

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules
accompanies this form

FILED
12-7-15 4:17 PM
ARCHIVES DIVISION
SECRETARY OF STATE

Department of Revenue
Agency and Division

150
Administrative Rules Chapter Number

Personal Income Tax; Surplus refund (aka Kicker) donation to State School Fund when debt owed.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Adopting 150-305.792

Statutory Authority:

ORS 305.100

Other Authority:

Statutes Implemented:

ORS 291.349; 305.792

Need for the Temporary Rule(s):

To clarify how the department will treat a donation of the surplus refund credit to the State School Fund when the taxpayer also owes an outstanding debt.

Documents Relied Upon, and where they are available:

Oregon Revised Statutes are available online or from agency upon request.

Justification of Temporary Rule(s):

It is unclear given current statute and rule how to handle the surplus refund (kicker) when the taxpayer elects to have their kicker donated to the State School Fund. This is due to the kicker statute (ORS 291.349) and the State School Fund election statute (ORS 305.792) not aligning well with each other. The uncertainty surrounds offsets against current liabilities and other debt when electing to have the kicker go to the State School Fund. The temporary rule will help clarify that the department will treat the kicker like other refundable credits and offset against outstanding debt and current liabilities and then divert any remaining amounts to the State School Fund.

The department needs this clarification on a temporary basis so that it may publish the 2015 tax booklets and Publication 17.5 which are both used by taxpayers to accurately complete their tax returns. These publications must be completed by the end of 2015. Additionally, the department will need to process tax returns filed in the beginning of 2016 prior to any legislative correction made, during the 2016 session, becoming effective.

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