

Tax Expenditure Review Commission Meeting
Thursday, January 30, 2025
1:00 PM
Via Zoom

Commission Members in Attendance:

- Chairperson Rebecca Forter, MA Department of Revenue
- Lindsay Janeczek, Designee, MA Auditor
- Chris Carlozzi, Designee, Senate Minority Leader
- Professor Natasha Varyani, Governor's Appointee
- Professor Thomas Downes, Governor's Appointee
- John Keeler on behalf of Representative Michael Soter, Designee, House Minority Leader
- Katie Verra, Designee, Senate Ways and Means Committee

Commission Members Absent:

- Tim Sheridan, Designee, House Ways and Means Committee
- Ryan Sterling, Designee, Joint Revenue Committee, House Co-Chair
- Sue Perez, Designee, MA Treasurer
- Vacant (House Chair, Joint Committee on Revenue)
- Vacant (Senate Chair, Joint Committee on Revenue)

List of Documents:

- Meeting Agenda
- Draft Minutes
 - November 22, 2024 Meeting
- Presentation of January tax expenditure evaluation ratings, discuss and vote on ratings
 - 1.311 & 2.313 Deduction and Seven Year Amortization for Reforestation
 - 1.608 & 2.608 Brownfields Credit
 - 3.412 Exemption for Sales of Building Materials and Supplies to be Used in Connection with Certain Construction Contracts
 - 3.608 Exemption for Gifts of Scientific Equipment
 - 1.032 Employer-Provided Adoption Assistance
 - 1.036 Survivor Annuities of Fallen Public Safety Officers

Meeting Minutes:

Chairperson Forter welcomed Commission members, and a quorum was recognized. The meeting via teleconference was called to order at 1:03 PM. 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 noted changes in membership. Amar Patel, designee for Senate Ways and Means, will be out on leave until April 7, 2025. Katie Verra (Deputy General Counsel) will attend on behalf of Amar Patel while he is on leave. Commission members welcomed Katie Verra. TERC members include the House and Senate chairs of the Joint Committee on Revenue. There are no members appointed in the current General Court at the time of this meeting. The previous Senate chair was Susan Moran. The previous House chair was Mark Cusack.

Chairperson Forter asked for any comments or changes on the November 22, 2024 draft meeting minutes. Members did not provide any comment. Members voted to approve the November '24 meeting minutes as drafted. The meeting minutes will be posted to the TERC website.

Tom Downes led a discussion on the Deduction and Seven Year Amortization for Reforestation. This tax expenditure was adopted in 1983 for purposes of the personal income tax, and 1980 for purposes of the corporate excise and has an annual revenue impact of \$0.2 million for personal income tax and \$0.2 million for corporate excise during FY22-FY26 with no sunset date.

Due to Massachusetts' reliance on the Internal Revenue Code (Code) § 194(b) for purposes of determining income, taxpayers may elect to deduct up to \$10,000 of "reforestation expenditures" incurred with respect to qualified timber property in the year in which expenditures are incurred. The deduction applies to both the personal income tax and to the net income measure of the corporate excise. See M.G.L. c. 62 §§ 1(c), 2(d)(1); M.G.L. c. 63, § 30.4. If reforestation expenditures exceed \$10,000, taxpayers may amortize the excess over a seven-year period. The amortization deduction has no dollar limit. See Code § 194(a). Trusts are not eligible for the deduction but may elect seven-year amortization for such expenses. See Code § (b)(1)(B)(iii).

Qualified timber property is a "woodlot or other site located in the United States" used for the "planting, cultivating, caring for, and cutting of" a commercial volume of trees for the purpose of producing timber products. See Code § 194(c). The property must be at least one acre in size. Reforestation expenditures include the direct costs of forestation or reforestation, such as site preparation, seeds, labor, and equipment. See Code § 194(c).

All states that impose an income tax based on federal adjusted gross income adopt the \$10,000 deduction and seven-year amortization deduction for forestation or reforestation expenses unless they decouple from the Code in that regard. States that adopt the deduction and seven-year amortization include California, Connecticut, Maine, New Hampshire, New York, Rhode Island, and Vermont. Note that California limits its conformity to expenditures on timber property located within the state. New Hampshire does not have a personal income tax but conforms to Code § 194 for the purpose of its corporate income tax.

The Commission assumes the goal of the expenditure is to incentivize forestation and reforestation.

