Tax Expenditure Review Commission Public Meeting Minutes
May 6, 2022
Via Teleconference
10:00AM

Commission Members in Attendance:

Chairman Kevin Brown, MA Department of Revenue
Professor Matthew Weinzierl, Governor's Appointee
Sue Perez, Designee, MA Treasurer
Suzanne Bump, State Auditor
Kerri-Ann Hanley, Designee, MA Auditor
Steve Maher, Designee, Joint Revenue Committee, Senate Co-Chair
Greg Sullivan, Designee, Senate Minority Leader
Jacob Blanton, Designee, Senate Ways and Means Committee
William Burke, Designee, House Minority Leader

Commission Members Absent:

Chairman Aaron Michlewitz, House Ways and Means Committee
Chairman Mark Cusack, Joint Revenue Committee, House Co-Chair
Professor Michelle Hanlon, Governor's Appointee

List of Documents:

1. Meeting Agenda
2. Draft Minutes – February 25, 2022 Meeting
3. Draft Reports of Tax Expenditures:

1.102	Treatment of Incentive Stock Options
1.103	Exemption of Earnings on Stock Bonus Plans or Profit-Sharing Trusts
1.202	Deduction of Capital Losses Against Interest and Dividend Income
3.304	Exemption for Materials, Tools, Fuels, and Machinery Used in Furnishing Power, Water, and Steam
3.418	Exemption for Fuels, Supplies, and Repairs for Vessels Engaged in Interstate or Foreign Commerce
3.601	Exemption for Casual or Isolated Sales
3.604	Exemption for Certain Bed and Breakfast Establishments from Sales Tax on Meals and Room Occupancy Excise
3.310	Exemption for Materials, Tools, Fuels, and Machinery Used in Radio and TV Broadcasting

Members were asked to announce themselves and a quorum was recognized by Chairman Brown. The meeting via teleconference was called to order at 10:05AM.

Chairman Brown 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.

Chairman Brown requested that Commission members provide any changes to the February 25, 2022 draft meeting minutes. Hearing none, members voted unanimously to approve the February 25, 2022 meeting minutes.

Jacob Blanton led a discussion on the Treatment of Incentive Stock Options. This tax expenditure was adopted in 1954 and has a current annual revenue impact of $4.3 million per year during FY19-FY23 with no sunset date. Massachusetts adopts the federal tax treatment of incentive stock options as provided in the Internal Revenue Code (the “Code”) as amended on January 1, 2005. Under the federal rules, and therefore for Massachusetts purposes as well, no tax consequences result when employees are granted or exercise options to purchase company stock. Employees are taxed only when they sell the stock acquired through the exercise. This results in a deferral of tax for both federal and Massachusetts tax purposes which constitutes a tax expenditure. States that adopt the definition of income under the Code follow the federal rules for incentive stock options unless they specifically decouple. Only Pennsylvania has decoupled. DOR assumes that the goal of the tax expenditure is to promote hiring and retention of employees. Members discussed the potential administrative burdens Massachusetts would face if decoupled from the Code. Members voted to approve the Treatment of Incentive Stock Options evaluation template as presented with the addition of adding “competitiveness” under business goals.

Professor Weinzierl led a discussion on the Exemption of Earnings on Stock Bonus Plans or Profit-Sharing Trusts. This tax expenditure was adopted in 1973 and has a current annual revenue impact of $786 - $1,333.1 million per year during FY19-FY23 with no sunset date. Employee stock bonus plans, employee pension plans and employee profit-sharing plans are retirement vehicles exempt from the Massachusetts personal income tax under M.G.L. c. 62, § 5(b). The expenditure allows amounts contributed to these plans to grow free of Massachusetts tax until they are distributed to retirees. The distributions are then treated as taxable income to the employees. The exemption of stock bonus plans, pension plans and profit-sharing plans from the personal income tax results in a deferral of state tax on income earned by the plans. The deferral is temporary to the extent that employees remain in Massachusetts after retirement as those employees will be subject to Massachusetts personal income tax on their retirement income. However, the deferral is permanent for employees who retire outside the Commonwealth as states are generally prohibited from taxing nonresidents on their income from retirement plans. No state taxes the income of employee stock bonus plans, employee pension plans or employee profit-sharing plans. DOR assumes that the policy goal is to promote the growth of assets in retirement funds by allowing investment income to accumulate tax-free until distribution. The Internal Revenue Code (the “Code”) contains a similar exemption in Section 401(a). Massachusetts conforms with federal definitions. This simplifies tax compliance and administration by allowing the same general definitions to be used for state and federal purposes. However, apart from the use of the federal definitions, M.G.L. c. 62, § 5(b) stands as an independent provision of state law. Members discussed retirees moving out of state and how this may impact revenue loss estimates. Members voted to approve the Exemption of Earnings on Stock Bonus Plans or Profit-Sharing Trusts evaluation template as presented with the addition of a comment addressing permanent deferrals and associated cost estimates.

