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Background Brief on …

Surplus Kicker

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How it Works

The two percent surplus kicker is part of the Oregon Constitution (Article IX, Section 14). It gives taxpayers an income tax refund or credit if actual revenues for the biennium are more than two percent higher than forecast at the time the budget was adopted. If the two percent surplus kicker is triggered, the entire amount above the forecast is returned to taxpayers.

The kicker law divides all General Fund money into two pots: (1) corporate taxes; and (2) personal income taxes plus all other revenues. At the end of each biennium, if the actual collections in either of these two pots are more than two percent higher than was forecast at the close of the regular session, then a refund or credit must be paid from that pot. If a kicker is triggered in a pot, then all the money in that pot in excess of the close of session forecast, including the two percent, is returned to taxpayers.

Surpluses in the corporate pot fund a corporate tax credit. The credit is calculated as a proportional reduction in the taxes before other credits of each corporate taxpayer. The credit is based on the tax year immediately preceding the end of the biennium.

Surpluses in the "all other" pot fund a personal income tax refund. Taxpayers receive a check by December 15th of the year the biennium ends. The amount refunded is an identical proportion of each taxpayer's personal income tax liability before calculation of tax credits for the prior year. For example, if the kicker refund is 5 percent and the taxpayer had a before credit liability of $1,000, he or she would receive a refund of $50.

The estimate upon which the kicker calculation is based can be increased, thereby reducing or eliminating the kicker refund/credit, on a one-time basis if an emergency is declared and approved by a two-thirds vote in each chamber of the Legislature.

History

The 1979 Legislative Assembly enacted a surplus kicker statute along with a spending limit and a major tax relief plan. Voters approved this package in the 1980 primary election. The 1999 Legislative Assembly referred a constitutional amendment placing much of the kicker statute in the Oregon Constitution; voters approved the amendment in November of 2000.

SURPLUS KICKER HISTORY					
		Personal		Corporate	
Biennium	Tax Year	Surplus/ Shortfall ($ million)	Credit/ Refund (% of liability)	Surplus/ Shortfall ($ million)	Credit (% of liability)
1979-81	1981	-141	None	-25	None
1981-83	1983	-115	None	-110	None
1983-85	1985	89	7.7%	13	10.6%
1985-87	1987	221	16.6%	7	6.2%
1987-89	1989	175	9.8%	36	19.7%
1989-91	1991	186	Suspended	-23	None
1991-93	1993	60	None	18	Suspended
1993-95	1994/5	163	6.3%	167	50.1%
1995-97	1996/7	432	14.4%	203	42.2%
1997-99	1998/9	167	4.6%	-69	None
1999-01	2000/1	254	6.0%	-44	None
2001-03	2002/03	-1,250	None	-439	None
2003-05	2004/05	- 401	None	101	35.9%
2005-07	2006/07	1,071	18.6%*	-131**	None
2007-09* **	2008	-5	None	-62	None
*Percentage calculated on a pre-credit basis **Based on new estimate authorized by 2/3 legislative vote *** March 2008 Forecast					

The table above shows the history of the surplus kicker. A severe recession dropped revenues far short of the forecast in the first two biennia after enactment. The first kicker credits were distributed following the 1983-1985 biennium.

Faced with budget problems related to Ballot Measure 5 (1990), the legislature suspended the kicker in 1991 and 1993. Kickers would have triggered in just one of the two pots in each of those biennia. The 1995 personal income tax refund was the first one paid by check. Prior to 1995, the personal kicker was paid through a tax credit like the corporate kicker.

Large corporate kicker credits were applied following the 1993-1995 and 1995-1997 biennia. Corporate income tax collections exceeded the forecast by $101 million in the 2003-2005 biennium leading to a 35.9 percent credit on 2005 corporate tax returns.

Personal income tax kicker refunds were distributed four biennia in a row beginning with the 1993-1995 biennium. These refunds averaged 7.8 percent, with the largest (14.4 percent) following the 1995-1997 biennium.

The 2001 recession depressed non-corporate General Fund revenue well below forecast in 2001-2003 and the failure of Ballot Measure 30 held non-corporate revenue below the close of session projection for the 2003-2005 biennium.

The 2007 Legislative Assembly approved a one-time suspension of the corporate kicker credit as specified in the constitution. The constitution allows the legislature to use a new “estimate” to recalculate the kicker. The legislature increased the estimate that the corporate credit is based on from $500 million to $975 million. This had the effect of eliminating what would have been a $344 million credit for corporations. The legislature redirected $319.3 million into a newly created Rainy Day Fund and established a one-time $24.7 million credit for small corporations.

The legislature also made two statutory changes to the method of distributing kicker refunds and credits. The first is a change in the calculation from a percentage of net tax liability to a percentage of tax liability before adjusting for credits. This does not affect the amount of kicker refunds/credits that are returned but it does benefit individual and corporate tax payers who use credits extensively at the expense of those who do not. A second change pertains to the corporate credit. Previously the credit had been based on an estimate of current year total corporate liability. The legislature changed this to the prior corporate tax year liability thereby increasing the accuracy of the credit calculation and lining up the corporate credit with the calculation for the personal income tax refund.

Following the 2005-2007 biennium, a record $1,071 million personal income tax refund (18.6 percent of pre-credit liability) was mailed to taxpayers. This is the largest kicker refund ever returned on both a dollar and a percentage basis. If the legislature had not acted to change the estimate, the corporate kicker credit would also have been the largest on record.

With the economy slowing in 2008, no surplus refunds or credits are currently anticipated following the 2007-2009 biennium.

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