

## PROPOSED MASSACHUSETTS TAX EXPENDITURES EVALUATION SUMMARY

**EVALUATION YEAR: 2021-2022**

<b>TAX EXPENDITURE TITLE</b>	Exemption for Films
<b>TAX EXPENDITURE NUMBER</b>	3.421
<b>TAX EXPENDITURE CATEGORY</b>	Exemptions for Specified Uses of Product/Services
<b>TAX TYPE</b>	Sales and Use Tax
<b>LEGAL REFERENCE</b>	M.G.L. c. 64H, § 6(m)
<b>YEAR ENACTED</b>	1967
<b>REPEAL/EXPIRATION DATE</b>	None
<b>ANNUAL REVENUE IMPACT</b>	Tax loss of \$0.8 - \$3.6 million per year during FY19-FY23.
<b>NUMBER OF TAXPAYERS</b>	Not Available
<b>AVERAGE TAXPAYER BENEFIT</b>	Not Available

<b>Description of the Tax Expenditure:</b> Motion picture films sold for commercial exhibition are exempt from sales tax.	<b>Is the purpose defined in the statute?</b> The statute does not explicitly state the purpose of this tax expenditure.
<b>What are the policy goals of the expenditure?</b> DOR assumes that the expenditure was intended to exempt one of the key business inputs of exhibitors in order to prevent sales tax from being either built into the charge for movie admission, which itself is explicitly exempt from the sales tax, or driving up the cost of operating a television station or movie theater.	<b>Are there other states with a similar Tax Expenditure?</b> Other states with a similar tax expenditure include Connecticut, Georgia, Vermont, and Virginia.

## INTRODUCTION

General Laws Chapter 64H, § 6(m) exempts from sales tax motion picture films sold or leased in Massachusetts for commercial exhibition. Commercial exhibition includes showing motion picture films at cinemas or on television stations or at other premises where films are exhibited for commercial purposes.

When the exemption was enacted, film distributors provided physical prints of films to exhibitors. As technology advanced, distributors began to supply film content to exhibitors in digital form on disk drives. These transfers of tangible personal property would have been taxable in the absence of the exemption. Currently, it is common for distributors to provide film content via electronic download. Transfers of products by electronic download (other than prewritten computer software) are not subject to Massachusetts sales tax.

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.

Absent the exemption afforded by this tax expenditure, businesses that show films would be required to pay sales or use tax when they purchase or rent the films. The sale for resale exclusion does not apply to the businesses' purchases of films because the business is not reselling the film. Rather, it is selling admission tickets to view the film, sales of which are explicitly not subject to sales tax.

## POLICY GOALS

DOR assumes that the tax expenditure is intended to exempt exhibitors' business inputs in order to prevent sales tax from either being built into the charge for movie admission, which itself is explicitly exempt from the sales tax, or driving up the cost of operating a television station or movie theater.

## DIRECT COSTS

The revenue loss resulting from this tax expenditure is estimated to be \$0.8 - \$3.6 million per year during FY19-FY23 (see Table 1 below). It should be noted that the decline in the expenditure estimates for FY2020 and FY2021 stems from the impact of COVID-19.

**Table 1. Tax Revenue Loss Estimates for Sales Tax Exemption for Films**

Fiscal Year	2019	2020	2021	2022	2023
Estimated Revenue Loss (\$Million)	\$3.6	\$2.3	\$0.8	\$1.6	\$2.9

DOR does not have in-house data to measure sales of the exempt products. The estimates reported above are based on data from the National Association of Theater Owners, the 2017 economic census from the U.S. Census Bureau, Statista, and other sources. 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 significant estimation uncertainty and should be used with caution.

## DIRECT BENEFITS

The Massachusetts businesses that buy or sell exempt products/services (motion picture films for commercial exhibition) 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 from the sales tax exemption 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.

Sellers of this exempt product are mostly businesses in the industry of "Motion Picture and Video Distribution". Businesses in the industry of "Motion picture and video production" may also distribute films. Table 2 reports statistics for such sellers in Massachusetts. It indicates that Massachusetts had 234 firms (with 237 establishments)<sup>1</sup> in 2017 in the

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<sup>1</sup> An establishment is a single physical location at which business is conducted or services or industrial operations are performed. It is not necessarily identical with a company or enterprise, which may consist of one or more establishments.

industry of “Motion Picture and Video production” according to the U.S. Census Bureau. These firms employed 1,066 people generating \$60.2 million in annual payroll. However, as the number of film distributors in Massachusetts is quite small, U.S. Economic Census confidentiality guidelines prevent the publication of data for the industry of “Motion Picture and Video Distribution”. Please note that out-of-state sellers are also direct beneficiaries if they distribute motion picture films to Massachusetts businesses.<sup>2</sup>

**Table 2. Annual Payroll, Sales, and Employment of the Industry of Motion Picture and Video Production or Distribution in Massachusetts**

2017 NAICS Code	Meaning of NAICS Code	Number of Firms	Number of Establishments	Sales, Value of Shipments, or Revenue (\$Millions)	Annual Payroll (\$Millions)	Number of Employees
512110	Motion picture and video production	234	237	Q	\$60.2	1,066
512120	Motion picture and video distribution	D	D	Q	D	100 to 249 employees

Source: The U.S. Census Bureau, 2017 Economic Census, which is the most recent version of Economic Census. The 2022 Economic Census has yet to be released.

