Tax Expenditure Review Commission Meeting
Friday, January 19, 2024
11:00 AM
Via Zoom

Commission Members in Attendance:

Chairperson Rebecca Forter, MA Department of Revenue
Sue Perez, Designee, MA Treasurer
Amar Patel, Designee, Senate Ways and Means Committee
Eli Roerden, Designee, House Minority Leader
Chris Carlozzi, Designee, Senate Minority Leader
Professor Michelle Hanlon, Governor's Appointee
Professor Matthew Weinzierl, Governor's Appointee

Commission Members Absent:

Tim Sheridan, Designee, House Ways and Means Committee
Ryan Sterling, Designee, Joint Revenue Committee, House Co-Chair
Stephen Lisauskas, Designee, MA Auditor
Stephen Maher, Designee, Joint Revenue Committee, Senate Co-Chair

List of Documents:

I. Meeting Agenda
II. Draft Minutes
    i. October 12, 2023 Meeting
    ii. November 15, 2023 Meeting
III. January Draft Reports of Tax Expenditures
    i. 1.617 & 2.621 Community Investment Tax Credit
    ii. 1.426 Expenses of Human Organ Transplant
    iii. 1.602 Credit for Removal of Lead Paint
    iv. 1.006 Exemption of Distributions from Certain Contributory Pension and Annuity Plans
    v. 1.029 Exemption for Retirement Pay of the Uniformed Services

Chairperson Forter welcomed Commission members. Chairperson Forter noted changes in membership; (i) Hailey Jenkins has resigned from the Commission, (ii) Amar Patel has been appointed as the new designee for the Senate Ways and Means Committee, and (iii) Chris Carlozzi has been appointed as the new designee for the Senate Minority Leader. Members were asked to announce themselves and a quorum was recognized by Chairperson Forter. The meeting via teleconference was called to order at 11:03AM. Chairperson Forter put the Commission and public on notice that the meeting is recorded for the purpose of minutes. The recording of the meeting will be kept for public record.

Chairperson Forter asked for any comments or changes on the October 12, 2023 draft meeting minutes and November 15, 2023 draft meeting minutes. Members did not provide any comment. Members voted to approve the October `23 and November `23 meeting minutes as drafted.

Chairperson Forter led a discussion on the Community Investment Tax Credit. This tax expenditure was adopted in 2014 and has an annual revenue impact of $4.6- $6.8 million for personal income tax and $3.2- $5.2 million for corporate and business tax during FY21 – FY25. This tax expenditure is set to expire December 31, 2025.

The expenditure provides a personal income tax and corporate excise credit equal to 50% of the total amount of qualified investments made by a taxpayer in a "community partner." A qualified investment is a cash contribution made to: (i) a specific community partner to support the implementation of the community partner's approved community investment plan, or (ii) a community partnership fund. Community partners include "community development corporations" and "community support organizations" selected by the Executive Office of Housing and Livable Communities (EOHLC) through a competitive process. DOR spoke with the Community Development Unit within EOHLC, the administering agency. They did not identify any particular concerns with administering the credit. The total cumulative value of all credits authorized may not exceed $12 million in any taxable year beginning in 2023 or later. Prior limits were $10 million for tax years 2021-2022, $8 million for tax years 2019- 2020, $6 million for tax years 2015- 2018, and $3 million for tax year 2014.

Most states have economic development programs that allow for the participation of community organizations and private contributors. But only a few states, including Missouri and South Carolina, offer a tax credit for such activity. No such credit is available in California, Connecticut, Maine, Rhode Island, New Hampshire, New York, or Vermont.

The purpose of the credit is "to enable local residents and stakeholders to work with and through community development corporations to partner with nonprofit, public and private entities to improve economic opportunities for low- and moderate-income households and other residents in urban, rural and suburban communities across the commonwealth."

