Tax Expenditure Review Commission Public Meeting Minutes
October 12, 2023
Via Zoom
1:00PM

Commission Members in Attendance:

Chairperson Rebecca Forter, MA Department of Revenue
Sue Perez, Designee, MA Treasurer
Stephen Maher, Designee, Joint Revenue Committee, Senate Co-Chair
Hailey Jenkins, Designee, Senate Ways and Means Committee
Representative Michael Soter, Designee, House Minority Leader
Stephen Lisauskas, Designee, MA Auditor

Commission Members Absent:

Professor Michelle Hanlon, Governor's Appointee
Professor Matthew Weinzierl, Governor's Appointee
Tim Sheridan, Designee, House Ways and Means Committee
Ryan Sterling, Designee, Joint Revenue Committee, House Co-Chair
Senator Bruce Tarr, Senate Minority Leader

List of Documents:

1. Meeting Agenda
2. Draft Minutes – June 29, 2023 Meeting
3. Revisit June Draft Reports of Tax Expenditures
4. October Draft Reports of Tax Expenditures

Chairperson Forter welcomed Commission members. Chairperson Forter noted changes in membership; (i) Kerri-Ann Hanley and Chris Anderson have resigned from the Commission, (ii) Stephen Lisauskas has been appointed as the new designee for the State Auditor's Office, and (iii) the Senate Minority Leader's new designee is expected to be appointed soon. Members were asked to announce themselves and a quorum was recognized by Chairperson Forter. The meeting via teleconference was called to order at 1:03PM. 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 June 29, 2023 draft meeting minutes and requested that Commission members provide any changes. Members did not provide any comment. Members voted to approve the June meeting minutes as drafted.

Chairperson Forter noted that the Exemption for Steam was briefly discussed during the June meeting but the Commission had not voted to approve the evaluation template. During the June meeting, members questioned how and why steam is purchased and whether steam is considered efficient or "green". Members had also discussed the narrow market for steam in Massachusetts and questioned whether the purchase of steam should be incentivized. Those members that were previously assigned to evaluate this tax expenditure were absent from this Commission meeting. Members agreed to revisit the Exemption for Steam evaluation template during the next Commission meeting.

Chairperson Forter noted that the Exemption for Certain Motor Vehicles was not reviewed during the June Commission meeting as the Commission did not have a completed evaluation template at the time.

Hailey Jenkins proceeded to lead a discussion on this tax expenditure, which was adopted in various years including (i) in 1967 for persons that have lost the use of two or more limbs and (ii) in 2006 for permanently disabled veterans. This tax expenditure has an annual revenue impact of $1.6 - $2.1 million during FY20 - FY24 with no sunset date. The tax expenditure provides an exemption from the sales and use tax for the sale of a motor vehicle that is purchased by and for the use of: (i) a person that has permanently lost the use of two or more limbs or (ii) a permanently disabled veteran. The exemption applies to the sales price of the vehicle and any charge for adaptive modifications included in the sales price. See Letter Ruling 81-105. To qualify for the exemption, a motor vehicle must be owned and registered by the eligible person and be used for personal, noncommercial purposes. The exemption is limited to one motor vehicle per person. The exemption also applies to the purchase of a motor vehicle by a parent or legal guardian of an eligible person who is a minor child, or the legal guardian or legal conservator of an adult who is unable to enter into a legal contract, for use in transporting the child or adult, if the parent, legal guardian, or conservator is the registered owner. See Letter Ruling 03-11. Absent the exemption afforded by this tax expenditure, persons that have lost the use of multiple limbs and permanently disabled veterans would be required to pay sales tax and use tax on purchases of a motor vehicles, which may create a financial barrier to purchasing a motor vehicle and therefore limit the mobility options for such persons.

States vary in their sales and use tax treatment of motor vehicles purchased for use by persons with disabilities. Some states, including New York, tax such purchases without any exemptions for purchasers who have a disability. Other states, including California, Connecticut, Maine, and Rhode Island, tax such purchases of motor vehicles but allow an exemption for amounts charged for adaptive modifications to the vehicles. Maine also allows a full exemption for motor vehicles purchased by veterans who are amputees. A few states, including Vermont, allow an exemption for motor vehicles, including adaptive modifications, purchased by persons with qualifying disabilities.

