

Tax Expenditure Review Commission Public Meeting Minutes
June 29, 2023
Via Teleconference
10:00AM

Commission Members in Attendance:

Chairperson Rebecca Forter, MA Department of Revenue
Kerri-Ann Hanley, Designee, MA Auditor
Sue Perez, Designee, MA Treasurer
Stephen Maher, Designee, Joint Revenue Committee, Senate Co-Chair
Hailey Jenkins, Designee, Senate Ways and Means Committee
Professor Michelle Hanlon, Governor's Appointee

Commission Members Absent:

Professor Matthew Weinzierl, Governor's Appointee
Representative Michael Soter, Designee, House Minority Leader
Tim Sheridan, Designee, House Ways and Means Committee
Ryan Sterling, Designee, Joint Revenue Committee, House Co-Chair
Chris Anderson, Designee, Senate Minority Leader

List of Documents:

1. Meeting Agenda
2. Draft Minutes – April 27, 2023 Meeting
3. Revisit April Draft Reports of Tax Expenditures
4. June Draft Reports of Tax Expenditures

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 provided an overview of the April 27, 2023 draft meeting minutes and requested that Commission members provide any changes. During the April meeting at 11:15 AM a Commission member disconnected from the teleconference due to internet connectivity issues, remaining members continued to discuss tax expenditure evaluation ratings and proposed changes. These tax expenditures included the Exclusion of Certain Foster Care Payments, Rent Deduction, and Exemption for Electricity. Proposed changes to evaluation templates are outlined in the April 27, 2023 Meeting Minutes. Members voted to approve the April meeting minutes and changes to evaluation templates. Members agreed to add an additional comment to the Rent Deduction evaluation template noting that “the average deduction per claimant tends to increase as net AGI increases” and that there is pending legislation to increase the deduction.

Chairperson Forter led a discussion on the Net Exemption of Employer Contributions and Earnings of Private Pension Plans. This tax expenditure was adopted in various years and has an annual revenue impact of \$734.1- \$1,082.3M during FY20 - FY24 with no sunset date. Employee contributions to employee stock bonus plans, pensions, and profit-sharing trusts are not subject to the Massachusetts

personal income tax when made, if requirements under federal pension law are met. Distributions from such plans are generally taxable when received. Where employee contributions are not eligible for an exclusion, the distributions from those plans are excluded up to the amount of previously taxed contributions. Massachusetts conforms to these federal rules. This results in a deferral of tax on contributions to such plans, or an exclusion from tax on distributions, both of which constitute a state tax expenditure. States that impose a personal income tax generally follow federal tax law with regard to employee contributions to employee stock bonus plans, pension plans, and profit-sharing trusts unless they decouple from the Internal Revenue Code. The Commission is not aware of any states that have decoupled. A number of states allow full or partial exemptions for pension distributions. States that exempt all pension income include Georgia and Illinois. New York allows a partial exemption of up to \$20,000 and Maine allows an exemption of up to \$25,000. California, Connecticut, Rhode Island, and Vermont tax the full amount of pension income included in federal gross income. The Commission assumes that the policy goal of the tax expenditure is to encourage private employers to provide and make contributions to employee stock bonus plans, pension plans, and profit-sharing trusts and to encourage employees to participate in those plans. In addition, general conformity with the federal rules simplifies tax compliance and administration. Members voted to approve the Net Exemption of Employer Contributions and Earnings of Private Pension Plans evaluation template as presented.

Professor Hanlon led a discussion on the Exemption of Earnings on IRA and Keogh Plans. This tax expenditure was adopted in 1973 and has an annual revenue impact of \$190.7M - \$209.4M during FY20 – FY24 with no sunset date. Massachusetts exempts the earnings of IRAs and Keogh plans from the personal income tax until the earnings are distributed. Distributions of earnings from Roth IRAs may be exempt if the account is held for at least 5 years and certain additional requirements are satisfied. This is consistent with the federal tax treatment of such plans. The Commission is not aware of any state that taxes the income of IRAs or Keogh plans. The Commission assumes that the policy goal of the expenditure is to promote the growth of assets in IRAs and Keogh plans by allowing investment income to accumulate tax-free until distribution. Consistency with the federal treatment of such plans also simplifies tax compliance and administration by allowing the same general definitions to be used for Massachusetts and federal purposes. Members voted to approve the Exemption of Earnings on IRA and Keogh Plans evaluation template with a change to “Somewhat Agree” on the question of whether the expenditure benefits lower income taxpayers.

Hailey Jenkins led a discussion on the Tax-Exempt Organizations expenditure. The tax expenditure was adopted in various years (1954 for exemption; 2006 for tax on unrelated business income) and has an annual revenue impact of \$280.8 - \$404.1 during FY20 – FY24 with no sunset date. Internal Revenue Code (IRC) § 501 provides a general exemption from federal income tax for non-profit corporations. As provided in IRC § 512, the exemption does not apply to unrelated business income that such corporations earn from activities outside the scope of their exempt purposes. Massachusetts provides a corporate excise exemption for corporations that qualify for the federal exemption, but subjects unrelated business income to the net income measure of the excise. Most states conform to the general federal exemption for nonprofit corporations under IRC § 501 but subject such corporations to tax on their unrelated business income. States that do so include California, Connecticut, Maine, New Hampshire, New York, Rhode Island and Vermont. The Commission assumes that the goal of the expenditure is to encourage the formation and operation of non-profit corporations by relieving them of the burden of the corporate excise, thereby increasing the resources such organizations have available to devote to their missions. Members discussed direct costs in comparison to indirect costs. Members voted to approve the Tax-Exempt Organizations evaluation template with a change to the comment section; members agreed to

remove the following comment, “the report states that the direct benefits are equal to direct cost. This assumes that the whole of tax savings are being passed on to other businesses and persons.”