The Commission concluded that the Community Investment Tax Credit is a worthwhile expenditure that encourages investment in local communities through financial incentive and that the credit also positively impacts some of the main pressure points the state faces now: housing, business development, job creation, with an emphasis on lower income communities. Members noted that a majority of the impacted businesses were small businesses with fewer than 50 employees and that Massachusetts is the only state in New England that offers this credit. Members agreed that this credit serves as an advantage for further investment in local communities and that this is a measurable expenditure which appears to be working as intended with the target audience as beneficiaries. The credit is set to expire December 31, 2025. Members agreed that while the Commission would not take a position as to whether the credit should be extended, it would make sense to flag this tax expenditure for legislative review in consideration of its expiration date and positive evaluation ratings. Members voted to approve the Community Investment Tax Credit evaluation template.

Professor Weinzierl led a discussion on the Expenses of Human Organ Transplant. This tax expenditure was adopted in 2011 and has an annual revenue impact of $0.02- $0.07 million during FY21- FY25 with no sunset date.

Massachusetts allows a deduction for certain expenses incurred by Massachusetts residents in the donation of specified human organs to other individuals. The deduction is allowed for travel expenses, lodging expenses, and up to $10,000 of lost wages.[1] For purposes of the deduction, a human organ is defined to include all or part of human bone marrow, liver, pancreas, kidney, intestine, or lung. The deduction applies only to donations by living persons to other living persons. Only taxpayers that are residents in Massachusetts for the entire tax year may claim the deduction. The deduction is allowed against Massachusetts adjusted gross income when determining Massachusetts taxable income.

A number of states allow income tax deductions for expenses relating to organ donation. Such states include Connecticut and New York. NY Tax Law Section 612(c)(38). CT GS Chapter 229, Title 12, sec 701(a)(20)(B)(xii). No deduction is available in California, Maine, Rhode Island, or Vermont.

The Commission assumes the goal of the expenditure is to offset the costs that Massachusetts residents incur when donating organs to other individuals, thereby reducing financial barriers to organ donation.

The Commission concluded that this tax expenditure is a relatively small cost for a socially beneficial act. Members noted these expenses are not deductible at the federal level which poses administrative challenges for DOR, because DOR has no federal data against which to verify deduction claims. Members voted to approve the Expenses of Human Organ Transplant evaluation template with a change to "Somewhat Disagree" on the question of whether the tax expenditure is easily administered.

Susan Perez led a discussion on the Credit for Removal of Lead Paint. This tax expenditure was adopted in 1987 and has an annual revenue impact of $1.8- $5.8 million during FY21- FY25 with no sunset date.

A personal income tax credit is provided to defray the cost that property owners incur when removing, containing, or replacing paint, plaster, or other accessible structural materials containing dangerous levels of lead in residential buildings constructed prior to 1978. The credit is equal to half the costs incurred for the removal, containment, or replacement of such materials, or the replacement of one or more window units, for the purpose of bringing a dwelling unit into compliance with the Commonwealth's health and safety laws. To qualify for the credit, the property owner must have the property inspected for lead paint by a person licensed to do so by the Department of Public Health (DPH). The de-leading work must be done by a contractor licensed to do so by the DPH. The property must then be re-inspected by a person approved by DPH, who certifies that the de-leading is complete. For 2023 tax years and thereafter, the maximum amount of the credit is $3,000 per dwelling unit.[2] For prior years, it was $1,500.

A smaller credit is available for costs associated with partial removal, containment, or replacement of materials containing dangerous levels of lead if such actions were incurred in pursuit of an emergency lead management plan and letter of interim control under DPH rules. The reduced credit is limited to $1,000 for 2023 tax years and thereafter. Prior to then it was $500 per dwelling unit.

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[1] In the United States, the medical and surgical costs associated with living organ donations such as kidney donation are directly covered by the transplant recipient's health insurance. These include costs for the initial evaluation and testing, health professional fees, hospitalization, readmissions, outpatient follow-up visits, and surgical or medical complications that occur within the first several months of surgery (based on the recipient's insurer).

[2] Amended by St. 2023, c. 50, §§ 9, 10.

