Tax Expenditure Review Commission Public Meeting Minutes
January 14, 2022
Via Teleconference
10:00AM

Commission Members in Attendance:

Chairman Kevin Brown, MA Department of Revenue
Professor Matthew Weinzierl, Governor's Appointee
Professor Michelle Hanlon, Governor's Appointee
Jacob Blanton, Designee, Senate Ways and Means Committee
Sue Perez, Designee, MA Treasurer
William Burke, Designee, House Minority Leader
Greg Sullivan, Designee, Senate Minority Leader
Suzanne Bump, MA Auditor & Kerri-Ann Hanley, Designee

Commission Members Absent:

Chairman Aaron Michlewitz, House Ways and Means Committee
Chairman Adam Hinds, Joint Revenue Committee, Senate Co-Chair
Chairman Mark Cusack, Joint Revenue Committee, House Co-Chair

List of Documents:

1. Meeting Agenda
2. Draft Minutes – November 18, 2021 Meeting
3. Draft Reports of Tax Expenditures:

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| 2.312 | Expensing of Certain Expenditures for Alternative Energy Sources |
| 2.501 | Nontaxation of Certain Energy Property |
| 3.306 | Exemption for Materials, Tools, Fuels, and Machinery Used in Newspaper Printing |
| 3.405 | Exemption for Certain Energy Conservation Equipment |
| 3.411 | Exemption for Certain Sales by Typographers, Compositors and Color Separators |
| 1.303 & 2.307 | Modified Accelerated Depreciation on Buildings (other than Rental Housing) |
| 1.304 & 2.305 | Modified Accelerate Cost Recovery System (MACRS) for Equipment |
| 1.305 & 2.306 | Deduction for Excess First-Year Depreciation |

Members were asked to announce themselves and a quorum was recognized by Chairman Brown. The meeting via teleconference was called to order at 10:05AM.

Chairman Brown put the Commission and public on notice that the meeting is recorded for purposes of minutes. The recording of the meeting will be kept for public record.

Chairman Brown requested that Commission members provide any changes to the November 18, 2021 draft meeting minutes. Hearing none, members voted unanimously to approve the November 18, 2021 meeting minutes.

Auditor Bump led a discussion on Expensing of Certain Expenditures for Alternative Energy Sources. This tax expenditure was adopted in 1976 and has a current revenue impact of $0 with no sunset date. Massachusetts General Laws chapter 63, § 38H allows a corporation to deduct "expenditures paid or incurred during the taxable year with respect to the installation of any solar or wind powered climatic control unit and any solar or wind powered water heating unit, or any other type of unit or system powered thereby." Without this provision, such costs would have to be capitalized and depreciated. To qualify for the deduction, the equipment must be located in Massachusetts and used exclusively in the trade or business of the corporation. The statute provides that equipment must meet certain technical standards that are required to be set by a now-defunct state agency – the Bureau of Building Construction. The Bureau of Building Construction was abolished in 1980 and was absorbed by the Division of Capital Asset Management & Maintenance ("DCAMM"). There is now no certification process in place and no current published guidance in effect. In the absence of that agency or a successor agency to certify the property, no exemption can be allowed. Members discussed that the tax expenditure is not currently active, although the statute authorizing it is still in effect, because the deduction requires certification by a state agency that no longer exists. DOR is not aware of other states that allow a similar deduction for alternative energy equipment. However, it is not uncommon for states to offer income tax credits, sales tax deductions or property tax exemptions for such equipment. Members assume the goal to be the encouragement of investment in alternative energy equipment. Members voted to approve the Expensing of Certain Expenditures for Alternative Energy Sources evaluation template as presented.

Greg Sullivan and Sue Perez led a discussion on Nontaxation of Certain Energy Property. Members discussed the similarities between this tax expenditure and the Expensing of Certain Expenditures for Alternative Energy Sources. This tax expenditure was adopted in 1976 and has a current revenue impact of $0 with no sunset date. Nontaxation of Certain Energy Property allows a corporate excise deduction for certain alternative energy property. Historically, the Bureau of Building Construction, a now-defunct state agency, was responsible for setting construction standards in Massachusetts. The Bureau of Construction's function in certifying alternative energy property was not specifically delegated to any successor agency. No certification standards, guidelines or regulations have been established by DCAMM or any other Massachusetts agencies for corporations seeking to take the alternative energy property deduction. Relatively few states impose a state level tax on tangible property. Of those states, none allow a specific exemption for alternative energy property. Members presumes that the expenditure is intended to encourage investment in alternative energy equipment. Members discussed DCAMM's proposed language change that may potentially affect the certification process for this tax expenditure. DCAMM submitted a proposed language change that would remove the certification requirement. Members voted to approve the Nontaxation of Certain Energy Property evaluation template as presented.

