PROPOSED MASSACHUSETTS TAX EXPENDITURES
EVALUATION SUMMARY

EVALUATION YEAR: 2021-2022

TAX EXPENDITURE TITLE	Exemption for Containers
TAX EXPENDITURE NUMBER	3.410
TAX EXPENDITURE CATEGORY	Exemptions for Specified Uses of Product/Services
TAX TYPE	Sales and Use tax
LEGAL REFERENCE	M.G.L. c. 64H, § 6(q)
YEAR ENACTED	Originally enacted in 1967 (St. 1967, c. 757 § 1); amended in 1981 to add the sale of empty returnable containers (St. 1981, c. 571 § 1).
REPEAL/EXPIRATION DATE	None
ANNUAL REVENUE IMPACT	Tax loss of $130.8 - $148.9 million per year during FY19-FY23.
NUMBER OF TAXPAYERS	Buyers and sellers of exempt containers.
AVERAGE TAXPAYER BENEFIT	Not available

Description of the Tax Expenditure: Sales of several types of containers are exempt from sales tax. Sales eligible for the exemption include sales of empty containers to be filled and resold, containers the contents of which are exempt from the sales tax, and returnable containers when sold with the contents or resold for refilling.	**Is the purpose defined in the statute?** The statute does not explicitly state the purpose of this tax expenditure.
What are the policy goals of the expenditure? DOR assumes that the tax expenditure is intended to reduce the sales tax burden on purchases of items sold in containers where the object of the transaction is to purchase the contents of such containers. In these transactions, the container is used to provide a service, such as transportation and containment of the contents, and service	**Are there other states with a similar Tax Expenditure?** Most other neighboring states offer a similar sales and use tax exemption for containers.

transactions are generally exempt from sales tax.	

INTRODUCTION

The tax expenditure exempts from tax sales of a number of different types of containers: (1) empty returnable and nonreturnable containers sold to vendors who fill the container with contents and then sell the filled containers (for example – a paper bag purchased to hold cleaning supplies which will then be sold as a unit; a box that a vendor purchases for purposes of enclosing a television for sale); (2) containers filled with contents that are exempt from the sales tax (for example – a carton of milk; a glass jar filled with jam); and (3) returnable containers when sold with the contents or resold for refilling (for example – a propane gas tank, whether sold full or empty with the intention of being filled). For purposes of the exemption, a returnable container is a container customarily returned by the buyer of the contents for reuse. The exemption also applies to the sale of bags containing feed for livestock and poultry. M.G.L. c. 64H, § 6(q). Note that the container exemption may overlap with certain other exemptions. For example, the milk carton or jam jar referenced above may also qualify for the exemption for ingredient and component parts of tangible personal property to be sold. See M.G.L. c. 64H, § 6(r).

The Massachusetts sales tax (and complementary use tax) is a transaction tax that applies to retail sales of tangible personal property (including prewritten computer software regardless of mode of transfer) and enumerated services (currently including only telecommunication services). A retail sale is any sale other than a sale for resale. A sale for resale occurs when a business purchases an item and sells it to a third party in substantially the same form in which it was purchased. All retail sales are taxable unless an exemption applies. These exemptions are tax expenditures because they prevent the imposition of tax on transactions that would otherwise be taxable.

While the sales tax is imposed on retail sales, it is not necessarily a tax on final consumption by households, as is the case with the value added taxes (VATs) imposed in most other countries. A retail sale to a business may also be subject to sales tax (e.g. paper, desks, computers, etc., purchased for office use would generally be taxable). The exclusion of sales for resale and the application of certain exemptions prevent the imposition of the tax on many business inputs, but other business inputs remain taxable. Aside from specific statutory exclusions and exemptions, there is no general prohibition in the sales and use tax statutes on the application of the tax to retail sales at multiple stages of the production and sales process.

The tax expenditure for containers may be viewed as one of the structural provisions of the sales tax that limits the tax impact on business inputs and/or on retail products that separately are exempt from tax. Absent the exemption afforded by this tax expenditure, businesses that sell goods would be required to pay sales or use tax when they purchase containers with which to fill their goods. The sale for resale exclusion does not apply to the businesses' purchases of containers because the business is not reselling the container; it is using the container as a means to sell its goods.

