

Tax Expenditure Review Commission Public Meeting Minutes
January 09, 2023
Via Teleconference
10:00AM

Commission Members in Attendance:

Chairperson Rebecca Forter, MA Department of Revenue
Professor Michelle Hanlon, Governor's Appointee
Sue Perez, Designee, MA Treasurer
Kerri-Ann Hanley, Designee, MA Auditor
Chris Anderson, Designee, Senate Minority Leader
Jacob Blanton, Designee, Senate Ways and Means Committee
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
Representative Michael Soter, Designee, House Minority Leader

List of Documents:

1. Meeting Agenda
2. Draft Minutes – November 21, 2022 Meeting
3. Draft Reports of Tax Expenditures:

TE No.	TE Name
1.412	Nontaxation of Charitable Purpose Income of Trusts and Estates
1.415 & 2.201	Charitable Contributions and Gifts Deduction
2.303	Expenditures to Remove Architectural and Transportation Barriers to the Handicapped and Elderly
3.003	Exemption for Sales to Tax-Exempt Organizations
3.406	Exemption for Funeral Items
3.409	Exemption for Books used for Religious Worship
3.607	Exemptions for Publications of Tax-Exempt Organizations
1.621 & 2.624	Apprentice Tax Credit

Chairperson Forter welcomed the Commission members. Members were asked to announce themselves and a quorum was recognized by Chairperson Forter. The meeting via teleconference was called to order at 10:05AM.

Chairperson Forter 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.

Chairperson Forter continued a discussion on the Abandoned Building Renovation Deduction. The Commission reached out to HED to try to figure out why the incentive is claimed so infrequently. MOBD staff thought it could be due to the fact that the deduction is available only when renovating a building. According to them, often old mill buildings are so deteriorated that a company will tear it down and

construct a new one on that location rather than renovating the building. It was also suggested that its lack of use could be in part due to the marketing of the deduction to companies - MOBD regional directors may be the only ones notifying companies of its availability. Without more data, the Commission does not know whether the deduction benefits smaller businesses. Additionally, the question of whether the deduction is meaningful as an incentive can only be answered in the context of the broader EDIP program. Even though the dollar amount per taxpayer is fairly small, it may be meaningful when taken together with other local property tax incentives. This tax expenditure is unique to Massachusetts. While every state with a corporate or personal income tax allows the recovery of business expenses incurred in renovating real property, either through immediate expensing or through depreciation allowances, no other state allows an additional deduction similar to the one allowed in Massachusetts. Members voted to approve the Abandoned Building Renovation Deduction evaluation template as presented.

Chairperson Forter requested that Commission members provide any changes to the November 21, 2022 draft meeting minutes. Hearing none, members voted unanimously to approve the November 21, 2022 meeting minutes.

Professor Hanlon led a discussion on the Nontaxation of Charitable Purpose Income of Trusts and Estates. This tax expenditure was adopted in 1973 and has an annual revenue impact of \$14.2 - \$15.4 million during FY20 - FY24 with no sunset date. The income of trusts and estates is subject to the personal income tax. When a trust receives income, it is required to report and pay tax on the income at the trust level, unless it is a simple trust. Estates are required to report and pay tax on all their income. In determining taxable income, trusts and estates are allowed a deduction for income they receive that is payable to or irrevocably set aside for a charitable purpose, as per the terms of the trust or will. The deduction is allowed for amounts payable to or set aside for 501(c)(3) organizations. In addition, the deduction is allowed to a so-called "charitable trust" that receives income and spends it or sets it aside for "the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes or other purposes which are beneficial to the community." Note that this deduction operates independently of the deductions for charitable contributions by individuals and corporations to 501(c)(3) organizations. Note that the federal rules pertaining to the income taxation of trusts provide a similar deduction. Massachusetts disallows the federal deduction and adopts its own deduction as described above. The Commission assumes that the expenditure is intended to encourage charitable giving. A number of states allow a deduction for trust and estate income that has been paid to, or permanently set aside for, charitable organizations. These states include California, Connecticut, Maine, New York, Rhode Island, and Vermont. Members voted to approve the Nontaxation of Charitable Purpose Income of Trusts and Estates evaluation template with an additional comment highlighting the analogous federal deduction. Absent this tax expenditure, Massachusetts would be out of sync with the Internal Revenue Code (the "Code") as well as other states.