The Commission assumes that the goal of the tax expenditure is to reduce the cost of motor vehicles for certain persons with disabilities, allowing such persons improved access to motor vehicles and thus greater mobility. Members agreed this tax expenditure should not be flagged for legislative review. Members voted to approve the evaluation template for the Exemption of Certain Motor Vehicles as presented.

Hailey Jenkins briefly discussed the Dairy Farmer Tax Credit. This tax expenditure was adopted in 2008 and has an annual revenue impact of $4.8 - $5.0 million for personal income tax, and $1.0 - $1.1 million for corporate and business tax during FY21 – FY25 with no sunset date. Massachusetts provides dairy farmers registered with the Massachusetts Department of Agricultural Resources (MDAR) a refundable personal income tax or corporate excise credit to offset cyclical downturns in milk prices. The credit is determined under regulations issued by the MDAR. See 330 CMR 29.00. The credit is triggered for any taxable year in which aggregate milk production costs (as determined by MDAR) exceed aggregate milk prices (also as determined by MDAR) in at least one month. The credit is based on the difference between production costs incurred by farmers (referred to as the farm price of the milk) and the price of milk established by the MDAR. The credit is determined on a statewide basis and is allocated to taxpayers based on the amount of the milk they produced and sold. The MDAR determines the credit and notifies the Department of Revenue of the amount of credit awarded to each taxpayer. The total personal income tax and corporate excise credits that can be awarded across the state cannot exceed $6 million in any year. The credit is fully refundable but cannot be sold or transferred. In the absence of the credit dairy farmers would be exposed to fluctuations in milk prices that might provide a disincentive for dairy farmers to start new dairy farms or to continue existing dairy businesses.

States offer a variety of tax incentives for taxpayers engaged in agriculture, including dairy farming. However, it appears that Louisiana is the only other state that offers dairy farmers a credit to offset downturns in milk prices. The Commission did not vote on the evaluation for this tax expenditure. Hailey Jenkins and Professor Weinzierl were assigned this tax expenditure; Professor Weinzierl was unable to attend this Commission meeting. Hailey Jenkins mentioned Professor Weinzierl did not agree with her draft evaluation template and that he would be providing his own ratings. Members agreed to revisit the Dairy Farmer Tax Credit evaluation template during the next Commission.

Sue Perez provided an overview of the Farming and Fisheries Tax Credit. This tax expenditure was adopted in 2015 and has an annual revenue impact of $0.1 - 0.3 million during FY21 - FY25 with no sunset date. Personal income taxpayers who are primarily engaged in agriculture, farming, or commercial fishing are allowed an investment tax credit equal to 3% of the cost of qualifying tangible property used in such activities in Massachusetts. Qualifying property is defined as tangible personal property and other tangible property, including buildings and structural components thereof, that is (i) purchased by the taxpayer, (ii) located and used by the taxpayer in Massachusetts, (iii) not subject to the registered motor vehicle excise, (iv) used solely in agriculture, farming, or fishing, and (v) depreciable with a useful life of at least 4 years. The credit is not allowed if the taxpayer leases the property as a lessor. The credit is also allowed for taxpayers that lease qualifying property that is situated in Massachusetts throughout the entire lease term. The credit for leased property is equal to 3% of a lessor's adjusted basis in the property at the beginning of the lease term, multiplied by a fraction, the numerator of which is the number of days of the tax year during which the lessee leases the property and the denominator of which is the number of days in the useful life of the property. The credit is not allowed if the lessor has previously received a credit with respect to the leased tangible personal property. Credit recapture is required if property on which a credit is taken is disposed of or ceases to be used solely in agriculture, farming, or fishing prior to the end of its useful life. Credits in excess of the taxpayer's personal income tax liability may be carried forward for three years. Note that corporations engaged in agriculture or commercial fishing may also claim a 3% investment tax credit against the corporate excise. The corporate excise credit is addressed in a separate evaluation for the Investment Tax Credit. In the absence of the tax expenditure personal income taxpayers engaged in agriculture, farming, or fishing would bear the full cost of all property used in their businesses.