The administration of the deduction and seven-year amortization of forestation and reforestation expenses does not present any special challenges for the DOR. Conformity with the federal treatment simplifies tax compliance and administration by allowing the same general rules and definitions to be

used for Massachusetts and federal purposes. DOR assumes that this consistency of treatment also eases the compliance burden for taxpayers and practitioners.

Members noted that to be eligible for the deduction, the taxpayer must be cultivating a commercial volume of trees. Members discussed how this tax expenditure's beneficiaries extend far beyond the taxpayers claiming the deduction.

Members agreed that this tax expenditure should not be flagged for legislative review. Members voted to approve the evaluation template for the Deduction and Seven-Year Amortization for Reforestation as presented.

Natasha Varyani led a discussion on the Brownfields Credit. This tax expenditure was adopted in 1998 and has an annual revenue impact of \$2.3 - \$2.8 million for personal income tax, and \$22.2 - \$26.4 million for corporate and business excise during FY22 – FY26 with no sunset date.

Massachusetts allows a credit for costs incurred in remediating contamination of real estate. See M.G.L. c. 62, § 6 (j); M.G.L. c. 63, § 38Q. The credit may be claimed by personal income taxpayers, business corporations or non-profit corporations. The credit is available for expenses incurred to remediate contaminated property in Massachusetts. To claim the credit a taxpayer must commence and diligently pursue an environmental response action and achieve and maintain a permanent solution or remedy operation status in compliance with M.G.L. c. 21E, § 2. The taxpayer must complete the cleanup in compliance with standards set out by the Massachusetts Department of Environmental Protection (DEP). The contaminated property must be owned or leased for business purposes by the claimant and must be located within an economically distressed area. The remediation must be commenced on or before August 5, 2028 and eligible costs that qualify for the credit must be incurred before January 1, 2029.

The credit is equal to either 25% or 50% of the taxpayer's net response and removal costs, depending on whether any limitations on the use of the property remain after remediation. The taxpayer's net response and removal costs are the eligible costs less any reimbursement received by the taxpayer. Unused credit may be carried forward for up to five years. Taxpayers may sell, transfer or assign the credit. The credit may be carried forward for up to 5 years.

Few other states allow a credit similar to the Brownfields Credit. No credit is available in California, Connecticut, Maine, New Hampshire, Rhode Island, or Vermont. However, New York allows a similar credit.

The Commission assumes the goal of the credit is to promote clean-up of contaminated property in Massachusetts in accordance with standards set out by the Massachusetts Department of Environmental Protection (DEP).

The administration of the Brownfields Credit presents challenges for the Department of Revenue (DOR). DOR is responsible for administering the credit. Verification of eligible expenses often raises technical environmental matters that require specialized expertise. DOR audits the credit as part of its personal income tax and corporate excise audit processes.

Members noted that (i) this credit has no cap and therefore the fiscal impact of the credit is unpredictable, (ii) there is administrative complexity in the fact that DEP regulations determine eligibility

for the credit but the statute tasks DOR with reviewing applications and granting credits, requiring DOR to develop technical expertise.

Members agreed that this tax expenditure should be flagged for legislative review. Members voted to approve the evaluation template for the Brownfields Credit as presented. Chris Carlozzi abstained.

Lindsay Janeczek led a discussion on the Exemption for Sales of Building Materials and Supplies to be Used in Connection with Certain Construction Contracts. This tax expenditure was adopted in 1967 and has an annual revenue impact of \$352.2 - \$375.1 million during FY22 – FY26 with no sunset date.

Massachusetts allows a sales and use tax exemption for the sale of building materials and supplies used by contractors in fulfilling construction contracts with federal and Massachusetts government entities or with corporations, foundations, organizations or institutions that are exempt from taxation under Internal Revenue Code § 501(c)(3). M.G.L. c. 64H, § 6(f). The exemption also applies to construction equipment that contractors rent for exclusive use in such construction contracts.

For purposes of the exemption, a construction contract is an agreement that will result in the construction, reconstruction, repair, or remodeling of certain building structures, public highways, bridges, or other public works. Exempt building materials and supplies include materials that will be incorporated into building structures (e.g., concrete or steel) and supplies that will be consumed in fulfilling the contract (e.g., fuel used to operate construction equipment). The exemption does not apply to items used by the contractor to administer the construction contract (e.g., telecommunications services or office equipment).