It appears that only a few states offer a credit for lead removal or containment. Rhode Island allows a credit similar to the Massachusetts credit. Vermont allows a credit for improvements to designated historical buildings, which can apply to de-leading costs, but does apply to residential property. No credit is available in California, Connecticut, Maine, New Hampshire, or New York.

The Commission assumes the goal of the expenditure is to promote public health by encouraging property owners to remove, contain, or replace materials in a dwelling containing lead, exposure to which can cause serious harm to children. Please note that, in addition to the lead paint tax credit program, there are also certain low-cost financing options available to Massachusetts residents under various programs with the same goal (https://www.mass.gov/info-details/learn-about-financial-assistance-for-deleading).

Professor Hanlon noted that it seemed odd that the credit was available under chapter 62 and not chapter 63. DOR employee Tom Chappell stated his understanding that most dwellings held by businesses would be held by passthrough entities owned by individuals. Members voted to approve the Credit for Removal of Lead Paint evaluation template with an additional comment noting this point.

Professor Hanlon led a discussion on the Exemption of Distributions from Certain Contributory Pension and Annuity Plans. This tax expenditure was adopted in 1973 and has an annual revenue impact of $488.0- $582.1 million during FY21- FY25 with no sunset date.

Income from contributory pensions of the U.S. and Massachusetts governments, including their agencies and political subdivisions, is excluded from Massachusetts gross income. Most federal and state pensions are contributory, meaning that the employees fund their pensions, at least in part, out of current compensation. In addition, income from contributory pensions of other states and their agencies and political subdivisions is excluded from Massachusetts gross income if the state does not tax comparable distributions from Massachusetts government pensions.

The treatment of federal and state pensions varies among states that have income taxes. A number of such states, including Pennsylvania, exempt all pension income. Other states, including Connecticut, Maine, Rhode Island, and Vermont, provide limited exemptions for pension income. New York provides a complete exemption for federal and New York state pensions. California does not provide an exemption for federal or state pension income or any other pension income.

The Commission assumes the goal of the tax expenditure is to provide an incentive for workers to pursue careers in federal, state, and local government.

Members discussed the high cost associated with this tax expenditure and considered whether that might be reason enough to flag it for legislative review. They also questioned whether government employees were aware of this tax benefit such that the expenditure creates a meaningful incentive. Members agreed to flag this tax expenditure for legislative review. Members voted to approve the Exemption of Distributions from Certain Contributory Pension and Annuity Plans evaluation template with an additional comment noting that in consideration of the expenditure’s large revenue impact, the legislature may wish to review whether this is the optimal way to encourage government service.

Chairperson Forter led a discussion on the Exemption for Retirement Pay of the Uniformed Services. This tax expenditure was adopted in 1997 and has an annual revenue impact of $22.7 – $24.4 million during FY21- FY25 with no sunset date.

Effective for tax years beginning on or after January 1, 1997, income from U.S. military pensions is excluded from Massachusetts gross income. The exclusion applies to pension payments and survivorship benefits and is available whether or not the retiree contributed to any military retirement system. U.S. military pensions are defined as pensions derived from service in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, and the Commissioned Corps of the Public Health Service and National Oceanic and Atmospheric Administration. Note that income from such pensions is subject to the federal income tax.

Most states have full or partial exemptions for income from U.S. military pensions. Connecticut, Maine, Rhode Island, and New York have full exemptions. Vermont exempts $10,000 of military pension income for lower-income taxpayers. California taxes the full amount of U.S. military pension income.

The Commission assumes the goal of the expenditure is to acknowledge veterans' service to the country and to make Massachusetts a more attractive place for veterans to live.

Members voted to approve the Exemption for Retirement Pay of the Uniformed Services evaluation template with a change to "Somewhat Agree" on the question whether this tax expenditure justifies its fiscal cost.

Chairperson Forter mentioned that the draft annual report will be distributed to members for review in upcoming weeks. Members agreed to schedule the next meeting for mid-February. The purpose of the next meeting is to review the draft annual report, discuss any questions or concerns, and recommend any revisions. Chairperson Forter concluded the meeting at 11:53AM.