William Burke led a discussion on the Deduction of Capital Losses Against Interest and Dividend Income. This tax expenditure was adopted in 1973 and has a current annual revenue impact of $14.1 million per year during FY19-FY23 with no sunset date. Generally, for both Massachusetts and federal income tax purposes, capital losses can be deducted only against capital gains. Losses in excess of gains may be carried forward and deducted from gains in subsequent taxable years. However, this tax expenditure allows a Massachusetts personal income tax deduction of up to $2,000 of capital losses against interest and dividend income. See M.G.L. c. 62, § 2(c)(2). There is a similar Internal Revenue Code (Code) provision that allows a deduction of up to $3,000 of net capital loss against ordinary income (which for federal purposes includes interest and dividend income). See Code § 1211. However, Massachusetts does not follow that Code provision and, instead, adopts its own deduction. States that base their income tax on federal adjusted gross income generally conform to the federal deduction allowing up to $3,000 of capital loss to offset ordinary income. Such states include California, Connecticut, Maine, New York, Rhode Island, and Vermont. DOR assumes that the tax expenditure is intended to encourage investment by allowing investors to offset a limited amount of interest and dividends with capital losses, thereby increasing the amount of capital loss that can be deducted in the year of the loss. DOR estimates that approximately 282,000 households benefit $48 in accelerated tax savings per year during FY19-FY23. Members voted to approve the Exemption of Deduction of Capital Losses Against Interest and Dividend Income evaluation template with the addition of "competitiveness" under business goals, a change from Strongly Disagree to Somewhat Disagree for Claimed by Broad Group of Taxpayers, and an additional comment addressing the history of this tax expenditure.

Chairman Brown led a discussion on the Exemption for Materials, Tools, Fuels, and Machinery Used in Furnishing Power, Water, and Steam. This tax expenditure was adopted in 1968 and has a current annual revenue impact of $47.2 - $60.1 million per year during FY19-FY23 with no sunset date. The tax expenditure provides for an exemption from the sales and use tax for sales of materials, tools, fuels, and machinery, including replacement parts, used in furnishing gas, water, steam, or electricity to consumers through mains, lines, or pipes, as long as such items are consumed or directly used in furnishing the water or power. Most purchasers of these items are utility businesses and contractors acting as agents of utilities. The exemption of these items reduces utilities' costs of providing water and power and prevents the tax from being incorporated in charges to customers. The exemption does not require that the purchaser be a particular person or entity, but rather the items purchased are required to be consumed and used in a particular manner. Most states adopt a full or partial exemption for materials and equipment used to furnish water, gas, steam, or electricity to consumers. DOR assumes that the tax expenditure is intended to support the provision of gas, water, steam, and electricity to consumers, and to avoid the cost of taxes on inputs being passed on to the ultimate consumers. Members discussed the difficulty in determining the cost and benefit of this tax expenditure as some utilities are owned by the state and municipalities. Members voted to approve the Exemption for Materials, Tools, Fuels, and Machinery Used in Furnishing Power, Water, and Steam evaluation template with a change from Somewhat Disagree to Somewhat Agree for Meaningful Incentive and an additional comment addressing indirect beneficiaries. Chairman Brown agreed to provide this comment.

Professor Weinzierl led a discussion on the Exemption for Fuels, Supplies, and Repairs for Vessels Engaged in Interstate or Foreign Commerce. This tax expenditure was adopted in 1967 and has a current annual revenue impact of $1.43 - $1.72 million per year during FY19-FY23 with no sunset date. The tax expenditure provides for an exemption from the sales and use tax for sales in Massachusetts of fuels, supplies, and repairs for vessels engaged in interstate or foreign commerce. Absent the exemption afforded by this tax expenditure, sales in Massachusetts of fuels, supplies, and repairs for vessels engaged in interstate or foreign commerce would be taxable when purchased. There are many variations of exemptions for commercial sea vessels in other states, often including exemptions for fuels and purchases related to the maintenance of these vessels. DOR assumes that the tax expenditure is intended to further interstate and foreign commerce. Many of the states that have sales and use tax exemptions for maritime activities are states with seaports. These exemptions encourage the continuation of maritime businesses, including shipbuilding and interstate commercial activities. Further, they may help make Massachusetts port facilities more attractive to water transport companies, increasing overall business activity in the state. Members discussed the scope of this tax expenditure;

this exemption would apply to purchases made in MA, not only MA businesses. Members voted to approve the Exemption for Fuels, Supplies, and Repairs for Vessels Engaged in Interstate or Foreign Commerce evaluation template as presented with an edit to the comment section addressing fuels. Chairman Brown agreed to provide this edit.