With respect to construction contracts with the federal government, Massachusetts or any political subdivision thereof, or their respective agencies, sales of building materials and supplies are generally exempt if the building structure, public highway, bridge or other public works under construction is owned by or held in trust for the benefit of the governmental entity and used exclusively for public purposes. With respect to construction contracts with a corporation, foundation, organization or institution that is tax-exempt under Internal Revenue Code § 501(c)(3), sales of building materials and supplies are generally exempt if the building structure under construction is owned by or held in trust for the benefit of the tax-exempt entity and used exclusively in the conduct of its religious, scientific, charitable or educational purposes. Further, the property must be used for the owner's governmental or tax-exempt purposes.

Most states that impose a sales and use tax allow an exemption for sales of building materials and supplies used in construction contracts with the federal government, their own state's government and tax-exempt organizations. Connecticut, Maine, New York, Rhode Island and Vermont allow such an exemption. California allows exemption for federal construction projects but generally taxes building materials and supplies used in state and local construction contracts and contracts with tax-exempt organizations.

The Commission assumes that the expenditure is intended to reduce the cost of construction projects funded by government entities and tax-exempt organizations, thereby increasing the resources such entities and organizations have available to devote to their missions.

The exemption for building materials and supplies used in construction contracts with government entities and tax-exempt organizations is administered through the DOR audit function. To facilitate the exemption the DOR issues Certificates of Exemption, Forms ST-2 to exempt organizations and entities upon request. The Form ST-2 documents the organizations' and entities' exempt status. Furthermore, the purchasing entities must generally complete either a Sales Tax Exempt Purchaser Certificate, Form ST-5, or a Contractor's Sales Tax Exempt Purchase Certificate, Form ST-5C and provide the forms to vendors at the time of purchase in order to claim the exemption. However, DOR must audit vendors and contractors to ensure that they are applying the exemption correctly.

Members noted this tax expenditure was adopted in 1967 which led to a discussion regarding the age of some Massachusetts' tax expenditures. Members agreed that age could be used as a factor for deciding which expenditures are flagged for legislative review. Members also noted that higher education institutions are eligible for the exemption.

Members agreed that this tax expenditure should not be flagged for legislative review. Members voted to approve the evaluation template for the Exemption for Sales of Building Materials and Supplies Used in federal and Massachusetts Government Construction Contracts and Construction Contracts with Tax Exempt Organizations as presented.

John Keeler led a discussion on the Exemption for Gifts of Scientific Equipment. This tax expenditure was adopted in 1983 and has an annual revenue impact of under \$50,000 during FY22 – FY26 with no sunset date.

Chapter 64H, Section 2 of the Massachusetts General Laws imposes a sales tax on retail sales of tangible personal property. A sale is defined as any transfer of title or possession for consideration. G.L. c. 64H, § 1(12)(a). Massachusetts provides a sales and use tax exemption for donations of scientific equipment or apparatus by manufacturers to non-profit educational institutions, to the Massachusetts Technology Park Corporation, or to the Bay State Skills Corporation. Although donations of tangible personal property are not subject to the sales or use tax because donations are not "for consideration," without this exemption the sales tax would be imposed upon otherwise exempt inputs required to make the tangible personal property. A manufacturer's purchase of inputs such as materials, tools, fuel, and machinery to be used in the manufacture of tangible personal property to be sold is exempt from the sales and use tax under G.L. c. 64H, § 6(r) and (s). To claim the exemption the manufacturer presents an exempt use certificate when purchasing the inputs and the sales and use tax is imposed upon the subsequent sale of the manufactured products (in this case, scientific equipment or apparatus) by the manufacturer, unless an exemption applies. However, if after presenting the certificate, the manufacturer donates the manufactured products instead of selling them, the manufacturer is required to pay sales tax on the cost of the inputs for which the manufacturer previously claimed an exemption. M.G.L. c. 64H, §§ 8 (h). See also Letter Ruling 84-62. Donation of manufactured equipment would trigger the sales tax if not for the exemption. The revenue foregone as a result of the exemption constitutes a tax expenditure.

The Commission is not aware of any state that has a specific exemption for donations of scientific equipment. However, several states, including California, Connecticut, Maine, New York, and Vermont

allow broader exemptions for donations of any tangible personal property by vendors to tax-exempt organizations.

The Commission assumes the goal of the exemption is to allow manufacturers to donate scientific equipment to public and private nonprofit educational institutions without incurring sales and use tax.

The exemption for donations of scientific equipment presents some challenge to the Department of Revenue (DOR) because no certificate or other documentation is required to claim the exemption, and the recipient of the donation will be a tax-exempt entity with no sales and use tax filing requirement. Thus, the exemption can be verified only by auditing manufacturers.