Chairman Brown led a discussion on the Exemption for Materials, Tools, Fuels, and Machinery Used in Newspaper Printing. This tax expenditure was enacted in 1968, repealed in 1990, and reinstated in 1995 and has a current annual revenue impact of approximately $3.3M per year during FY19-FY23 with no sunset date. The tax expenditure provides for an exemption from the sales tax for materials, tools, fuels, and machinery, including replacement parts if they are consumed and used directly and exclusively in an industrial plant for purposes of publishing a newspaper to be sold. Examples of these consumables include paper on which the newspaper is printed, ink, and printing presses and replacement parts. Most states exempt sales of components used and consumed in manufacturing from sales tax, which would cover the majority of property that would qualify for this exemption. However, a few states adopt a broader exemption specifically for components used in newspaper publishing (e.g., Idaho, Vermont, North Carolina). Members assume that the expenditure is intended to support the newspaper industry and the publication and readership of newspapers. According to the U.S. Census Bureau, in 2017, Massachusetts had 99 newspaper publishing firms. These firms jointly employed 5,138 people, generating $270.0 million in annual payroll and $926.2 million in annual sales. Members discussed how this tax expenditure has become less relevant today as newspapers have become more popular online and hardcopy newspapers have diminished. Members also discussed the overlap of general manufacturing exemptions and this exemption. Members voted to approve the Exemption for Materials, Tools, Fuels, and Machinery Used in Newspaper Printing evaluation template as presented.

William Burke and Sue Perez led a discussion on the Exemption for Certain Energy Conservation Equipment. This tax expenditure was adopted in 1977 and has a current annual revenue impact of approximately $6.2M-$8.9M per year during FY19-FY23 with no sunset date. The tax expenditure provides for an exemption from the sales and use tax for equipment directly relating to any solar, wind-powered or heat pump system used as a primary or auxiliary energy source in an individual's principal residence. More than twenty other states have exemptions for solar equipment, while nearly twenty have exemptions for wind equipment. Several also have exemptions for heat pump systems. Members assume the goal of the expenditure is to encourage energy conservation in residential homes in Massachusetts. Members discussed the trend of tax expenditures lacking sunset dates, or expiration dates. Members supported the notion advising the application of sunset dates to tax expenditures in order to encourage the re-evaluation of the tax expenditure to periodically analyze changes in industries and technologies. Such changes can impact the direct costs and benefit of tax expenditures. Members voted to approve the Exemption for Certain Energy Conservation Equipment evaluation template as presented.

William Burke and Greg Sullivan led a discussion on the Exemption for Certain Sales by Typographers, Compositors and Color Separators. This tax expenditure was adopted in 1979 and has a current annual revenue impact of $3.1M-$3.4M per year during FY19-FY23 with no sunset date. The tax expenditure provides for an exemption from the sales tax for sales by typographers, compositors or color separators of composed type, film positives and negatives and reproduction proofs, or the fabrication or transfer of such items to a printer, publisher, or manufacturer of folding boxes, for use in printing. This is a broadening of the manufacturing exemption. Connecticut, Maine, and California have similar exemptions. Other states exempt tangible personal property purchased by typographers, compositors, and color separators. Rhode Island exempts property consumed in the process of manufacturing tangible personal property for resale. New York offers a more limited exemption. Members assume the goal of the expenditure is to encourage and support the printing and publishing industry. Members discussed that the tax expenditure is potentially outdated due to technological improvements. Members also discussed the size of impacted businesses. Based on estimates, impacted businesses have approximately 20 employees. Members voted to approve the Exemption for Certain Sales by Typographers, Compositors and Color Separators evaluation template with a change from Strongly Agree to Somewhat Agree for Relevant Today and a change from Somewhat Disagree to Somewhat Agree for Beneficial to Small Businesses.

