

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

Commission Members in Attendance:

Chairperson Rebecca Forter, MA Department of Revenue
Senator Susan L. Moran, Joint Revenue Committee, Senate Co-Chair
Sue Perez, Designee, MA Treasurer
Chris Anderson, Designee, Senate Minority Leader
Professor Matthew Weinzierl, Governor's Appointee
Professor Michelle Hanlon, Governor's Appointee
Marisa Janeczek, Designee, MA Auditor
Hailey Jenkins, 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
Representative Michael Soter, Designee, House Minority Leader

List of Documents:

1. Meeting Agenda
2. Draft Minutes – January 9, 2023 Meeting
3. Draft Reports of Tax Expenditures
4. 2023 Report of the Tax Expenditure Review Commission

Chairperson Forter welcomed the Commission members and mentioned changes in Commission membership. Chairperson Forter introduced Senator Moran, Joint Revenue Committee Senate Co-Chair, and Hailey Jenkins, designee for the Senate Ways and Means Committee. Chairperson Forter noted State Auditor Diana DiZoglio will be joining the Commission with Kerri-Ann Hanley as her designee; Marisa Janeczek stated she will be serving as the Auditor's designee for today's meeting. Members thanked Jacob Blanton and Former Auditor Suzanne Bump for their thoughtful contributions and analyses.

Members were asked to announce themselves and a quorum was recognized by Chairperson Forter. The meeting via teleconference was called to order at 10:13AM. 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 requested that Commission members provide any changes to the January 9, 2023 draft meeting minutes. Hearing none, members voted unanimously to approve the January 9, 2023 meeting minutes.

Chairperson Forter continued a discussion on the 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. During the January Commission meeting, members discussed data limitations and DOR agreed to revise the summary report for this tax expenditure to address these concerns. Members reviewed the revised summary report and voted to approve the Charitable Contributions and Gifts Deduction evaluation template as presented.

Chairperson Forter continued a discussion on the 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. During the January Commission meeting, members discussed potential data limitations. No changes were made to the summary report nor the evaluation template since no new data sources were identified. Members voted to approve the Exemption for Funeral Items evaluation template as presented.

Chairperson Forter led a discussion on the 2023 Report of the Tax Expenditure Review Commission. This report addresses 22 tax expenditures reviewed by the Commission during the September 2022, November 2022, and January 2023 meetings. Chairperson Forter thanked Cole Doherty-Crestin for

drafting and distributing the report to members for review. Chairperson Forter thanked Sue Perez and Professor Hanlon for their feedback and recommended edits. Members voted to approve the 2023 Report of the Tax Expenditure Review Commission as presented. The report will be posted to the Commission's website and submitted to Legislature.

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- to late-April. Chairperson Forter concluded the meeting at 10:30 AM.