Sue Perez led a discussion on the Exemption for Casual or Isolated Sales. This tax expenditure was adopted in 1968 and has a current annual revenue impact of $34.6 - $39.2 million per year during FY19-FY23 with no sunset date. Certain sales made outside a seller's regular course of business are exempt from the Massachusetts sales and use tax. Such sales are referred to as "casual and isolated" sales and include: (i) non-recurring sales by schools, churches, and other non-profits for fundraising purposes (such as a church bizarre); (ii) non-recurring sales by individuals (such as a garage sale); (iii) non-recurring sales by businesses of used business equipment and fixtures (such as a store selling its used cash registers); and (iv) bulk sales of assets when an entire business is sold to new owners. Sales of motor vehicles, trailers, boats, or airplanes do not qualify for this exemption, unless they are between family members. Most states that impose sales and use tax have an exemption for sales outside the seller's regular course of business. States that have an exemption similar to Massachusetts' include California, Connecticut, Rhode Island, and Vermont. These states do not allow the exemption for sales of motor vehicles, trailers, boats, or airplanes. Maine has an exemption that applies to all items, including motor vehicles, trailers, boats, and airplanes. New York does not have an exemption for sales outside the regular course of business. DOR assumes that the goal of the tax expenditure is to promote sales and use tax efficiency by reducing the compliance burden on sellers that are not in a trade or business or that make sales outside their usual course of business. Members discussed the scope of this tax expenditure in comparison to online marketplaces such as Facebook and Craigslist and recent changes to Massachusetts tax laws. Members voted to approve the Exemption for Casual or Isolated Sales evaluation template with a change from Somewhat Disagree to Somewhat Agree for Benefit Justifies Fiscal Cost and an addition of a comment addressing the scope of this tax expenditure. Chairman Brown agreed to provide this comment.

Auditor Bump led a discussion on the Exemption for Certain Bed and Breakfast Establishments from Sales Tax on Meals and Room Occupancy Excise. This tax expenditure was adopted in 1988 and has a current annual revenue impact of $0.07 million per year during FY19-FY23 with no sunset date. The tax expenditure exempts meals provided by bed and breakfast businesses from sales tax on meals unless (i) they are provided by a bed and breakfast that has four or more rooms; and (ii) the meals are included in rent subject to the room occupancy excise. Therefore, such bed and breakfasts generally do not incur the administrative and tax responsibilities unique to restaurants. No neighboring state exempts meals sold by bed and breakfast businesses from a sales tax on meals. DOR assumes that the tax expenditure aims to reduce the tax and compliance burdens on bed and breakfast businesses. According to the 2017 Economic Census, there were 154 bed and breakfast businesses in Massachusetts. Based on this data, DOR estimates the average benefit per taxpayer in FY23 is $506 per establishment. Members discussed the scope of this tax expenditure. The Public Registry of Lodging Operators indicates that there are 471 Bed and Breakfast operators in Massachusetts. However, it is unknown which of the establishments registered via this portal would actually fall within the scope of the tax expenditure #3.604. In addition, the public registry portal does not capture dollar value of taxable meals tax that would be exempted under this expenditure. Therefore, DOR relied on external sources to estimate the revenue loss impact of this expenditure, including the U.S. Census figure of 154 B&B establishments. Members voted to approve the Exemption for Certain Bed and Breakfast Establishments from Sales Tax on Meals and Room Occupancy Excise evaluation template with the addition of "administrative compliance" under the business goals, removing "progressivity" under individual goals, a change from Strongly Disagree to

Somewhat Disagree for Benefit Justifies Fiscal Cost, and a change from Strongly Disagree to Somewhat Disagree for Measuring Overall Benefit.

Chairman Brown led a discussion on the Exemption for Materials, Tools, Fuels, and Machinery Used in Radio and TV Broadcasting. This tax expenditure was adopted in 1968 and has a current annual revenue impact of $6.8 million per year during FY19-FY23 with no sunset date. The tax expenditure provides for an exemption from the sales and use tax for sales of materials, tools, fuels and machinery, including replacement parts, used in commercial radio and television broadcasting. In 2017, buyers of exempt items included 55 radio broadcasting firms and 35 television broadcasting firms in Massachusetts. Most purchasers of these items are radio and television businesses and contractors acting as agents of these businesses. The expenditure does not require that the purchaser be a particular person or entity, but rather the items purchased are required to be consumed and used in a particular manner. DOR is not aware of any other state with a similar tax expenditure. Members agreed it is difficult to determine the beneficiaries of this tax expenditure. Due to industry changes, it is difficult to determine who exactly is a broadcaster. Members voted to approve the Exemption for Materials, Tools, Fuels, and Machinery Used in Radio and TV Broadcasting evaluation template with a change from Somewhat Agree to Somewhat Disagree for Amount Claimed per Taxpayer.

Chairman Brown led a discussion on the next TERC report and the year three tax expenditure review schedule. In the coming weeks, DOR will draft a report to address evaluations reviewed during the year two evaluation cycle. This report includes 36 tax expenditures that were reviewed between October 7, 2021 and May 6, 2022. The report and DOR's tentative year three proposal will be distributed to members for review. Members agreed to have a follow-up meeting to vote on the final report and to finalize the year three review schedule. Chairman Brown concluded the meeting at 12:13PM.