

(Including Amendments to Resolve Conflicts)

## B-Engrossed Senate Bill 819

Ordered by the House June 15  
Including Senate Amendments dated May 15 and House Amendments  
dated June 15

Sponsored by COMMITTEE ON FINANCE AND 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.

Changes method by which surplus "kicker" refunds are calculated for corporate income and excise taxpayers and personal income taxpayers. Allows corporate income and excise taxpayers to carry unused credit forward for application in succeeding tax years.

Applies to biennia ending on or after June 30, 2007.

Takes effect on 91st day following adjournment sine die.

### A BILL FOR AN ACT

1  
2 Relating to surplus refund methods; creating new provisions; amending ORS 291.349; and prescribing  
3 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 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

**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 adjournment sine die of the regular session, by two percent or more, the total amount of that excess  
2 shall be credited to corporate income and excise taxpayers in a percentage amount of corporate  
3 excise and income tax liability as determined under subsection (5) of this section. However, no credit  
4 shall be allowed against tax liability imposed by ORS 317.090.

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

13 (5)(a) If there is an excess to be credited under subsection (3) of this section, on or before Oc-  
14 tober 1, following the end of each biennium, the Oregon Department of Administrative Services shall  
15 determine and certify to the Department of Revenue the percentage amount of credit for purposes  
16 of subsection (3) of this section. The percentage amount determined shall be a percentage amount  
17 to the nearest one-tenth of a percent that will distribute the excess to be credited to corporate ex-  
18 cise and income taxpayers for taxable years beginning in the calendar year during which the excess  
19 is determined.

20 **(b) The credit shall be determined based on the tax liability as shown on the return of**  
21 **the taxpayer or as corrected by the Department of Revenue.**

22 (c) The credit shall be computed *[after]* **before** the allowance of any other credit or offset  
23 against tax liability allowed or allowable under any provision of law of this state, and before the  
24 application of estimated tax payments, withholding or other advance tax payments.

25 **(d) If a credit applied against tax liability as described in paragraph (c) of this subsection**  
26 **reduces tax liability to zero and an amount of the credit remains unused, the remaining un-**  
27 **used amount shall be carried forward and applied against tax liability as prescribed in para-**  
28 **graph (c) of this subsection in the succeeding tax year. Following application of the credit**  
29 **against tax liability in a succeeding tax year, any amount continuing to remain unused shall**  
30 **be carried forward and applied against tax liability in a succeeding tax year until all re-**  
31 **maining amounts of unused credit are offset against tax liability.**

32 **(e) Notwithstanding paragraph (c) of this subsection, if an excess is credited under sub-**  
33 **section (3) of this section for a tax year and an unused credit amount from a prior tax year**  
34 **is carried forward to the tax year as prescribed under paragraph (d) of this subsection, the**  
35 **amount of the carryforward credit shall be applied against tax liability prior to applying the**  
36 **new credit.**

37 (6)(a) If there is an excess to be refunded under subsection (4) of this section, on or before  
38 September 15, following the end of each biennium, the Oregon Department of Administrative Ser-  
39 vices shall determine and certify to the Department of Revenue the percentage amount of refund  
40 payment for purposes of subsection (4) of this section. The percentage amount so determined shall  
41 be a percentage amount to the nearest one-hundredth of a percent that will distribute the excess to  
42 be refunded to personal income taxpayers under subsection (4) of this section. The percentage  
43 amount shall equal the amount distributed under subsection (4) of this section divided by the esti-  
44 mated total personal income tax liability for all personal income taxpayers for tax years beginning  
45 in the calendar year immediately preceding the calendar year in which the excess is determined.