Jacob Blanton and Professor Hanlon led a discussion on Modified Accelerated Depreciation on Buildings (other than Rental Housing). This tax expenditure was adopted in 1986 and has an annual revenue impact of $5.3M for FY23 with no sunset date. This is a tax expenditure due to Massachusetts' conformity to the Internal Revenue Code (the "Code"). Since 1993, the Code has allowed nonresidential buildings to be depreciated using straight-line depreciation over 39 years. The Code refers to this method as "accelerated". The Code also provides an option to use straight-line depreciation over a period of 40 years. The benefit of using the 39-year recovery period instead of the 40-year recovery period is a federal tax expenditure to which Massachusetts conforms. Most states conform to the current Code deduction allowing depreciation of nonresidential buildings. States that do so include Connecticut, Maine, New Hampshire, New York, Rhode Island, and Vermont. California requires the use of traditional financial accounting depreciation schedules for all buildings. Members assume that the tax expenditure is intended to encourage investment in industrial, commercial, and other nonresidential buildings used for business purposes. Conformity with federal depreciation rules also simplifies tax compliance and administration by allowing the same general depreciation rules to be used for Massachusetts and federal purposes. DOR estimates that at least 10,000 corporate taxpayers and 10,000 personal income taxpayers benefit from this tax expenditure, with more than half of the impacted businesses having less than 50 employees. Members voted to approve the Modified Accelerated Depreciation on Buildings (other than Rental Housing) evaluation template as presented.

Chairman Brown led a discussion on Modified Accelerate Cost Recovery System (MACRS) for Equipment. This tax expenditure was adopted in 1986 and has a current annual revenue impact of $149.7M for FY23 with no sunset date. In general, businesses may recover the cost of durable business assets only by capitalizing the cost and claiming depreciation deductions over a period of years. However, Massachusetts conforms to the Modified Accelerated Cost Recovery System (MACRS) set out in the Code. MACRS allows more of the cost of the property to be deducted in the first few years of an asset's life, and relatively less later. The use of the accelerated method instead of the alternative method results in a temporary reduction of tax in the earlier years of an asset's life, which constitutes a tax expenditure. The deferral of tax is analogous to an interest-free loan from the Commonwealth to taxpayers. Most states conform to the depreciation deduction allowed under the Code. States that do so include Connecticut, Maine, New Hampshire, Rhode Island, and Vermont. New York conforms to MACRS with some state-specific modifications. California does not conform to MACRS and generally requires the use of depreciation methods in effect for federal purposes prior to 1981. Members assume that the tax expenditure is intended to encourage investment in durable business assets such as machinery and equipment used for business purposes. DOR estimates that at least 10,000 corporate taxpayers and 10,000 personal income taxpayers benefit from this tax expenditure. Members voted to approve the Modified Accelerate Cost Recovery System (MACRS) for Equipment evaluation template as presented.

Professor Weinzierl and Auditor Bump led a discussion on the Deduction for Excess First-Year Depreciation. This tax expenditure was adopted in 1958 and has an annual revenue impact of $50.3 million for FY23 with no sunset date. The Code adopts different depreciation schedules for specified classes of assets. Code § 179 allows federal taxpayers to elect to claim an immediate expense deduction in the tax year during which the asset was first placed in service. Massachusetts follows the federal depreciation rules, with modifications. Due to its conformity to the Code for determining business expense deductions, Massachusetts allows the Code § 179 deduction in the same amount as it is allowed for federal tax purposes. The tax expenditure is a result of such conformity. The immediate deduction of the cost of business assets constitutes a tax expenditure because it results in a deferral of tax. Most states either follow the Code § 179 deduction or allow a similar state-specific deduction. New York, Maine, Rhode Island, and Vermont follow the federal deduction. California, Connecticut, and New Hampshire allow state-defined deductions similar to Code § 179 expensing. Members assume that the tax expenditure is intended to encourage investment in durable business assets such as machinery and equipment. Using the Massachusetts share of the U.S. population (2.1%), DOR estimates that in 2017 roughly 20,000 corporate excise taxpayers and 81,700 personal income taxpayers benefited from this tax expenditure. Members discussed the challenge of businesses navigating the differences between federal and state depreciation schedules, which would be the case without this tax expenditure. Members voted to approve the Deduction for Excess First-Year Depreciation evaluation template with a change from Somewhat Disagree to Somewhat Agree for Easily Administered.

Members discussed tax expenditures that are a result of Massachusetts' conformity to the Code. Members agreed it would be beneficial to re-evaluating the review schedule of these tax expenditures. Members agreed to determine which tax expenditures to examine more closely based on factors including revenue impact and other states' conformity to the Code. DOR agreed to provide a table of the requested data. Members agreed to revisit this discussion at the next Commission meeting.

Members discussed the next batch of tax expenditures to be reviewed at the next Commission meeting. Members agreed to schedule a meeting prior to late-February 2022. Chairman Brown concluded the meeting at 11:32AM.