Q: Revenue not collected at this level of detail for multi-establishment firms.

D: Withheld to avoid disclosing data for individual companies; data are included in higher level totals.

Buyers of this exempt product are mostly Massachusetts businesses in the industry of “Motion Picture and Video Exhibition” and the industry of “Television Broadcasting”. Table 3 below indicates that Massachusetts had 51 firms (with 88 establishments) in 2017 in the industry of “Motion Picture and Video Exhibition” according to the U.S. Census Bureau. These firms employed 3,055 people generating \$44.2 million in annual payroll and \$337.1 million in annual sales. Table 3 also indicates that Massachusetts had 35 firms (with 46 establishments) in 2017 in the industry of “Television Broadcasting”, and these firms employed 2,484 people generating \$203.8 million in annual payroll and \$724.3 million in annual sales. The Cinema Treasures<sup>3</sup> website indicates that there are currently 135 cinemas in operation in Massachusetts. Online streaming services providers such as Netflix, Amazon Prime Video, Disney+, when buying or licensing films from distributors,

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A firm is a business organization consisting of one or more domestic establishments in the same geographic area and industry that were specified under common ownership or control. The firm and the establishment are the same for single-establishment firms. For each multi-establishment firm, establishments in the same industry within a geographic area will be counted as one firm; the firm employment and annual payroll are summed from the associated establishments.

<sup>2</sup> According to the 2017 Economic Census, there were 13,812 motion picture and video production firms and 340 motion picture and video distribution firms nationwide.

<sup>3</sup> Cinema Treasures (2021) *Movie Theaters in Massachusetts* <http://cinematreasures.org/theaters/united-states/massachusetts>

could conceivably be direct beneficiaries as well, but it is likely that only a small portion of such sales take place in Massachusetts.<sup>4</sup>

**Table 3. Annual Payroll, Sales, and Employment of the Industry of Motion Picture and Video Exhibition and the Industry of Television Broadcasting in Massachusetts**

2017 NAICS Code	Meaning of NAICS Code	Number of Firms	Number of Establishments	Sales, Value of Shipments, or Revenue (\$Millions)	Annual Payroll (\$Millions)	Number of Employees
51213	Motion picture and video exhibition	51	88	\$337.1	\$44.2	3,055
51512	Television Broadcasting	35	46	\$724.3	\$203.8	2,484

Source: The U.S. Census Bureau, 2017 Economic Census, which is the most recent version of Economic Census. The 2022 Economic Census has yet to be released.

## 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 the commercial exhibition of motion pictures) and direct benefits (to buyers and sellers of exempt items) 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 or sellers of the exempt product, which is the sales tax they would have had to pay to the Commonwealth.

Besides the direct costs and benefits, there are indirect and induced costs and benefits associated with this tax expenditure. 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 a directly or indirectly 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

<sup>4</sup> These businesses may be included in the industry of “Internet Publishing and Broadcasting and Web Search Portals” with NAICS code of 519130. However, many firms in this industry may be not buyers of the exempt product discussed in this report. Some data on online streaming services may be found from other sources, like Statista.

total costs or benefits to the whole economy are larger than the initial direct impacts. This phenomenon is called the “Multiplier Effect”.<sup>5</sup>

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. Although it is difficult to measure the total impact of this tax expenditure, there are studies on the economic impact of the movie theater industry<sup>6</sup> or the industry of television and cable broadcasting<sup>7</sup> themselves.

We note that as a result of the COVID-19 pandemic, movie theaters were shut down for several months in calendar year 2020, and when permitted to re-open had to comply with various capacity restrictions. These limits reduced admission and concession sales. The negative revenue impact of COVID-19 on the movie theaters resulted in a decline in the FY2020 and FY2021 tax expenditure estimates.

Digitization of content has changed the structure of film distribution in recent years. On the demand side, more films are distributed to audiences through online streaming service providers such as Netflix, Amazon Prime Video, Disney+, which provide home viewers with premium movies and television content across multiple electronic devices. The COVID-19 pandemic may have accelerated this trend. On the supply side, digitization of content has enabled film production companies to distribute their own content at lower costs, therefore reducing the demand for services from other film distributors.

### **Similar Tax Expenditures Offered by Other States**

Other states with specific exemptions for sales of films for commercial exhibition include Connecticut, Georgia, Vermont, and Virginia.

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<sup>5</sup> For an illustration of “Multiplier Effect”, see Slide 4 of:  
<https://www.ilw.com/seminars/JohnNeillCitation.pdf>

<sup>6</sup> <https://www.boxofficepro.com/wp-content/uploads/2021/08/NATO-Econ-Impact-Final-Report-2021-August-16th.pdf>

<sup>7</sup> [https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1021&context=nerc\\_pub](https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1021&context=nerc_pub)