Professor Hanlon led a discussion on Charitable Contributions and Gifts Deduction. The corporate portion of this tax expenditure was adopted in 1903 and revised in 1963 and has an annual revenue impact of \$47.1 - \$71.4 million during FY20 - FY24 with no sunset date. The tax expenditure allows corporations (and will allow individuals) to deduct charitable contributions in determining taxable income. The deduction for individuals and the deduction for corporations are based on separate provisions of Massachusetts law, but both deductions derive from Code § 170. Code § 170 allows both individuals and corporations a federal deduction for charitable contributions to § 501(c)(3) organizations. The Massachusetts corporate excise deduction for charitable contributions results from the general allowance of federal deductions in the determination of net income. Thus, Massachusetts allows the deduction in

the same amount as the federal deduction. All federal requirements and limits pertaining to the deduction apply for Massachusetts purposes. The most important of these limits is that the deduction cannot exceed 10% of a corporation's taxable income. The federal limit was temporarily increased to 25% for certain corporate contributions made in 2020 and 2021. Massachusetts followed those temporary increases. The personal income tax and corporate excise revenue lost as a result of the deduction for charitable contributions is a Massachusetts tax expenditure. Because the reinstatement of the personal income tax charitable deduction will take effect 1/1/23, this report will only cover the corporate and business charitable deduction. The Commission assumes that the expenditure is intended to encourage charitable giving. Most states with an income tax allow a deduction for charitable contributions. States that do so for individual income tax purposes include California, Connecticut, Maine, New York, and Rhode Island. Vermont offers a credit for up to \$400 of charitable contributions. States that allow a charitable deduction for corporate income tax purposes include California, Connecticut, Maine, New Hampshire, New York, Rhode Island, and Vermont. Members discussed data limitations and agreed to revisit the Charitable Contributions and Gifts Deduction evaluation template at the next Commission meeting. DOR agreed to revise the summary report for this tax expenditure.

Chairperson Forter led a discussion on the Expenditures to Remove Architectural and Transportation Barriers to the Handicapped and Elderly. This tax expenditure was adopted in 1990 and has an annual revenue impact of \$0.7 million during FY20 – FY24 with no sunset date. Massachusetts conforms to Code § 190, which allows taxpayers to elect an immediate deduction of up to \$15,000 of expenses incurred in removing architectural or transportation barriers to the handicapped and elderly. The cost of an improvement to a business asset is normally a capital expense, which would have to be capitalized and deducted over a period of years. Any costs over \$15,000 must be capitalized and deducted under the generally applicable depreciation schedules set out in the Code. Expenses incurred in making a building or public transportation vehicle more accessible to people with disabilities and the elderly are eligible for the deduction. Examples with regard to buildings include installing ramps, widening doors, modifying restrooms, and lowering counters to accommodate customers in wheelchairs. Examples with regard to vehicles include installing lifts for wheelchairs and modifying signage and public address systems to accommodate the visually or hearing impaired. The deduction is not available for costs incurred in completely renovating a building or vehicle or for the cost of replacing depreciable property in the normal course of business. The policy goal stated in Code § 190(b)(1) is to make "any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals." States that conform to the Code in determining personal and corporate business expense deductions adopt the accelerated deduction under Code § 190, unless they specifically decouple from that provision. California, Connecticut, Maine, New Hampshire, New York, Rhode Island, and Vermont allow the accelerated deduction. The Commission is not aware of any state that has decoupled. Members voted to approve the Expenditures to Remove Architectural and Transportation Barriers to the Handicapped and Elderly evaluation template as presented.