1 (b) The Department of Revenue shall multiply the percentage amount determined under para-  
2 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the  
3 tax year beginning in the calendar year immediately preceding the calendar year in which the ex-  
4 cess is determined in order to calculate the amount of the refund to be made to the taxpayer. **For**  
5 **purposes of this paragraph, the taxpayer's tax liability is the amount as shown on the return**  
6 **of the taxpayer or as corrected by the Department of Revenue, and is determined:**

7 (A) **Before the allowance of any other credit or offset against tax liability allowed or al-**  
8 **lowable on the return for the tax year; and**

9 (B) **Before the application of estimated tax payments, withholding or other advance tax**  
10 **payments.**

11 [(c) *The refund described under this subsection shall be subject to the rules allowing setoff of re-*  
12 *funds or sums due debtors of this state under ORS 293.250.*]

13 [(d)] (c) The refund described under this subsection shall be mailed by the Department of Re-  
14 venue to personal income taxpayers eligible for the payment on or before December [1] 15 following  
15 the end of the biennium for which the payment described under this subsection is being made.

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

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

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

21 (7) No refund shall be made to a taxpayer if, after making the calculation described under sub-  
22 section (6) of this section, the amount calculated is less than \$1.

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

26 **SECTION 2. The amendments to ORS 291.349 by section 1 of this 2007 Act apply to cal-**  
27 **culations of refunds for biennia ending on or after June 30, 2007.**

28 **SECTION 3. If House Bill 3048 becomes law, section 1 of this 2007 Act (amending ORS**  
29 **291.349) is repealed and ORS 291.349, as amended by section 1, chapter \_\_, Oregon Laws 2007**  
30 **(Enrolled House Bill 3048), is amended to read:**

31 291.349. (1) As soon as practicable after adjournment sine die of the regular session of the  
32 Legislative Assembly, the Oregon Department of Administrative Services shall report to the Emer-  
33 gency Board the estimate as of July 1 of the first year of the biennium of General Fund and State  
34 Lottery Fund revenues that will be received by the state during that biennium. The Oregon De-  
35 partment of Administrative Services shall base its estimate on the last forecast given to the Legis-  
36 lative Assembly before adjournment sine die of the regular session on which the printed, adopted  
37 budget prepared in the Oregon Department of Administrative Services is based, adjusted only insofar  
38 as necessary to reflect changes in laws adopted at that session. The report shall contain the esti-  
39 mated revenues from corporate income and excise taxes separately from the estimated revenues from  
40 other General Fund sources. The Oregon Department of Administrative Services may revise the es-  
41 timate if necessary following adjournment sine die of any special or emergency session of the Leg-  
42 islative Assembly but any revision does not affect the basis of the computation described in  
43 subsection (3) or (4) of this section.

44 (2) As soon as practicable after the end of the biennium, the Oregon Department of Adminis-  
45 trative Services shall report to the Emergency Board, or the Legislative Assembly if it is in session,

1 the amount of General Fund revenues collected as of the last June 30 of the preceding biennium.  
2 The report shall contain the collections from corporate income and excise taxes separately from  
3 collections from other sources.

4 (3) If the revenues received from the corporate income and excise taxes during the biennium  
5 exceed the amounts estimated to be received from such taxes for the biennium, as estimated after  
6 adjournment sine die of the regular session, by two percent or more, the total amount of that excess  
7 shall be credited to corporate income and excise taxpayers in a percentage amount of prior year  
8 corporate excise and income tax liability as determined under subsection (5) of this section. How-  
9 ever, no credit shall be allowed against tax liability imposed by ORS 317.090.

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

18 (5)(a) If there is an excess to be credited under subsection (3) of this section, on or before Oc-  
19 tober 1, following the end of each biennium, the Oregon Department of Administrative Services shall  
20 determine and certify to the Department of Revenue the percentage amount of credit for purposes  
21 of subsection (3) of this section. The percentage amount determined shall be a percentage amount  
22 to the nearest one-tenth of a percent that will distribute the excess to be credited to corporate ex-  
23 cise and income taxpayers.

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

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

33 (d) The credit shall be determined based on the tax liability as shown on the return of the tax-  
34 payer or as corrected by the Department of Revenue.

35 (e) The credit shall be computed *after* **before** the allowance of any other credit or offset  
36 against tax liability allowed or allowable under any provision of law of this state, and before the  
37 application of estimated tax payments, withholding or other advance tax payments.

