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| PROPOSED MASSACHUSETTS TAX EXPENDITURES  EVALUATION SUMMARY |
| EVALUATION YEAR: 2020 |

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| **TAX EXPENDITURE TITLE** | Exemption of Income from the Sale, Lease, or Transfer of Certain Patents |
| **TAX EXPENDITURE NUMBER** | 1.020 and 2.002 |
| **TAX EXPENDITURE CATEGORY** | Exemption of income from tax |
| **TAX TYPE** | Personal and Corporate income tax |
| **LEGAL REFERENCE** | M.G.L. c. 62, § 2(a)(2)(G); M.G.L. c. 63, § 30.3 |
| **YEAR ENACTED** | Added in 1979 (1979, 796, § 8) |
| **REPEAL/EXPIRATION DATE** | None |
| **ANNUAL REVENUE IMPACT** | N/A |
| **NUMBER OF TAXPAYERS** | N/A |
| **AVERAGE TAXPAYER BENEFIT** | N/A |

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| **Description of the Tax Expenditure:**  Exempts from tax income from the sale or transfer of certain patents, or from the production of royalty or other income from property subject to such patents, for a period of five years. The patents must be issued to or applied for by a Massachusetts resident or a Massachusetts corporation, support energy conservation or alternative energy, and be approved by the commissioner of energy resources. | **Is the purpose defined in the statute?**  The statute does not explicitly state the purpose of this tax expenditure. However, the language suggests that it is intended to create an economic incentive for Massachusetts residents and corporations to develop technology related to energy conservation and alternative energy development. |
| **What are the policy goals of the expenditure?**  Energy conservation, efficiency, environmental protection, alternative energy development. | **Are there other states with a similar Tax Expenditure?**  There are many state incentives for renewable energy and efficiency. See [DSIRE](https://www.dsireusa.org/)[[1]](#footnote-1) website. |

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| Incentive Evaluation Results |

**INTRODUCTION**

For purposes of the personal income tax, Massachusetts gross income is federal gross income. Federal gross income includes income from the sale, lease or other transfer of all patents and income from property subject to such patents. Pursuant to M.G.L. c. 62, § 2(a)(2)(G) income from certain patents that are useful for energy conservation or alternative energy development may be deducted from Massachusetts gross income (and therefore is not subject to tax) for a period of five years. The five-year period begins on the date of issuance of the United States patent or the date of approval by the Commissioner of Energy Resources, whichever expires first.

Similarly, for purposes of the corporate excise the starting point for the computation of Massachusetts taxable net income is federal gross income as defined under the IRC, as amended and in effect for the taxable year (with certain modifications not relevant here). Federal gross income includes income from the sale, lease or other transfer of all patents and income from property subject to such patents. Pursuant to M.G.L. c. 63, § 30.3 income from certain patents that are useful for energy conservation or alternative energy development may be deducted from Massachusetts gross income (and therefore is not subject to tax) for a period of five years. The five-year period begins on the date of issuance of the United States patent or the date of approval by the Commissioner of Energy Resources, whichever expires first.

The income may only be deducted in relation to patents that were issued to or applied for by a Massachusetts resident or a Massachusetts corporation. Also, the patents must be of economic value, practicable, and necessary for the Commonwealth. Finally, the patents must be approved by the Commissioner of Energy Resources.

**POLICY GOAL**

The statute does not explicitly state the purpose of this tax expenditure. However, the language suggests that it is intended to create an economic incentive for Massachusetts individual residents and corporations to develop technology related to energy conservation and alternative energy development.

**COSTS**

As noted in the Introduction, the exemption is granted for certain patents approved by the Commissioner of Energy Resources. To determine the number of patents that might currently be taking advantage of this exemption, DOR contacted the Massachusetts Department of Energy Resources. However, the Department of Energy Resources reported that “To the best of our knowledge there has been no approval of any U.S. patents deemed beneficial for energy conservation, alternative energy development or related purposes by the Commissioner of the Department of Energy Resources.” From this DOR concludes that there has not been any tax loss as a result of this potential exemption.

While the past tax loss has been zero, we cannot be certain that it will remain zero over the forecast period through FY22. For future years, we report the cost of this tax expenditure as “N.A.”, meaning the data is “not available” to determine the cost, if any.

**Tax Impact: Exemption of Certain Energy Patents**



**BENEFITS**

Given that no eligible patents have been approved, no actual benefits have accumulated.

**EVALUATION: COMPARING COSTS AND BENEFITS**

Both costs and benefits for this tax expenditure are currently zero.

**SIMILAR TAX EXPENDITURES OFFERED BY OTHER STATES**

Indiana has a similar income exclusion for certain patent income. Its exclusion is for a utility patent or a plant patent issued after Dec. 31, 2007, for an invention resulting from a development process conducted in Indiana.

**IS THE INCENTIVE AS DESIGNED ACCOMPLISHING ITS PURPOSE?**

The agency that would certify a patent for this exemption, the Massachusetts Department of Energy Resources, has reported that, to the best of their knowledge, no patents deemed beneficial for energy conservation, alternative energy development or related purposes has been certified by their commissioner.

To be completed further by TERC

Conclusion/Recommendations: [To be Entered by TERC]

1. DSIRE is a website that has compiled information on incentives and policies that support renewables and energy efficiency in the United States (<https://www.dsireusa.org/>). [↑](#footnote-ref-1)