

2% SURPLUS KICKER

Another unique feature of Oregon's revenue system is the 2% surplus kicker. The kicker was approved by the 1979 Legislature as part of an overall fiscal reform package. The package, which included property tax relief, was approved by voters in the spring of 1980. A complete listing of revenue related votes over the past 50 years can be found in section N1 - N3. In 2000, voters acting on a legislative referral put a large portion of the 2% surplus kicker statute into the state constitution (Article IX, Section 14). In 2012, voters modified the constitution (Measure 85), redirecting corporate kicker revenue to the General Fund for purposes of funding K-12 education.

How it Works

The kicker law divides all General Fund revenue into two pots: (1) corporate income taxes and (2) personal income taxes plus all other (non-corporate) revenue. At the end of each biennium, a calculation is made for each pot. The latter pot is referred to as either the "all other" pot or the "personal pot". If the collections in the "all other" pot are more than 2% higher than was forecast at the close of the regular session, then a credit must be paid to personal income taxpayers. In these cases, all the money in excess of the close of session forecast, including the 2%, is returned to taxpayers.

A similar calculation is carried out for corporate income taxes. If actual corporate income tax collections are 2% or more above the close of session estimate for corporate income tax revenue, then a kicker is triggered. Voters passed Measure 85 in 2012 amending the constitution to require the corporate kicker to be allocated to the General Fund for purposes of funding K-12 education, instead of being returned to corporations. This allocation started with the 2013-15 biennium.

Surpluses in the "all other" pot fund lead to a credit on personal income tax returns. The amount of the credit is an identical proportion of each taxpayer's personal income tax liability for the prior year. For example, if the kicker credit is 5% and the taxpayer had a liability of \$1,000, they would receive a credit of \$50 on their income tax return.

The estimate upon which the kicker calculation is based can be increased, thereby reducing or eliminating the personal income tax 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 prior to the end of the biennium upon which the kicker calculation is based.

History

Table 8 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 budget problems associated with 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. Personal kickers would continue to be returned through a refund check when triggered until the 1995 law was changed by the 2011 Legislature.

Large corporate kicker credits were applied following the 1993-95 and 1995-97 biennia. Corporations were not eligible for a surplus credit for three biennia following the 1995-97 biennium. Corporate income tax collections exceeded the forecast by \$101 million in the 2003-05 biennium leading to a 35.9% credit on 2005 corporate income tax returns. The excess corporate revenue occurred despite the defeat of Measure

30 in January 2004. The revenue from Measure 30 was included in the close of session forecast and therefore part of the base for the kicker calculation.

Personal income tax kicker refunds were distributed four biennia in a row starting with the 1993-95 biennium. These refunds averaged 7.8% with the largest (14.4%) following the 1995-97 biennium. The 2001 recession depressed non-corporate General Fund revenue well below forecast in 2001-03 and the failure of Measure 30 held non-corporate revenue \$401 million below the close of session projection for the 2003-05 biennium.

Table 8
Surplus Refund / 2% Kicker

Biennium	Tax Year	Personal		Corporate	
		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	7.70%	\$13	10.60%
1985-87	1987	\$221	16.60%	\$7	6.20%
1987-89	1989	\$175	9.80%	\$36	19.70%
1989-91	1991	\$186	Suspended	-\$23	None
1991-93	1993	\$60	None	\$18	Suspended
1993-95	1994/5	\$163	6.27%	\$167	50.10%
1995-97	1996/7	\$432	14.40%	\$203	42.20%
1997-99	1998/9	\$167	4.60%	-\$69	None
1999-01	2000/1	\$254	6.00%	-\$44	None
2001-03	2002/03	-\$1,249	None	-\$439	None
2003-05	2004/05	-\$401	None	\$101	35.90%
2005-07	2006/07	\$1,071	18.60%	\$344	Suspended
2007-09	2008	-\$1,113	None	-\$236	None
2009-11	2010	-\$1,050	None	-\$4	None
2011-13	2012	\$124	None	-\$10	None
2013-15	2014	\$402	5.60%	\$79	To K-12
2015-17	2016	\$464	5.60%	\$111	To K-12
2017-19	2018	\$1,688	17.17%	\$675	To K-12
2019-21	2020	\$1,898	17.34%	\$851	To K-12
2021-23	2022	\$5,619	44.28%	\$1,810	To K-12