Professor Weinzierl led a discussion on the Exemption for Sales to Tax-Exempt Organizations. This tax expenditure was adopted in 1967 and has an annual revenue impact of \$627.3 - \$833.0 million during FY20 – FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for tangible personal property and services purchased by organizations that are exempt from taxation under §501(c)(3) of the Code. Purchases by non-profit volunteer fire departments and ambulance services are also exempt. To qualify for the exemption the tangible personal property or services must be used by

such organizations in carrying out their tax-exempt purposes. To claim the exemption a 501(c)(3) organization or non-profit volunteer fire department or ambulance service must apply to DOR for an exemption certificate and present the certificate to the vendor when making purchases. The Commission assumes that the expenditure is intended to reduce the expenses of § 501(c)(3) organizations, thereby increasing the resources such an organization has available to devote to its mission. Most states that impose a sales and use tax have a similar exemption. These states include Connecticut, Maine, New York, Rhode Island, and Vermont. California does not have an exemption for purchase by § 501(c)(3) organizations. Members voted to approve the Exemption for Sales to Tax-Exempt Organizations evaluation template with a change from Somewhat Disagree to Somewhat Agree for Benefits Justify Costs and Claimed by a Broad Group.

Kerri-Ann Hanley led a discussion on Exemption for Funeral Items. This tax expenditure was adopted in 1967 and has an annual revenue impact of \$11.7 - \$13.8 million during FY20 – FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for coffins, caskets, burial garments, and other materials that are generally sold by a funeral director as part of the business of funeral directing. DOR's administrative practice is to apply the exemption only to items normally transferred by funeral directors as part of their business as a funeral director. DOR has interpreted the exemption to also apply to transfers by persons that are not funeral directors so long as the items transferred would be exempt if transferred by a funeral director. DOR does not apply the exemption to sales of monuments, grave markers, or funeral flowers. Funeral directors are subject to sales and use tax on items that they use or consume in their businesses other than coffins, caskets, burial garments and other items covered by the exemption. Such taxable items include motor vehicles, business fixtures, embalming supplies, and instruments and equipment. Absent the exemption afforded by this tax expenditure, sales of coffins, caskets, burial garments, and similar items sold by a funeral director would generally be subject to the sales and use tax. The Commission assumes that the goal of the expenditure is to lessen the funeral costs of the bereaved upon the death of a loved one. Connecticut, Maine, Rhode Island, and Vermont provide similar exemptions. New York exempts retail sales by funeral directors from sales and use tax, but taxes purchases by funeral directors. California does not provide any exemption for funeral directors. Members discussed data limitations and the methodology for revenue loss estimates. Members agreed to revisit the Exemption for Funeral Items evaluation template at the next Commission meeting.

Jacob Blanton led a discussion on Exemption for Books used for Religious Worship. This tax expenditure was adopted in 1967 and has an annual revenue impact of \$0.7 - \$0.9 million during FY20 – FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for books used for religious worship. The exemption is limited to printed material and does not apply to audio or video recordings or to books that are simply religion-themed. The exemption applies to eligible books whether sold by publishers to religious institutions or sold by retailers to such institutions or to individuals. Absent the exemption afforded by this tax expenditure, books used for religious worship would be subject to sales tax. The Commission assumes that the goal of the expenditure is to make religious materials more accessible. There is no similar exemption in California, Connecticut, Maine, New York, Rhode Island, or Vermont. Similar sales and use tax exemptions have been held to be unconstitutional in a number of states on the grounds that they promote the establishment of a religion or infringe on the freedom of the press. States where similar exemptions have been stricken include Georgia, North Carolina, and Rhode Island. A number of states, including New Jersey, continue to exempt religious material. Members voted to approve the Exemption for Books used for Religious Worship evaluation template as presented with an

additional comment acknowledging that similar sales and use tax exemptions have been held to be unconstitutional in a number of states on the grounds that they promote the establishment of a religion or infringe on the freedom of the press. The Commission also noted that this exemption may overlap with certain other exemptions, such as 3.607 Exemptions for Publications of Tax-Exempt Organizations.

