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Research Brief
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Oregon's 2% Surplus Kicker: 2001 Update

Description

The 2% surplus kicker (ORS 291.342 - 353) gives taxpayers an income tax refund or credit if actual revenues are more than 2% higher than was forecast at the time the budget was adopted.

The kicker begins by dividing all General Fund money into two pots: (1) corporate taxes and (2) 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 forecast at the close of the last 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%) must be returned to taxpayers.

Surpluses in the corporate pot fund a corporate tax credit. The credit must be a proportional reduction in the taxes of each corporate taxpayer. The credit appears on corporate tax forms filed for 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 following the end of the biennium. Refunds are calculated as the same proportion of each taxpayer's personal income tax for the prior year.

History

The 1979 Legislature enacted the surplus kicker along with a spending limit as part of a major tax relief plan. The plan was referred to voters and approved in 1980. The table on the next page shows the history of the surplus kicker.

Refunds or credits have been paid after seven of the eleven biennia since enactment of the kicker law. 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. 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 each of those two 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 just like the corporate kicker. There has been a personal kicker each of the last four biennia. There was no corporate kicker the past two biennia.

The 1999 Legislature passed HJR 17, referring Measure 86 to voters. Voters approved Measure 86 at the 2000 general election, placing the kicker statute in the Oregon Constitution. The measure also allows the Legislature to suspend a kicker in an emergency by a ⅔ majority vote in each chamber. (Article IX §14 of the Oregon Constitution contains the Measure 86 language).

Has the Kicker Worked?

The purpose of the kicker was to reduce taxes if revenues exceed the forecast. At the time it was enacted many felt that surplus revenues were automatically spent without considering tax relief.

The kicker has encouraged tax cuts. Almost $2.2 billion in kicker credits and refunds have been paid since enactment. The Legislature has suspended kickers just twice, in 1991 and 1993. In 2001 the Legislature passed SB 963, transferring some federal revenues from the General Fund to an Other Fund category, thereby reducing the General Fund surplus and, potentially, the amount of any personal refund. However even these actions could be viewed as consistent with the original purpose of the law since the Legislature had to vote each time to modify or suspend a kicker.

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[1]	18	Suspended
1993-95	1994/95	163	6.27%	167	50.1%
1995-97	1996/97	432	14.4%	203	42.2%
1997-99	1998/99	167	4.6%	-69	None
1999-01[2]	2000/01	254	6.0%	-44	None
Dollar figures in millions [1] 1991-93 personal surplus was less than 2%; [2] September 2001 forecast.					

Policy Issues Related to the Kicker

A number of issues have emerged for the Legislature since the kicker law was enacted, including:

- Since refunds and credits are not distributed until after the end of the biennium, surpluses do not necessarily go to the taxpayers that actually paid them. Changing the personal kicker in 1995 from a credit to refund partially addressed this concern.
- A kicker could be triggered in one pot even though the overall forecast is short. For example since corporate revenues were below forecast in both 1997-99 and 1999-01, the amount refunded each time to personal income tax payers was actually larger than the total General Fund surplus.
- External events can cause a budget shortfall even though a surplus has been identified under the kicker law. When this occurred in 1991 under Ballot Measure 5 (a property tax limitation passed in 1990), the Legislature suspended the kicker.
- Some have argued that the 2% threshold is an unrealistically small target for biennial forecast accuracy. Forecasters generally consider even 5% to be a challenging biennial target. The 2% threshold was originally adopted to avoid having to refund unreasonably small surpluses.
- Others argue that some surpluses should be dedicated to a budget stabilization or “rainy day” fund (i.e. when state finances are healthy surplus money is saved for when the economy turns down). Oregon is one of only five states currently without a stabilization fund. (The others are Arkansas, Kansas, Illinois and Montana).