The 2007 Legislature made several statutory changes that affected the kicker. First, using the constitutional exception process that allows the estimate to be changed with a 2/3 vote, the Legislature redirected the corporate kicker credit to the newly established Rainy Day Fund. The Legislature also modified the personal income tax refund process by basing the calculation on gross tax liability (before credits) rather than net tax liability (after tax credits).¹ This change affected the distribution of the refund but did not affect the total amount. Finally, the Legislature changed the tax year the corporate credit is based on from the current year to the prior year. This brought the corporate calculation into line with the personal refund calculation. This change will no longer apply due to the elimination of the corporate kicker

¹ Technically the calculation is based on gross tax liability plus the allowance of one tax credit -- the credit for taxes paid to another state.

credit brought about by the passage of Measure 85, which directs the corporate kicker to the funding of K-12 public education.

The personal kicker exceeded \$1 billion for the first time following the 2005-07 biennium. The refunds totaled \$1.071 billion or 18.6% of pre-credit tax liability in the 2006 tax year. The refunds were mailed out in the fall of 2007. The Great Recession and its aftermath forced both personal and corporate income tax revenue well short of the 2% kicker trigger for the 2007-09, 2009-11 and the 2011-13 biennia.

Both kickers have been triggered following the last five biennia, as shown in the table above. Personal income taxpayers received kicker credits of 5.6% of their pre-credit liability for tax years 2014 and 2016. For the subsequent two biennia, the kicker percentage was just above 17%. For the 2021-23 biennium, a new record was set for surplus revenue, reaching just over \$5.6 billion; the tax credit was roughly 44.3 percent. Corporate income tax revenue has exceeded forecasted levels ranging from \$79 million for the 2013-15 biennium up to \$1.8 billion for the 2021-23 biennium, also setting a new record. These revenues were dedicated to education spending.

For the 22 biennia in which the kicker has been in effect (1979-81 through 2021-23), the personal income tax trigger was exceeded fourteen times. Kicker refunds/credits were distributed on thirteen occasions and suspended once. Eight times collections fell short of the 2% personal income tax trigger. For the corporate calculation, actual collections exceeded the trigger thirteen times and fell below nine times. Of the thirteen times in which the corporate trigger was exceeded, the kicker was credited to corporate taxpayers six times, suspended twice, and allocated five times to the State School Fund.

RESERVE FUNDS

Oregon currently has two reserve funds - The Education Stability Fund (ESF) and the Oregon Rainy Day Fund (RDF). The Education Stability Fund was created in 2002 as a constitutional amendment with House Joint Resolution 80 during the third special session of 2002 and subsequent passage by voters. The Oregon Rainy Day Fund was created in 2007 with the passage of HB 2707.

Education Stability Fund

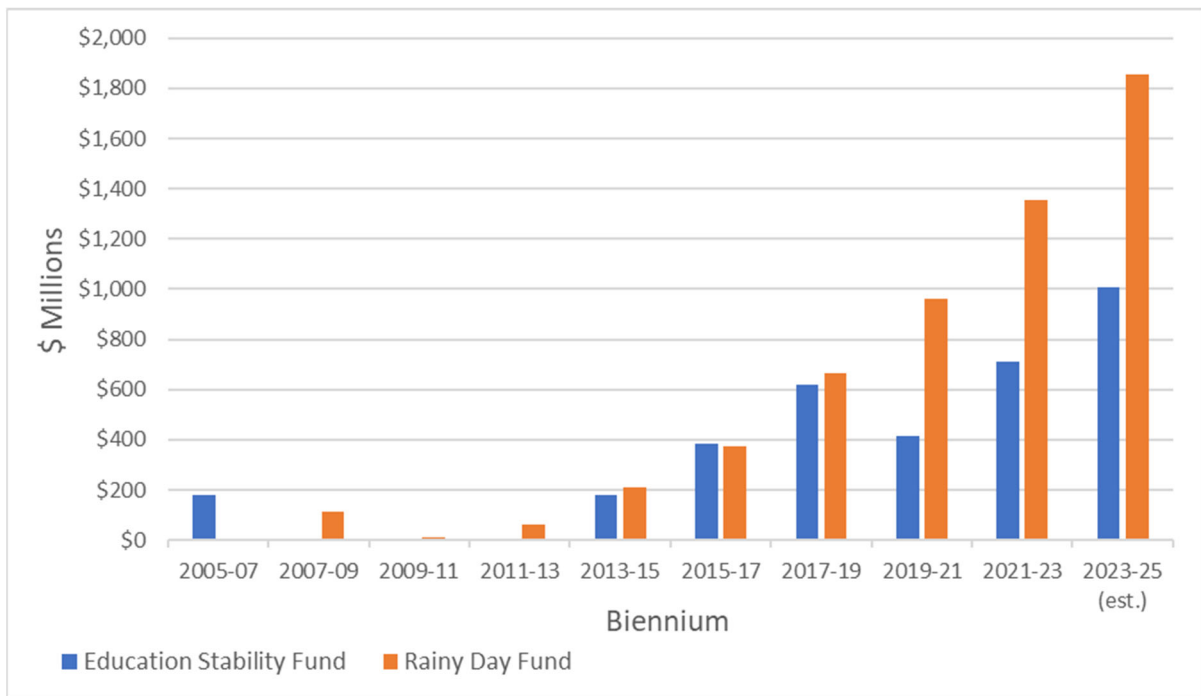
The Legislature referred HJR 80 to the voters at a special election held in September 2002. Voters approved the resolution, thereby converting the former Education Endowment Fund into the Education Stability Fund. Since July 1, 2003, the fund has received 18% of lottery net proceeds. The size of the fund is limited to 5% of General Fund revenue in the prior biennium. If the fund exceeds this limit, the lottery deposits stop until its size is drawn down to below the limit.