Kerri-Ann Hanley led a discussion on the Exemptions for Publications of Tax-Exempt Organizations. This tax expenditure was adopted in 1967 and has an annual revenue impact of \$19.0 - \$23.0 million during FY20 – FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for sales of the publications of organizations that are exempt from taxation under § 501(c)(3) of the Code. The exemption applies to all printed material published and sold by such organizations. Massachusetts also allows an exemption from sales and use tax for sales of newspapers and magazines. Some, but not all, publications of eligible tax-exempt organizations may also be eligible for the newspaper and magazine exemption. Absent the exemption afforded by this tax expenditure, sales of publications of tax-exempt organizations would be subject to sales and use tax unless the exemption for newspapers and magazines, or another exemption, applies. The Commission assumes that the goal of the expenditure is to support tax-exempt organizations by relieving them from the burden of sales and use tax compliance and by reducing the cost of their publications to consumers. Most states with a sales or use tax require tax-exempt organizations to collect tax on their sales unless another exemption applies. Connecticut, Maine, New York, Rhode Island, and Vermont apply such a requirement. California exempts the sale of periodicals (defined as a publication with different issues published at least four times per year) published by 501(c)(3) nonprofit organizations only for their members or without commercial advertising. Members voted to approve the Exemptions for Publications of Tax-Exempt Organizations evaluation template with an additional comment acknowledging that many states do not exempt these sales. The Commission noted that this tax expenditure appears to primarily benefit large institutions of higher education, which are most likely to have significant publishing operations. According to causeiq.com, “Harvard Business Publishing Corporate Learning” accounted for about 80% of the annual revenue for Massachusetts’ 117 nonprofit presses and publishers.

Chairperson Forter led a discussion on the Apprentice Tax Credit. This tax expenditure was adopted in 2018 and has an annual revenue impact of \$0.2 - \$0.3 million during FY20 – FY24 with no sunset date. The tax expenditure allows employers to claim a credit against the personal income tax or corporate excise if they establish apprenticeship programs and hire apprentices in designated computer technology, health care technology, or manufacturing occupations. The apprentice tax credit is equal to the lesser of \$4,800 or 50% of the wages paid to the apprentice. Apprentices must be Massachusetts residents working for employers with business premises in the Commonwealth. Occupations eligible for the credit include a range of jobs in the designated fields. Such occupations generally include jobs that require technical skills but do not necessarily require post-secondary education. The statutes authorizing the credit state that the purpose of the credit is to “create talent pipelines for businesses and provide career pathways toward high demand occupations for unemployed and underemployed residents of the commonwealth.” To be eligible for the credit, employers must register their apprenticeship programs and program participants with the Massachusetts Executive Office of Labor and Workforce Development, Division of Apprentice Standards. The amount of the credit available to any employer is determined by the Secretary for Labor and Workforce Development in consultation with the Massachusetts Executive Office for Administration and Finance. The total amount of cumulative credit available annually is limited to \$2.5 million. The Division of Apprentice Standards confirmed there are multiple contributing factors

that could have an effect on the current number of employers taking advantage of this tax credit. For both manufacturing and technology, nearly all of the apprenticeships are “sponsored” by intermediary organizations and, as a result, information disseminated by the Commonwealth to these primary contacts on when and how to apply for the RATC may have not reached the employer audience directly. For manufacturing, this number may have been even lower with only production manufacturers eligible. And, for healthcare, the majority of apprentices are EMTs employed by local municipalities who are not eligible for the tax credit. Additionally, for both FY20 and FY21, these results likely mirror the temporary downturn in apprenticeship participation (and workforce programming generally) due to the pandemic with a decrease in credits awarded by \$27 K and \$14 K in FY20 and FY21, respectively. Legislation proposed in 2022 would have given EOLWD the authority to expand the list of occupations eligible for the credit, but that legislation was not enacted. A number of states have adopted tax credits and incentives for employers that employ apprentices in various occupations. However, the types of eligible occupations and credit-generating activities vary widely. Members voted to approve the Apprentice Tax Credit as presented with an additional comment noting the small number of credits claimed.

Members discussed the next batch of tax expenditures to be reviewed and discussed drafting a report to be voted on during the next Commission meeting. Members agreed to schedule the next meeting for late February or early March. Chairperson Forter concluded the meeting at 11:48 AM.