subsection (4) of this section divided by the estimated total per-**  
 35 **sonal income tax liability for all personal income taxpayers for tax years beginning in the**  
 36 **calendar year immediately preceding the calendar year in which the excess is determined.**

37 (e) **The amount of the surplus credit under subsection (4) of this section is determined**  
 38 **by multiplying the percentage amount determined under paragraph (d) of this subsection by**  
 39 **the total amount of a personal income taxpayer's tax liability for the tax year beginning in**  
 40 **the calendar year immediately preceding the calendar year in which the excess is determined**  
 41 **in order to calculate the amount to be credited to the taxpayer.**

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

44 *[(e)]* (g) The credit shall be computed after the allowance of a credit provided under ORS  
 45 316.082, 316.131 or 316.292, but before the allowance of any other credit or offset against tax liability

1 allowed or allowable under any provision of law of this state, and before the application of estimated  
2 tax payments, withholding or other advance tax payments.

3 **[(f)] (h) For corporate income and excise taxpayers,** if a credit applied against tax liability  
4 as described in paragraph [(e)] (g) of this subsection reduces tax liability to zero and an amount of  
5 the credit remains unused, the remaining unused amount shall be carried forward and applied  
6 against tax liability as prescribed in paragraph [(e)] (g) of this subsection in the succeeding tax year.  
7 Following application of the credit against tax liability in a succeeding tax year, any amount con-  
8 tinuing to remain unused shall be carried forward and applied against tax liability in a succeeding  
9 tax year until all remaining amounts of unused credit are offset against tax liability.

10 **(i) For personal income taxpayers, if a credit applied against tax liability as described in**  
11 **paragraph (g) of this subsection reduces tax liability to zero and an amount of the credit**  
12 **remains unused, the remaining unused amount shall be refunded to the taxpayer. For pur-**  
13 **poses of ORS chapters 305 and 314, 315 and 316, refunds issued under this paragraph are re-**  
14 **funds of an overpayment of tax imposed under ORS chapter 316.**

15 [(g)] (j) Notwithstanding paragraph [(e)] (g) of this subsection, if an excess is credited under  
16 subsection (3) of this section for a tax year and an unused credit amount from a prior tax year is  
17 carried forward to the tax year as prescribed under paragraph [(f)] (h) of this subsection, the amount  
18 of the carryforward credit shall be applied against tax liability prior to applying the new credit.

19 [(h) *The Department of Revenue may prescribe by rule the manner of calculating and claiming a*  
20 *credit if the filing status of a corporation changes between the tax year described in paragraph (b) of*  
21 *this subsection and the succeeding tax year.*]

22 **(k) The Department of Revenue may prescribe by rule the manner of calculating and**  
23 **claiming a credit if the filing status of a taxpayer changes between the tax year for which a**  
24 **credit may be claimed and the succeeding tax year.**

25 [(6)(a) *If there is an excess to be refunded under subsection (4) of this section, on or before Sep-*  
26 *tember 15, following the end of each biennium, the Oregon Department of Administrative Services shall*  
27 *determine and certify to the Department of Revenue the percentage amount of refund payment for pur-*  
28 *poses of subsection (4) of this section. The percentage amount so determined shall be a percentage*  
29 *amount to the nearest one-hundredth of a percent that will distribute the excess to be refunded to per-*  
30 *sonal income taxpayers under subsection (4) of this section. The percentage amount shall equal the*  
31 *amount distributed under subsection (4) of this section divided by the estimated total personal income*  
32 *tax liability for all personal income taxpayers for tax years beginning in the calendar year immediately*  
33 *preceding the calendar year in which the excess is determined.*]

34 [(b) *The Department of Revenue shall multiply the percentage amount determined under paragraph*  
35 *(a) of this subsection by the total amount of a personal income taxpayer's tax liability for the tax year*  
36 *beginning in the calendar year immediately preceding the calendar year in which the excess is deter-*  
37 *mined in order to calculate the amount of the refund to be made to the taxpayer. For purposes of this*  
38 *paragraph, the taxpayer's tax liability is the amount as shown on the return of the taxpayer or as*  
39 *corrected by the Department of Revenue, and is determined.*]

40 [(A) *After the allowance of a credit provided under ORS 316.082, 316.131 or 316.292;*]

41 [(B) *Before the allowance of any other credit or offset against tax liability allowed or allowable*  
42 *on the return for the tax year; and]*

43 [(C) *Before the application of estimated tax payments, withholding or other advance tax*  
44 *payments.*]

45 [(c) *The refund described under this subsection shall be mailed by the Department of Revenue to*

1 *personal income taxpayers eligible for the payment on or before December 15 following the end of the*  
 2 *biennium for which the payment described under this subsection is being made.]*

3 *[(d) Notwithstanding paragraph (c) of this subsection, the Department of Revenue shall mail the*  
 4 *refund at the earliest date of practicable convenience in the case of a return:]*

5 *[(A) For a tax year beginning in the calendar year immediately preceding the calendar year in*  
 6 *which the excess is determined for which refund is being made; and]*

7 *[(B) That is first filed on or after August 15 after the end of the biennium.]*

