CHAPTER 733

AN ACT HB 2325

Relating to state financial administration; creating new provisions; amending ORS 291.349 and 305.792; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) For purposes of implementing Article IX, section 14 (3), of the Oregon Constitution, if revenues received by the General Fund from the corporate income and excise taxes during the biennium exceed the amount estimated to be received from such taxes for the biennium by two percent or more, the Legislative Assembly shall appropriate an amount equal to the total amount of the excess to the State School Fund established by ORS 327.008 for apportionment as provided in ORS 327.008.

(2) The amount appropriated under this section shall be in addition to the total amount of revenues the Legislative Assembly would otherwise appropriate, allocate or make available for the biennium for funding kindergarten through grade 12 public education if excess revenues described in subsection (1) of this section were not available.

SECTION 2. ORS 291.349, as amended by section 22, chapter 107, Oregon Laws 2012, is amended to read:

291.349. (1) As soon as practicable after adjournment sine die of the odd-numbered year regular session of the Legislative Assembly, the Oregon Department of Administrative Services shall report to the Legislative Revenue Officer and the Legislative Fiscal Officer the estimate as of July 1 of the first year of the biennium of General Fund and State Lottery Fund revenues that will be received by the state during that biennium. The Oregon Department of Administrative Services shall base its estimate on the last forecast given to the Legislative Assembly before adjournment sine die of the odd-numbered year regular session on which the printed, adopted budget prepared in the Oregon Department of Administrative Services is based, adjusted only insofar as necessary to reflect changes in laws adopted at that session. The report shall contain the estimated revenues from corporate income and excise taxes separately from the estimated revenues from other General Fund sources. The Oregon Department of Administrative Services may revise the estimate if necessary following adjournment sine die of a special session or an even-numbered year regular session of the Legislative Assembly, but any revision does not affect the basis of the computation described in subsection (3) or (4) of this section.

(2) As soon as practicable after the end of the biennium, the Oregon Department of Administrative Services shall report to the Legislative Revenue Officer and the Legislative Fiscal Officer, or the Legislative Assembly if it is in session, the amount of General Fund revenues collected as of the last June 30 of the preceding biennium. The report shall contain the collections from corporate income and excise taxes separately from collections from other sources.

(3) If the revenues received from the corporate income and excise taxes during the biennium exceed the amounts estimated to be received from such taxes for the biennium, as estimated after adjournment sine die of the odd-numbered year regular session, by two percent or more, the total amount of that excess shall be [*credited to corporate income and excise taxpayers in a percentage amount of prior year corporate excise and income tax liability as determined under subsection (5) of this section. However, no credit shall be allowed against tax liability imposed by ORS 317.090*] **retained in the General Fund and used, in the manner described in section 1 of this 2013 Act, to provide additional funding for public education, kindergarten through grade 12**.

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

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

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

[*(c) The amount of the surplus credit under subsection (3) of this section is determined by multiplying the percentage amount determined under paragraph (b) of this subsection by the total amount of a corporate income or excise taxpayer's tax liability for the*

tax year beginning in the calendar year immediately preceding the calendar year in which the excess is determined in order to calculate the amount to be credited to the taxpayer.]

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

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

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

[*(g)*] **(e)** The credit shall be computed after the allowance of a credit provided under ORS 316.082, 316.131 or 316.292, but before the allowance of any other credit or offset against tax liability allowed or allowable under any provision of law of this state, and before the application of estimated tax payments, withholding or other advance tax payments.

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

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

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

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

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

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

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

SECTION 3. ORS 305.792 is amended to read:

305.792. (1) The Department of Revenue shall provide a means by which personal income [*and corporate income or excise*] tax return filers may indicate that a surplus refund credit to which the taxpayer may otherwise be entitled to under ORS 291.349 shall instead be used for funding education.

(2)(a) A personal income [*or corporate excise or income*] taxpayer may elect not to claim a surplus refund credit that the taxpayer would otherwise be entitled to pursuant to ORS 291.349, in order to achieve a corresponding transfer of such moneys from the General Fund to the State School Fund for the support of public elementary and secondary school education. The taxpayer may make the election in the form and manner prescribed by the department by rule.

(b) A taxpayer that indicates that the credit will not be claimed but that nevertheless claims the credit in determining the taxpayer's tax liability shall be considered to not have made the election under this subsection.

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

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

SECTION 4. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

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