Members agreed that this tax expenditure should not be flagged for legislative review. Members voted to approve the evaluation template for the Exemptions for Gifts of Scientific Equipment with a change from Strongly Disagree to Somewhat agree on the question of whether the tax expenditure is easily administered.

Chris Carlozzi led a discussion on the Employer-Provided Adoption Assistance. Massachusetts conformed to the federal expenditure as of 2022. This tax expenditure has an annual revenue impact of under \$50,000 during FY22 – FY26 with no sunset date.

Due to Massachusetts' reliance on the Internal Revenue Code (Code) for purposes of determining income, amounts received by employees through employer-sponsored adoption assistance programs are excluded from Massachusetts gross income. Specifically, Massachusetts adopts Code § 137 (as amended and in effect for the 2024 tax year), which allows the exclusion for federal tax purposes. M.G.L. c. 62, §§ 1, 2(a). The maximum amount of employer-provided adoption benefits that can be excluded is \$16,810 per child, with higher amounts excluded for the adoption of children with special needs. The exclusion amount begins to phase out for taxpayers with income in excess of \$252,150 and is completely phased out when income reaches \$292,150. The limitation amounts are adjusted annually for inflation. See Code § 137(f). The exclusion applies to amounts used for reasonable and necessary adoption fees, court costs, attorney fees, and certain other expenses. Adoption expenses related to surrogacy, or the adoption of a spouse's child are ineligible for the exclusion.

States that conform to the Internal Revenue Code for individual income tax purposes adopt the exclusion for employer-provided adoption benefits, unless they have specifically decoupled from the Code. The Commission is not aware of any state that has decoupled.

The Commission assumes that the goal of the exclusion is to ease the financial burden on taxpayers who adopt children by excluding employer-provided adoption benefits from gross income.

The administration of the exclusion for employer-provided adoption assistance does not present any special challenges for DOR. Conformity with the federal treatment simplifies tax compliance and administration by allowing the same general rules and definitions to be used for Massachusetts and federal purposes. The Commission assumes that this consistency of treatment also eases the compliance burden for taxpayers and employers.

Members agreed that this tax expenditure should not be flagged for legislative review. Members vote to approve the evaluation template for the Employer-Provided Adoption Assistance as presented.

John Keeler led a discussion on the Survivor Annuities of Fallen Public Safety Officers. This tax expenditure was adopted in 1958 and has an annual revenue impact of under \$50,000 during FY22 – FY26 with no sunset date.

Due to its reliance on the Internal Revenue Code (Code) for purposes of determining gross income for personal income tax purposes, Massachusetts excludes from income certain payments to eligible survivors of public safety officers killed in the line of duty. Specifically, Massachusetts adopts Code § 101(h), which allows a federal exclusion for annuities paid under a governmental plan. To be treated as an eligible governmental plan, the plan must meet certain funding, participation and anti-discrimination requirements. Public safety officers include law enforcement officers, firefighters, members of rescue squads and members of ambulance crews. Eligible survivors are limited to the spouses and children of public safety officers. See § 101(h)(1)(A). The federal and state exclusion is not allowed in certain circumstances detailed in IRC § 101(h)(2), where the public safety officer was engaged in misconduct or negligence when he or she was killed, or if the survivor contributed to the public safety officer's death.

States that conform to the Code for individual income tax purposes adopt the exclusion unless they have specifically decoupled from the Code in that regard. The Commission is not aware of any state that has decoupled.

The Commission assumes the goal of the exclusion is to ease the financial burden for survivors of public officers killed in the line of duty.

The administration of the exclusion for annuity income paid under a governmental plan to the survivors of public safety officers killed in the line of duty does not present any special challenges for DOR. Conformity with the federal treatment simplifies tax compliance and administration by allowing the same general rules and definitions to be used for Massachusetts and federal purposes. The Commission assumes that this consistency of treatment also eases the compliance burden for taxpayers.

Members agreed that this tax expenditure should not be flagged for legislative review. Members voted to approve the evaluation template for the Exemption for Survivor Annuities for Fallen Public Safety Officers as presented.

Members agreed to reconvene in late February. The purpose of the next meeting is to discuss and vote on the annual report. Chairperson Forter noted that the draft report will be circulated for review in upcoming weeks and thanked members for their contributions to the Commission. The meeting concluded at 2:02 PM.