Kerri-Ann Hanley led a discussion on the Exemption for Clothing. This tax expenditure was adopted in 1967 and has an annual revenue impact of \$164.1M to \$196.1M during FY20 – FY24 with no sunset date. Sales of clothing or footwear up to \$175 per item are exempt from sales and use tax. The exemption does not include special clothing or footwear designed for athletic or protective uses and not normally worn except for these uses. Most states impose sales and use tax on sales of clothing. However, a number of states have exemptions for clothing. Connecticut, New York, Rhode Island, and Vermont have limited exemptions similar to the one in Massachusetts. California and Maine tax sales of clothing. The Commission assumes that the goal of the tax expenditure is to reduce the burden of tax on clothing, as clothing is viewed as a necessity. Members voted to approved the Exemption for Clothing evaluation template with the following changes: (i) a change from “Somewhat Agree” to “Strongly Agree” on the question whether the tax expenditure is easily administered (ii) a change to “Somewhat Disagree” on the question whether the tax expenditure is beneficial to smaller businesses and (iii) an additional comment noting that the exemption does not include special clothing or footwear designed for athletic or protective uses and not normally worn except for these uses. The change to the question of whether the expenditure is beneficial to small businesses was made because small businesses that sell these items would receive a lower “after tax” price relative to those small businesses selling clothing covered by the exemption.

Sue Perez led a discussion on the Exemption for Water. This tax expenditure was adopted in 1967 and has an annual revenue impact of \$123.7M - \$148.9M during FY20 – FY24 with no sunset date. Sales of water are exempt from sales and use tax whether the water is provided through utility services, in containers or otherwise, and regardless of how the water is used, except those charges for water provided as part of meals served by restaurants are taxable. Most states that impose a sales and use tax allow an exemption for the provision of water under certain circumstances. California exempts water provided through utility services and drinking water provided in containers, but taxes water used for industrial purposes. Connecticut generally exempts all sales of water. Maine allows an exemption for water provided to residences (not including hotels) through utility services and water used for industrial purposes. New York exempts water provided through utility services and water used for industrial purposes. Rhode Island exempts water provided to residences for domestic use and water used for industrial purposes. Vermont exempts water provided through utility services and water used for industrial purposes. The Commission assumes that the goal of the expenditure is to shield the provision of water from sales and use tax, as water is a necessity for households and businesses. As it is used in industrial plants, the tax expenditure also helps to prevent pyramiding of sales and use tax on manufactured products. Members voted to approve the Exemption for Water evaluation template with the following changes: (i) a change from “Strongly Agree” to “Somewhat Agree” on the question whether the tax expenditure is claimed by its intended beneficiaries, (ii) a change from “Somewhat Agree” to “Strongly Agree” on the question whether the tax expenditure benefits a broad group of taxpayers, (iii) a change from “Somewhat Agree” to “Strongly Agree” on the question whether the tax expenditure is easily administered, (iv) a change from “Somewhat Disagree” to “Somewhat Agree” on the question whether the tax expenditure benefits smaller businesses, (v) a change from “Somewhat Disagree” to “Somewhat Agree” on the question whether the tax expenditure benefits lower income taxpayers, and (vi) an additional comment noting that, in general, sales tax is more burdensome on lower income taxpayers than wealthier taxpayers since lower income taxpayers spend a larger percentage of wages on necessities.

Chairperson Forter briefly led a discussion on the language of the “Business only” and “Individuals only” sections of the tax expenditure evaluation template. Members agreed to update the language of these sections from “the TE is beneficial...” to “the TE is primarily beneficial...”.

Professor Hanlon led a discussion on the Exemption for Steam. This tax expenditure was adopted in 1971 & 1990 and has an annual revenue impact of \$0.6M to \$0.7M during FY20 – FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for sales of (i) steam used for residential purposes, (ii) steam purchased for use by certain small businesses and (iii) steam purchased for use in an industrial plant subject. Most states that impose a sales and use tax exempt sales of steam used in residences or industrial plants at least in part. Connecticut, Maine, New York and Rhode Island provide exemptions for residential and industrial users. California and Vermont exempt only residential use. The Commission is not aware of any other state that provides an exemption for purchases of steam by small businesses. The Commission assumes that the goal of the expenditure is to shield households, small businesses, and manufacturers from sales and use tax on steam, which is often used for residential, heating, or manufacturing purposes. The Commission further assumes that steam used in manufacturing is exempt in order to avoid pyramiding of the sales and use tax. Members questioned how and why steam is purchased and whether steam is considered efficient or “green”. Members discussed the narrow market for steam in Massachusetts and questioned whether the purchase of steam should be incentivized. Members agreed to table the Exemption for Steam evaluation template until the next Commission meeting; DOR agreed to conduct further research for available data.

Chairperson Forter noted that the Exemption for Certain Motor Vehicles will be reviewed during the next Commission meeting. The Commission did not have a completed evaluation template for this tax expenditure at the time of this meeting.

Members discussed the next batch of tax expenditures to be reviewed at the next Commission meeting. Members agreed to schedule the next meeting for mid-September. Chairperson Forter concluded the meeting at 11:05 AM.