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Background Brief on...

# 2% Surplus Kicker

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## How it Works

The 2% 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 2% higher than forecast at the time the budget was adopted.

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 2% higher than was forecast at the close of the regular session, then a refund or credit must be paid. 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 2%, 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 of each corporate taxpayer. The credit is claimed in the tax year in which the biennium ends.

Surpluses in the "all other" pot fund a personal income tax refund. Taxpayers receive a check by December 1<sup>st</sup> of the year the biennium ends. The amount refunded is an identical proportion of each taxpayer's personal income tax liability for the prior year. For example, if the kicker refund is 5% and the taxpayer had a 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 2/3 vote in each chamber of the Legislative Assembly.

## History

The 1979 Legislature 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 Legislature referred a constitutional amendment placing much of the kicker statute in the Oregon Constitution. Voters approved the amendment in November of 2000. The constitutional provision first applies to the kicker calculation following the 2001-03 biennium.

The table below 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 table actually understates the recession's effect. If the legislature had not increased taxes in special session, the shortfall would have been much larger than shown in the table.

Faced with Measure 5 budget problems, 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 1993-95 and 1995-97 biennia. Corporations have not been eligible for a corporate kicker credit since the 1995-97 biennium. Personal income tax kicker refunds have been distributed after each of the four biennia between 1993-95 through 1999-01. These refunds averaged 7.8% with the largest (14.4%) following the 1995-97 biennium.

The chances for either a personal or corporate

income tax refund/credit following the 2003-05 biennium are remote. The March 2004 forecast projects corporate revenue at \$475 million or 16% below the regular session estimate. This means that the corporate revenue forecast is \$85 million below the amount needed to trigger the 2 % kicker credit. The projection for all other General Fund revenue is also well below the level required to trigger kicker refunds. Personal income tax collections plus all other non-corporate General Fund revenue is \$589.7 million below the regular session estimate and \$794 million below the 2% kicker threshold.

For the thirteen biennia in which the kicker has been in effect, including the current biennium, the personal income tax trigger has been exceeded eight times. Kicker refunds/credits were distributed on seven occasions and suspended once. Five times, including the current biennium, revenue has fallen short of the 2% personal income tax trigger. A recession occurred in each of these biennia. For the corporate calculation, actual collections have exceeded the trigger six times and fallen below seven times. Of the six times in which the corporate trigger was exceeded, the kicker was credited to corporate taxpayers five times and suspended once.

<b>SURPLUS KICKER HISTORY</b>					
<b>Biennium</b>	<b>Tax Year</b>	<b>Personal</b>		<b>Corporate</b>	
		<b>Surplus/ Shortfall</b> (\$ million)	<b>Credit/ Refund</b> (% of liability)	<b>Surplus/ Shortfall</b> (\$ million)	<b>Credit</b> (% 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	6.27%	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	- 794	None	- 85	None

\* March 2004 Forecast

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