POLICY GOALS

DOR assumes the goal of the tax expenditure is to reduce the sales tax burden on certain sales where the ultimate purpose of the transaction is to purchase the contents of the container, rather than the container itself, which would otherwise be taxable. In these transactions, the container is used to provide a service, such as transportation and containment of the contents, and service transactions are generally exempt from sales tax.

DIRECT COSTS

The revenue loss resulting from this tax expenditure is estimated to be $130.8 - $148.9 million per year during FY19-FY23 (see Table 1 below). The estimates in Table 1 are based on the U.S. Census Bureau's Annual Survey of Manufactures data[1], and estimates of a similar tax expenditure in Rhode Island compiled by the Rhode Island Department of Revenue. Due to the use of external data and the limitations of the data for estimating this tax expenditure, the estimates reported in Table 1 may have a high estimation uncertainty and should be used with caution.

Table 1. Tax Revenue Loss Estimates for Sales Tax Exemption for Containers

Fiscal Year	2019	2020	2021	2022	2023
Estimated Revenue Loss ($Million)	$132.8	$131.0	$130.8	$140.5	$148.9

DIRECT BENEFITS

The Massachusetts consumers and businesses that produce, buy, and sell the exempt containers are the direct beneficiaries of the sales tax exemption. Buyers benefit from the sales tax exemption in the form of paying a lower "after tax" price while sellers benefit in the form of receiving a higher "before tax" price. The exact split of the direct benefits depends on the interaction of demand and supply and is often difficult to quantify. Out-of-state businesses selling exempt containers to Massachusetts consumers and businesses are also direct beneficiaries.

[1] DOR used national industry sales data for the manufacturing industries that likely produce containers.

DOR is not aware of any data that identifies direct beneficiaries or provides measures for the exempt sales of containers. However, businesses in the industries, listed in Table 2 below, are likely producers of exempt containers.

Table 2. Container Manufacturing Industries[2]

NAICS	NAICS Description
321920	Wood Container and Pallet Manufacturing
322211	Corrugated and solid fiber boxes Manufacturing
322212	Folding paperboard boxes Manufacturing
322219	Other Paperboard Container Manufacturing
322220	Paper bag and coated and treated paper manufacturing
326111	Plastics bag and Pouch manufacturing
326112	Plastics packaging film and sheet (including laminated) manufacturing
326113	Unlaminated plastics film and sheet (except packaging) manufacturing
326121	Unlaminated plastics profile shape manufacturing
326122	Plastics pipe and pipe fitting manufacturing
326130	Laminated plastics plate, sheet (except packaging), and shape manufacturing
326140	Polystyrene foam product manufacturing
326150	Urethane and other foam product (except polystyrene) manufacturing
326160	Plastics bottle manufacturing
326199	All other plastics product manufacturing
327213	Glass container manufacturing
332431	Metal can manufacturing
332439	Other Metal Container Manufacturing

Source: 2019 Annual Survey of Manufactures, U.S. Census Bureau

EVALUATION: COMPARING COSTS AND BENEFITS

In the previous sections, we report the direct costs (to the Commonwealth, or to the residents and businesses who ultimately bear the costs when the Commonwealth cuts government spending or increases taxes to finance the sales tax exemption for containers) and direct benefits (to buyers and sellers of exempt containers) of this tax expenditure. In this instance, the direct costs to the Commonwealth, namely the sales tax that would have been collected from these transactions, are equal to the direct benefits afforded by the tax expenditure to buyers and sellers of the exempt containers, which is the sales tax they would have had to pay to the Commonwealth.

[2] Table 2 lists the manufacturing industries DOR identified as industries that produce containers, whether exempt from sales tax or not. The list may be not exhaustive. In addition, the listed industries may produce products other than containers.

