Tax Expenditure Review Commission Public Meeting Minutes
November 18, 2021
Via Teleconference
10:00AM

Commission Members in Attendance:

Chairman Kevin Brown, MA Department of Revenue
Professor Matthew Weinzierl, Governor's Appointee
Professor Michelle Hanlon, Governor's Appointee
Jacob Blanton, Designee, Senate Ways and Means Committee
Sue Perez, Designee, MA Treasurer
William Burke, Designee, House Minority Leader
Greg Sullivan, Designee, Senate Minority Leader
Kerri-Ann Hanley, Designee, MA Auditor

Commission Members Absent:

Chairman Aaron Michlewitz, House Ways and Means Committee
Chairman Adam Hinds, Joint Revenue Committee, Senate Co-Chair
Chairman Mark Cusack, Joint Revenue Committee, House Co-Chair

List of Documents:

1. Meeting Agenda
2. Draft Minutes – October 7, 2021 Meeting
3. Draft Reports of Tax Expenditures:

1.042 & 1.501	Favorable Tax Treatment of Qualified Small Business Stock (QSBS) Gain
2.205	Deduction for Certain Dividends of Cooperatives
2.703	Exemption for Regulated Investment Companies
3.109	Exemption for Cement Mixers
3.410	Exemption for Containers
3.421	Exemption for Films

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 October 7, 2021 draft meeting minutes. Hearing none, members voted unanimously to approve the October 7, 2021 meeting minutes.

Chairman Brown led a discussion on sales tax exemptions in an effort to provide clarity to sales tax structure. DOR added additional detail to tax expenditure summaries reviewed during the October meeting, which reflect the discussion on how sales tax works. Members agreed that the sales tax explanation provided a helpful overview. Members agreed to adopt these revisions.

Jacob Blanton and Sue Perez led a discussion on Favorable Tax Treatment of Qualified Small Business Stock (QSBS) Gain. This tax expenditure was adopted in 2005 and has a current annual revenue impact of approximately $32M-$49.8M with no sunset date. Gains derived from the sale of certain “qualified small business stock” (“QSBS”) are eligible for a 50% income exclusion because of Massachusetts’ conformity with section 1202 of the Internal Revenue Code (the “Code”) as in effect in 2005. If it meets certain requirements, QSBS gains that are included in income is taxed at a rate of 3% instead of the generally applicable long-term gain rate of 5%. Many states allow an exclusion for the entire amount of gain on the sale of qualified small business stock including New York, Connecticut, Maine, Rhode Island, and Vermont. The goal of this tax expenditure is to encourage investment in new small businesses. Note, there is a 100% exclusion for federal tax purposes on these capital gains. Members discussed that given the existing federal exemption, it is hard to determine how the tax expenditure spurs investment at the state level. Dr. Kazim Ozyurt, DOR’s Chief Economist, stated that DOR does not have data on where the investments are being made. Professor Hanlon stated that there is pending federal legislation (Build Back Better bill) that would take the federal benefit away from people who earn over $400K. Rebecca Forter, Deputy Commissioner of OTA, stated that this is an area that taxpayers find confusing because Massachusetts conforms to federal rules to an extent, but then the 3% rate that MA offers can only be claimed if taxpayers meet additional requirements. Approximately 130 taxpayers currently benefit from this tax expenditure at an average of $246,000 per taxpayer. Members discussed whether the benefits justify the costs given the small group of claimants. Members agreed to move Benefits Justify Costs from Somewhat Disagree to Strongly Disagree and to move Ease of Administration from Somewhat Disagree to Strongly Disagree.

Professor Weinzierl and Greg Sullivan led a discussion on Deduction for Certain Dividends of Cooperatives. This tax expenditure was adopted in 1962 and has a current annual revenue impact of approximately $4.0M-$4.2M with no sunset date. Cooperatives subject to tax under Subchapter T of the Internal Revenue Code (the “Code”), including farmers’ cooperatives, and most other corporations operating on a cooperative basis, may deduct amounts paid to members as patronage dividends. Massachusetts adopts the federal deduction by virtue of its conformity with the Code. DOR infers that the primary function of a cooperative is to allow member businesses to band together to take advantage of economies of scale when buying supplies or selling products. The tax expenditure allows the members to do so without incurring additional tax on transactions with the cooperative. Members discussed how the deduction promotes the formation and operation of cooperative corporations. Every state with a corporate income tax based on federal taxable income allows the deduction unless they specifically disallow it. It does not appear that any state has done so. Professor Weinzierl and Greg Sullivan stated that this tax expenditure appears to benefit cooperative members by about $150 each per year. Members voted to approve the Deduction for Certain Dividends of Cooperatives evaluation template as presented.