8 *[(7) (6) [No refund shall be made] A refund may not be made under this section to a tax-*  
 9 *payer if, after making the calculation described under subsection (6) of this section, the amount cal-*  
 10 *culated] the amount of the refund is less than \$1.*

11 *[(8) For purposes of ORS chapters 305 and 314 to 318, refunds issued under subsection (6) of this*  
 12 *section are refunds of an overpayment of tax imposed under ORS chapter 316, but do not bear*  
 13 *interest.]*

14 **(7) Not later than October 15 following the end of the biennium, the Department of Re-**  
 15 **venue shall provide information and guidance to taxpayers relating to the calculation of the**  
 16 **credit. The department may make the information and guidance available electronically or**  
 17 **otherwise.**

18 **(8) The Department of Revenue may adopt rules specifying the manner for issuing re-**  
 19 **funds under this section to taxpayers who filed returns in the tax year on which the credit**  
 20 **is computed but who are not required to file returns in the year in which the credit could**  
 21 **be claimed.**

22 **SECTION 2.** ORS 305.792 is amended to read:

23 305.792. (1) The Department of Revenue shall *[cause a checkoff box to be printed on the]* **provide**  
 24 **a means by which** personal income and corporate income or excise tax *[returns for the appropriate*  
 25 *tax year, by which a taxpayer]* **return filers** may indicate that a surplus refund *[payment or]* credit  
 26 *[that]* **to which** the taxpayer may otherwise be entitled to under ORS 291.349 shall instead be used  
 27 for funding education.

28 *[(2)(a) A personal income taxpayer may elect to donate a surplus refund payment to be made under*  
 29 *ORS 291.349 to public elementary and secondary school education. The taxpayer may make the election*  
 30 *by checking the appropriate checkoff box on the taxpayer's return indicating the taxpayer's intention*  
 31 *to donate the surplus refund payment to public elementary and secondary education.]*

32 *[(b) Once made, the election is irrevocable for any surplus refund payments received until a sub-*  
 33 *sequent return is filed for a later tax year, and on which the checkoff box is not checked.]*

34 *[(3)(a)]* **(2)(a) A personal income or** corporate excise or income taxpayer may elect **not** to  
 35 *[not]* claim a surplus refund credit that the taxpayer would otherwise be entitled to pursuant to ORS  
 36 291.349, in order to achieve a corresponding transfer of such moneys from the General Fund to the  
 37 State School Fund for the support of public elementary and secondary school education. The tax-  
 38 payer may make the election *[by checking the appropriate checkoff box on the taxpayer's return and*  
 39 *by not using the surplus refund credit percentage to reduce the taxpayer's tax liability]* **in the form**  
 40 **and manner prescribed by the department by rule.**

41 (b) A taxpayer that *[checks the appropriate checkoff box indicating]* **indicates** that the credit will  
 42 not be claimed but that nevertheless claims the credit in determining the taxpayer's tax liability  
 43 shall be considered to **not** have *[not]* made the election under this subsection.

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

1        [(4) After the determination that surplus refund payments are to be made under ORS 291.349 (4)  
2 and (6), the department shall determine the total amount of such payments for which an election to  
3 donate to public elementary and secondary education has been made and shall certify this amount to  
4 the State Treasurer. Following the department's certification to the State Treasurer, an election to  
5 donate that biennium's surplus refund payments under subsection (2) of this section is irrevocable.]

6        [(5)] (3) Following the determination to credit **personal income or** corporate income and excise  
7 taxes pursuant to ORS 291.349 [(3) and (5)], the department shall annually certify **to the State**  
8 **Treasurer** the total amount of allowable credits that have not been claimed pursuant to an election  
9 made under subsection [(3)] (2) of this section. The certification shall be made on or before Decem-  
10 ber 31 of each year, until the tax year for which the credit would otherwise be claimed becomes a  
11 closed tax year.

12        **SECTION 3.** ORS 291.351 is amended to read:

13        291.351. If, based on the report made under ORS 291.349 (2), [refund will be made] **an amount**  
14 **will be credited** under ORS 291.349 (4), the Department of Revenue shall certify the costs that are  
15 incurred in calculating and [making the refunds] **administering the credits** under ORS 291.349 (4).  
16 **The amount of the costs certified by the department under this section may not exceed**  
17 **\$250,000.** Costs shall be certified by the department within 15 days of the date the report under ORS  
18 291.349 (2) is made. As used in this section, "costs" means and is limited to those costs that, absent  
19 the requirement of [making a refund] **providing credits** under ORS 291.349 (4), would not be in-  
20 curred by the department.

21        **SECTION 4.** For purposes of determining the amount to be certified to the State Treas-  
22 urer under ORS 305.792, surplus refund payment elections made under ORS 305.792 (2009 or  
23 earlier edition) shall be considered surplus refund credit elections.

24        **SECTION 5.** ORS 291.353 is repealed.

25        **SECTION 6.** Amounts in the Surplus Kicker Cost Account on the effective date of this  
26 2011 Act shall be transferred to the General Fund.

27        **SECTION 7.** The amendments to ORS 291.349, 291.351 and 305.792 by sections 1 to 3 of this  
28 2011 Act and the repeal of ORS 291.353 by section 5 of this 2011 Act apply to biennia beginning  
29 on or after July 1, 2011.