Besides the direct costs and benefits, there are indirect and induced costs and benefits associated with this tax expenditure. Generally, the indirect impact (cost or benefit) is felt by the chain of businesses that provide intermediate products and services to the directly impacted businesses. The induced impact (cost or benefit) occurs when an impacted business passes on the costs or benefits to households, such as those of its employees, in the form of lower or higher income, such as wages and salaries, who then in turn reduce or increase purchases of goods and services from other businesses. The total costs or benefits to the whole economy are larger than the initial direct impacts. This phenomenon is called the "Multiplier Effect".[3]

To measure these indirect and induced costs and benefits, economists often need to utilize complicated models, such as REMI (Regional Economic Models, Inc.) or IMPLAN (Impact Analysis for Planning) models. DOR did not attempt such models given their complexity and the data limitation present in this instance.

Besides the economic costs and benefits discussed so far, one may also want to consider the factor of negative externality when evaluating this tax expenditure. A negative externality occurs when the production and/or consumption of a good or service exerts a negative effect on a third party independent of the transaction. For example, manufacturing plants producing inputs for making containers, such as paper, plastic, wood, etc., may cause noise and air/water pollution during the manufacturing process. By encouraging manufacturing activities, this tax expenditure may aggravate the problem of negative externality such as noise and pollution if there are no other policies to offset the impact. DOR was not able to find any directly relevant research quantifying potential impact of such externalities.

If a business must pay sales tax on containers to be filled with its own products, then that tax becomes part of the price the business charges its own customers. When making sales of taxable products, the business must collect tax based on that price, resulting in tax being imposed twice on the same container. This tax pyramiding invariably results in some industries being taxed more heavily than others, which violates the principle of neutrality and causes economic distortions. By exempting certain containers, this tax expenditure helps avoid tax pyramiding.

[3] For an illustration of "Multiplier Effect", see Slide 4 of: https://www.ilw.com/seminars/JohnNeillCitation.pdf

Similar Tax Expenditures Offered by Other States

All of the states neighboring Massachusetts that impose a sales and use tax offer an exemption for containers, though their approaches differ. Some of these states exempt containers in a manner similar to the Massachusetts exemption (Connecticut, Rhode Island), other states provide an exemption for sales of containers to be used for packaging, shipping, and transportation (New York, Vermont), and others are a combination thereof (Maine, New Jersey).

Connecticut provides a sales tax exemption for containers that is very similar to the Massachusetts exemption. Under Conn. Gen. Stat. § 12-412(14), (1) empty nonreturnable containers and returnable dairy product containers to customers who fill and resell the containers; (2) containers the contents of which are exempt from tax; and (3) returnable containers when sold with the contents or when resold for refilling. The Connecticut statute defines "returnable containers" in the same manner as Massachusetts and also exempts the sale of bags containing feed for livestock and poultry. Conn. Gen. Stat. § 12-412(14).

Maine provides a narrower exemption that adopts only the third prong of the Massachusetts exemption, exempting only the sale of returnable containers when sold with the contents or when resold for refilling. 36 M.R.S. § 1760. 12. However, sales of containers for use by entities engaged in the business of packing or shipping tangible personal property are also exempt from tax. 36 M.R.S. § 1760.12-A.

In New Jersey, the sales or use of nonreturnable containers and reusable milk containers are exempt from tax when they are used incidentally to the delivery of any tangible personal property. N.J. Rev. Stat. § 54:32B-8.15. Containers used in a "farming enterprise" are also exempt from tax.

In New York, containers, and components thereof, for use and consumption by a vendor in packaging or packing tangible personal property for sale are exempt from tax. NY CLS Tax § 1115(a)(19).

Rhode Island exempts sales of (1) empty nonreturnable containers, including boxes, paper bags, and wrapping materials that are biodegradable and all bags and wrapping materials utilized in the medical and healing arts, to customers who fill and resell the containers; (2) containers the contents of which are exempt from tax; (3) returnable containers when sold with the contents or when resold for refilling; and (4) empty keg and barrel containers, whether returnable or not, when sold to alcoholic beverage producers who place the alcoholic beverages in the containers. R.I. Gen. Laws § 44-18-30(4). Rhode Island defines the term "returnable containers" in the same manner as Massachusetts.

Vermont exempts containers for use in packing, packaging, or shipping tangible personal property by a manufacturer or distributor from tax. Vt. Stat. Ann. 32 § 9741(16).