William Burke led a discussion on the Exemption for Regulated Investment Companies. This tax expenditure was adopted in 1992 and has a current annual revenue impact of approximately $400M-$502M with no sunset date. Regulated Investment Companies (RICs), also known as mutual funds, are investment vehicles that are eligible for favored tax treatment for federal tax purposes. Specifically, unlike most ordinary corporations, RICs may deduct dividends they pay to their shareholders for federal tax purposes. Massachusetts does not conform to the federal tax treatment of RICs, but in Massachusetts RICs are fully exempt from both the income and non-income measures of the corporate excise. DOR assumes that the expenditure is intended to promote the mutual fund industry and encourage investment, and to avoid taxing mutual fund income at both the entity and shareholder levels. Most states that impose a corporate income tax follow the federal tax treatment of RICs. These states include California, Connecticut, Maine, New Hampshire, New York, and Vermont. Greg Sullivan stated that if Massachusetts taxed mutual funds at the entity level it would hurt competitiveness. Many states have this type of tax expenditure, but Massachusetts is particularly attractive for mutual fund firms. Members agreed that without this tax expenditure, it would be easier for RICs to relocate to other states. Members voted to approve the Exemption for Regulated Investment Companies evaluation template as presented.

Kerri-Ann Hanley and Jacob Blanton led a discussion on the Exemption for Cement Mixers. This tax expenditure was adopted in 1971 and has a current annual revenue impact of approximately $1.6M with no sunset date. Concrete mixing units mounted on the back of trucks are exempt from sales tax. Spare parts for such units are also exempt. The truck chassis is subject to sales tax. DOR assumes that the policy goal of this expenditure is to spur economic development through construction projects and to ensure that tax is imposed only on finished products, rather than multiple times on companies during construction. No New England state has a similar statutory exemption. However, cement mixers and repair parts may be exempt in other states as machinery used in manufacturing. New York, for example, does not have a statutory exemption for cement mixers, but the mixers are exempt as manufacturing machinery. Members discussed the changes in technology and deployment of delivery since the tax expenditure was adopted. Professor Weinzierl inquired about the number of cement mixer suppliers taking advantage of this tax expenditure. Members voted to approve the Exemption for Cement Mixers evaluation template as presented with an addition of a note on the number of cement mixer suppliers in Massachusetts.

Chairman Brown led a discussion on the Exemption for Containers. This tax expenditure was adopted in 1967 and has a current annual revenue impact of approximately $130.8-$148.9M with no sunset date. Sales eligible for the exemption include sales of empty containers to be filled and resold, containers the contents of which are exempt from the sales tax, and returnable containers when sold with the contents or resold for refilling. DOR assumes the goal to be to reduce the sales tax burden on purchases of items sold in containers where the object of the transaction is to purchase the contents of such containers. In these transactions the container is used to provide a service, such as transportation and containment of the contents, and service transactions are generally exempt from sales tax. Most other neighboring states offer a similar sales and use tax exemption for containers. Members voted to approve the

Exemption for Containers evaluation template as presented with an addition of a note on level of packaging impacted.

Chairman Brown led a discussion on the Exemption for Films. This tax expenditure was adopted in 1967 and has a current annual revenue impact of approximately $0.8-$3.6M with no sunset date. Motion picture films sold for commercial exhibition are exempt from sales tax. DOR assumes that the expenditure was adopted to exempt one of the key business inputs of exhibitors in order to prevent sales tax from being either built into the charge for movie admission, which itself is explicitly exempt from the sales tax, or driving up the cost of operating a television station or movie theater. Other states with a similar tax expenditure include Connecticut, Georgia, Vermont, and Virginia. Professor Weinzierl inquired whether COVID-19 impacted the revenue estimate since theaters were closed, and small businesses closed. Dr. Kazim Ozyurt, DOR's Chief Economist, said the figure could be revisited, but on the other hand the estimate could go down given more competitiveness within the industry and viewer access to movies. Purchasing a movie ticket is a nontaxable service in MA, so this tax expenditure provides a somewhat outdated carve-out for theaters that had to purchase films. Members discussed how this tax expenditure becomes less relevant as competition from streaming increases. Members voted to approve the Exemption for Films review template with a change from Strongly Agree to Somewhat Agree for Claimed by Intended Beneficiaries and a change from Somewhat Disagree to Strongly Disagree for Relevant Today.

Members discussed the next batch of tax expenditures to be reviewed at the next Commission meeting. Members agreed to schedule a meeting prior to mid-January 2022. Chairman Brown concluded the meeting at 11:48AM.