38 (f) If *the* a credit *is* applied against tax liability as described in paragraph (e) of this sub-  
39 section *and* reduces *the* tax liability to zero and an amount of the credit remains unused, the  
40 **remaining** unused amount shall be carried forward and applied against tax liability as prescribed  
41 in paragraph (e) of this subsection in the succeeding tax year. Following application of the credit  
42 against tax liability in a succeeding tax year, any amount continuing to remain unused shall be  
43 carried forward and applied against tax liability in a succeeding tax year until all remaining  
44 amounts of unused credit are offset against tax liability.

45 (g) **Notwithstanding paragraph (e) of this subsection**, if an excess is credited under sub-

1 section (3) of this section for a tax year and an unused credit amount from a prior tax year is car-  
 2 ried forward to the tax year as prescribed under paragraph (f) of this subsection, the amount of the  
 3 carryforward credit shall be applied against tax liability prior to applying the new credit.

4 (h) The Department of Revenue may prescribe by rule the manner of calculating and claiming  
 5 a credit if the filing status of a corporation changes between the tax year described in paragraph  
 6 (b) of this subsection and the succeeding tax year.

7 *[(i) Notwithstanding any other provision of law, if the tax liability of the taxpayer for the tax year*  
 8 *described in paragraph (b) of this subsection is adjusted by the Department of Revenue or the taxpayer,*  
 9 *the allowable credit under this subsection for a succeeding tax year may also be adjusted to reflect the*  
 10 *adjustment to tax liability.]*

11 (6)(a) If there is an excess to be refunded under subsection (4) of this section, on or before  
 12 September 15, following the end of each biennium, the Oregon Department of Administrative Ser-  
 13 vices shall determine and certify to the Department of Revenue the percentage amount of refund  
 14 payment for purposes of subsection (4) of this section. The percentage amount so determined shall  
 15 be a percentage amount to the nearest one-hundredth of a percent that will distribute the excess to  
 16 be refunded to personal income taxpayers under subsection (4) of this section. The percentage  
 17 amount shall equal the amount distributed under subsection (4) of this section divided by the esti-  
 18 mated total personal income tax liability for all personal income taxpayers for tax years beginning  
 19 in the calendar year immediately preceding the calendar year in which the excess is determined.

20 (b) The Department of Revenue shall multiply the percentage amount determined under para-  
 21 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the  
 22 tax year beginning in the calendar year immediately preceding the calendar year in which the ex-  
 23 cess is determined in order to calculate the amount of the refund to be made to the taxpayer. For  
 24 purposes of this paragraph, the taxpayer's tax liability is the amount **as** shown on the return **of the**  
 25 **taxpayer** or as *[adjusted]* **corrected** by the Department of Revenue, and is determined:

26 (A) *[After]* **Before** the allowance of any other credit or offset against tax liability allowed or  
 27 allowable on the return for the tax year; and

28 (B) Before the application of estimated tax payments, withholding or other advance tax pay-  
 29 ments.

30 (c) The refund described under this subsection shall be mailed by the Department of Revenue  
 31 to personal income taxpayers eligible for the payment on or before December 15 following the end  
 32 of the biennium for which the payment described under this subsection is being made.

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

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

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

38 (7) No refund shall be made to a taxpayer if, after making the calculation described under sub-  
 39 section (6) of this section, the amount calculated is less than \$1.

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

43 **SECTION 4.** If House Bill 3048 becomes law, section 2 of this 2007 Act is amended to read:

44 **Sec. 2.** The amendments to ORS 291.349 by section *[1]* **3** of this 2007 Act apply to calculations  
 45 of refunds for biennia ending on or after June 30, 2007.

1        **SECTION 5. This 2007 Act takes effect on the 91st day after the date on which the reg-**  
2        **ular session of the Seventy-fourth Legislative Assembly adjourns sine die.**  
3        \_\_\_\_\_