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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.

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 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 1st 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 five percent 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 two-thirds vote in each chamber of the Legislature.

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 applied to the kicker calculation following the 2001-03 biennium.

The table above shows the history of the surplus kicker. A severe

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	1,098	21.3%	275	67.3%
* December 2006 Forecast					

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.

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 1993-95 and 1995-97 biennia. Corporate income tax collections exceeded the forecast by $101 million in the 2003-05 Biennium leading to a 35.9 percent credit on 2005 corporate tax returns. The excess corporate revenue occurred despite the defeat of Ballot Measure 30 in January of 2004. The revenue from that measure was included in the close of session forecast and therefore was part of the base for the kicker calculation.

Personal income tax kicker refunds were distributed four biennia in a row beginning with the 1993-95 Biennium. These refunds averaged 7.8 percent, with the largest (14.4 percent) following the 1995-97 Biennium. However, no personal income tax refund has been received since 2001. The 2001 recession depressed non-corporate General Fund revenue well below forecast in 2001-03 and the failure of Ballot Measure 30 held non-corporate revenue $401 million below the close of session projection for the 2003-05 Biennium.

The latest quarterly revenue forecast—December 2006—projects record personal refunds and corporate credits following the 2005-07 Biennium. Under current law, these dollars will be paid out in the 2007-09 Biennium. If the current forecast holds, personal income tax refunds totaling $1,098 million (21.3 percent of tax liability) will be issued while corporations will be eligible for a 67.3 percent credit on their 2007 tax liability. The surplus kicker refund and credit percentages will be finalized in August 2007. The sum of the kicker refunds and credits equals 10.9 percent of projected General Fund revenue in the 2007-09 Biennium.

For the thirteen biennia in which the kicker has been in effect (1979-81 through 2003-05), the personal income tax trigger has been exceeded eight times. Kicker refunds/credits were distributed on seven occasions and suspended once. Five times, revenue has fallen short of the two percent personal income tax trigger. For the corporate calculation, actual collections have exceeded the trigger seven times and fallen below six times. Of the seven times in which the corporate trigger was exceeded, the kicker was credited to corporate taxpayers six times and suspended once.

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