

Tax Expenditure Review Commission Public Meeting Minutes
Friday, January 29, 2021
Via Teleconference
10:00PM

Commission Members in Attendance:

Chairman Kevin Brown, MA Department of Revenue
Auditor Suzanne Bump, MA Auditor
Chairman Adam Hinds, Joint Revenue Committee, Senate Co-Chair
Ryan Sterling, Designee, Joint Revenue Committee, House Co-Chair
Sue Perez, Designee, MA Treasurer
Professor Michelle Hanlon, Governor's Appointee
Professor Matthew Weinzierl, Governor's Appointee
David Sullivan, Designee, Senate Ways and Means Committee
William Burke, Designee, House Minority Leader

Commission Members Absent:

Greg Sullivan, Designee, Senate Minority Leader
Chairman Aaron Michlewitz, House Ways and Means Committee

List of Documents:

1. Meeting Agenda
2. Draft Minutes – January 8, 2021 Meeting
3. Tax Evaluation Expenditure Ranking Assignment Spreadsheet

Members were asked to announce themselves and welcomed William Burke to his first meeting as Designee for House Minority Leader Bradley Jones. A quorum was recognized by Chairman Brown and the meeting via teleconference was called to order at 10:04AM.

Chairman Brown advised that the meeting is public but due to the COVID-19 State of Emergency, public participation is limited to listening without posing questions during the meeting. Chairman Brown put the Commission and public on notice that the meeting is recorded for purposes of minutes. Once the minutes are approved, the recording will be deleted.

Chairman Brown requested that Commission members provide any changes to the January 8, 2021 draft meeting minutes. Hearing none, members voted unanimously to approve the January 8, 2021 meeting minutes.

Professor Hanlon led a discussion of the Net Operating Loss Carryover (NOL) that was reviewed in collaboration with Chairman Brown. Members discussed the benefits to start-ups that have a long runway before profitability and determined that jobs creation should be added to the "scoring chart."

The NOL had previously had a five-year carry forward, but most states follow the 20-year carry forward in line with the federal NOL tax expenditure. However, Massachusetts does not have a carry-back provision as federal law provides. Members voted to approve the review with the addition of “jobs creation” and comment that this is consistent with federal code.

David Sullivan led a discussion of Small Business Corporations (S-Corps). Members discussed distinctions between the federal and state treatment of S-Corps, as well as the more favorable tax treatment of LLPs and LLCs. Members voted to approve the Small Business Corporations review with the addition of comments on the disconnect between entities formed as S-Corps versus LLPs and LLCs, as well as the appropriateness of applying the S-Corps structure to larger businesses that may be closely held.

Auditor Bump and Senator Hinds led a discussion of Exclusion of Income from Business-Related Meals and Entertainment. Members discussed there being some challenge with administering the Exclusion, such as when the owner of a business is also an employee, given that the Exclusion from income is for employees. Members voted to approve the review as presented.

Sue Perez and Professor Weinzierl led a discussion of the Life Sciences Tax Incentive Program. Members discussed the uniqueness of the Program given that it is not administered by the Department of Revenue and offers a suite of incentives, such as corporate excise and sales tax deductions. David Sullivan stated that the 2012 Tax Expenditure Review Commission favored the model of this Program because it must be applied for and has a sunset. Auditor Bump stated that the model also has an accountability feature, given the claw back provision. If job creation did not occur as the applicant maintained it would, the incentive is rescinded. Members voted to approve the Life Sciences Tax Incentive Program review with additional comments regarding it being a favorable model.

Chairman Brown led a discussion of the Motor Fuels Exemption from Sales Tax. Motor fuels are exempt from sales and use tax but are subject to an excise tax per gallon. Members voted to approve the Motor Fuels Exemption from Sales Tax review as presented.

Chairman Brown led a discussion of the Alcoholic Beverages Exemption review. Alcoholic beverages, except those sold as part of a meal, are exempt from sales tax but are subject to an excise tax by volume rather than retail price. As a result, alcoholic beverages are taxed at a lower rate than if they were subject to the sales tax. Members voted to approve the review as presented, with additional comments on the inequity of there being no retail sales tax on alcohol but significant retail sales taxes on marijuana and tobacco.

Auditor Bump led a discussion of the Exemption for Property Subject to Local Taxation, which she reviewed with Representative Cusack. The Exemption reduces the capital costs of doing business by excluding assets such as land and vehicles that are taxed locally. Members discussed the confusing interrelationship between state and local taxes that the Exemption creates. Members voted to approve the Exemption for Property Subject to Local Taxation review with a change from Strongly Agree to Somewhat Agree that its benefits justify the Exemption’s costs, removal of Investment as a goal, and additional comments on whether non-income measures should be taxed at all.

Chairman Brown led a discussion on the Capital Gain Deduction for Sale of Collectibles. In the absence of the Deduction, Collectibles would be taxed at 12% as are short-term capital gains. Additionally, the Deduction favors high-income taxpayers. Members voted to approve the review as presented, with an

additional comment on its unusual structure given the Deduction reduces the rate to 6%, just above the 5% Massachusetts income tax rate.

Chairman Brown led a discussion of the Income Exclusion for Sale of Certain Patents. To qualify the patents must support energy conservation or alternative energy. However, the Exclusion has never been granted. Members voted to approve the Income Exclusion for Sale of Certain Patents review as presented.

Members agreed to schedule another meeting for mid-February. Chairman Brown concluded the meeting at 3:04PM.