To access the fund, there are three different types of triggers: economic, budgetary, and political. The economic trigger is that there must be two or more consecutive quarters with a decline in seasonally adjusted non-farm payroll employment within the prior 12 months. The first budgetary trigger is that the final quarterly forecast of the biennium indicates that the General Fund revenue in the following biennium will be at least 3% less than the appropriations in the current biennium. The second is that the quarterly General Fund forecast for the current biennium projects revenue to be at least 2% below the forecast used for the legislatively adopted budget. The first political trigger is that a 3/5 vote in each house is required to access the funds; this is an additional requirement that must be met after at least one of the economic or budgetary triggers have been met. In the absence of those triggers, the funds can still be accessed if the Governor declares an emergency and 3/5 of each chamber approves. Use of the funds is restricted to expenditures on public education, which is broadly defined to include all levels from pre-Kindergarten through higher education as well as continuing education and workforce training.

Rainy Day Fund

The 2007 Legislature, by a 2/3 vote in each chamber, implemented a constitutional one-time exception to suspend the \$344 million corporate kicker credit and used the funds to create the Oregon Rainy Day Fund. As for ongoing contributions, the legislation required the deposit of the General Fund ending balance up to 1% of General Fund appropriations, beginning with the 2007-2009 biennium. The 2009 Legislature added another continuing source of deposits into the fund. As part of the corporation income tax increase passed -- and subsequently approved by voters -- a portion of that increase has been dedicated to this fund. At the time, any corporation income tax collections due to a tax rate above 6.6% was deposited into the fund. That threshold has changed over the years and currently sits at 7.2%. The fund is capped at 7.5% of General Fund revenue in the prior biennium. If the cap is reached, the dedicated revenues revert to the General Fund until the fund falls back below the cap. To access the funds, the triggers are the same as those described above for the Education Stability Fund, except for an emergency declaration by the Governor. Withdrawals are not allowed to exceed 2/3 of the beginning balance for any biennium.

At the end of the 2021-23 biennium, the ESF had a balance of \$711 million and the RDF had a balance of \$1,354 million. The chart below shows the balances at the end of each biennium since 2005-07. For 2023-25, the projection as of the December 2023 forecast is that the ESF will have \$1,008 million and the RDF will have roughly \$1,866 million.



STATE REVENUE AND EXPENDITURES

Recent state budget history is shown in Table 9. The table shows state General Fund revenue and expenditures and state All Funds revenue and expenditures for the 2009-2023 period. The 2021-23 expenditure numbers are from the Legislatively Approved Budget; and the 2023-25 expenditure numbers are from the Legislatively Adopted Budget.² The table also shows values for total personal income of Oregon residents, total Oregon population and the consumer price index for comparison purposes.

² From the Legislative Fiscal Office's report [2023-25 Budget Highlights](#).