States offer a variety of tax incentives for taxpayers engaged in agriculture, farming, and fishing. However, it appears that only New York offers an investment tax credit similar to the Massachusetts credit. In addition, several states offer credits for purchases of land and equipment by farmers that begin new farming businesses. These states include Iowa, Kentucky, Minnesota, Nebraska, and Pennsylvania. The Commission assumes that the tax expenditure is intended to support investment in local food production by reducing costs related to equipment and facilities through the provision of a personal income tax credit. Members agreed that this tax expenditure should not be flagged for legislative review. Members noted that on average, there are only 80 taxpayers taking advantage of this tax credit while there are over 7,000 farms in Massachusetts. Members speculated that a number of factors may contribute to the small percentage of eligible taxpayers to claim the credit. Members also noted that perhaps not all taxpayers are purchasing qualifying property each year. The Commission concluded that the exact reason for the small percentage of claimants may be difficult to determine as it requires analyzing individual tax returns. Members voted to approve the evaluation template for the Farming and Fisheries Tax Credit with an additional comment noting various factors that may contribute to the small percentage of claimants.

Sue Perez provided an overview on the Exemption of Interest from Massachusetts Obligations. This tax expenditure was adopted in 1973 and has an annual revenue impact of $70.8 - $86.4 million during FY21 - FY25 with no sunset date. Under Internal Revenue Code ("Code") § 103, gross income generally excludes the interest earned on state and local bonds. Massachusetts does not conform to the federal exclusion, but provides a personal income tax exemption for interest income from obligations issued by the Commonwealth of Massachusetts, political subdivisions of the Commonwealth, or any agency or instrumentality thereof. See M.G.L. c. 62, § 2 (a)(1)(A). Interest from such obligations issued by other states, their political subdivisions, agencies, and instrumentalities is added back to federal gross income when determining Massachusetts gross income and is thus taxable in Massachusetts. The exemption for interest from Massachusetts state and local obligations results in a state tax expenditure. Note that gain from the sale of Massachusetts state and local obligations may be exempt if such an exemption is specifically allowed by the statute authorizing the issuance of the obligations. Such obligations are not typical and exempt gain is not considered in this analysis. In the absence of the personal income tax exemption, interest earned on Massachusetts state and local bonds would generally be taxable in Massachusetts. However, even in the absence of this tax exemption, income from such interest earned or derived by a non-resident is generally not subject to Massachusetts income tax. See 830 CMR 62.5A.1(4).

Most states that impose a personal income tax provide a general exemption for interest on their own state and local obligations. These states include California, Connecticut, Maine, New Hampshire (interest and dividends tax), New York, Rhode Island, and Vermont. A few states, including Illinois and Wisconsin, allow an exemption only for obligations specifically designated as tax exempt by statute. These states tax interest on at least some of their obligations.

Members discussed the scope of the state tax expenditure relative to the federal tax expenditure. Members questioned whether private purpose debt is covered by the state tax expenditure and agreed it would be beneficial to confirm whether the state tax expenditure includes private purpose debt, as it is covered by the federal tax expenditure. Members agreed not to flag this tax expenditure for legislative review. Members voted to approve the evaluation template for the Exemption of Interest from Massachusetts Obligations with change to "Strongly Agree" on the question whether the tax expenditure is relevant today and a change to "Somewhat Disagree" on the question whether the tax expenditure is primarily beneficial to lower-income taxpayers and an additional comment noting that the tax expenditure is intended to help finance state and local government projects by making state and local obligations more attractive to investors.

Chairperson Forter provided an overview on the Discharge of Indebtedness for Health Care Professionals. This tax expenditure was adopted in 2005 and has an annual revenue impact of $0.8 - $1.2 million during FY21 - FY25 with no sunset date. In general, amounts attributable to the discharge of indebtedness, such as from loan forgiveness, are deemed to be taxable income. Among the exceptions to this rule is the federal exclusion of the discharge of indebtedness for amounts attributable to certain costs for students entering health care professions. Massachusetts adopts this federal exclusion. The exclusion applies to student loan cancellation, amounts received as loan repayments, and amounts attributable to loan forgiveness under certain programs established to increase the availability of health care services in underserved areas. These programs include the National Health Service Corps (NHSC) Loan Repayment Program under section 338B(g) of the Public Health Service Act; state run programs that are eligible under section 338I of the Public Health Service Act; and any other state loan repayment program or loan forgiveness program that is intended to provide for increased availability of health care services in underserved or health professional shortage areas. Code § 108(f)(4). Although eligible state loan repayment or forgiveness programs may require a participant to work in Massachusetts, there is no such requirement in the tax rules. Absent the exclusion described above, amounts that students in the health care field receive in the form of loan repayment or forgiveness would be counted as taxable income to the student. Relief from such taxation removes a potential financial barrier to participating in programs that incentivize students to pursue health care careers in underserved areas.

Generally, states adopt the federal exclusion for discharges of indebtedness related to costs for students entering health care professions due to the states' reliance on the Code for purposes of defining income. States that do so include California, Connecticut, Maine, New York, Rhode Island, and Vermont. The Commission is not aware of any state that does not adopt the federal exclusion. The Commission assumes that the goal of this expenditure is to encourage people to enter health care professions to address staff shortages and provide for increased availability of health care services in underserved areas. Members agreed not to flag this tax expenditure for legislative review. Members voted to approve the evaluation template for the Discharge of Indebtedness for Health Care Professionals as presented.

Chairperson Forter provided an overview of the Exemption of Premiums on Group-Term Life Insurance. This tax expenditure was adopted in 1964 and has an annual revenue impact of $21.3 - 31.5 million during FY21 - FY25 with no sunset date. Massachusetts conforms to Code § 79 for purposes of determining gross income under the personal income tax. Under that section, employer payments of employees' group-term life insurance premiums for coverage up to $50,000 per employee are excluded from the employees' income. Amounts paid for coverage in excess of $50,000 are included in the employees' income unless (i) the insurance is provided through a retirement plan, (ii) the employer is a beneficiary of the insurance policy or (iii) a government or non-profit agency is the sole beneficiary of the insurance policy. Note that premiums paid by the employer are deductible as employee compensation whether or not they are excluded from employee income. The tax expenditure summary report does not take the employer deduction into account. Without this exclusion, employer payments of employees' term life insurance premiums would be considered taxable income to employees. Personal income tax foregone as a result of the exclusion constitutes a tax expenditure.

All states that impose an income tax adopt the tax expenditure unless they decouple from Code § 79. The Commission is not aware of any state that that has decoupled. States that adopt the tax expenditure include California, Connecticut, Maine, New York, Rhode Island, and Vermont. The Commission assumes that the purpose of the expenditure is to cause more people to be covered by group-term life insurance by allowing employers to provide employees with coverage on a tax-free basis. Members agreed not to flag this tax expenditure for legislative review. Members voted to approve the evaluation template for the Exemption of Premiums on Group-Term Life Insurance as presented.

Stephen Maher provided an overview of the Exemption of Interest on Life Insurance Policy and Annuity Cash Value. This tax expenditure was adopted in 1954, but an exemption for life insurance proceeds paid on the death of the insured was allowed under predecessor statutes since 1913, and has an annual revenue impact of $326.8 - $419.4 million during FY21 - FY25 with no sunset date. This tax expenditure is in effect because of Massachusetts' conformity with Code § 101. Under that provision, increases in the cash value of life insurance policies and annuities are not included in the policy holder's income. Such increases in value are taxable when the policy is surrendered or when such amounts are paid as policy dividends, but only to the extent that they exceed total premiums paid and any cash consideration paid for the policy. If a life insurance policy or annuity is in force when the policy holder dies, the increases in cash value and the amount of any death benefit are excluded from the income of the beneficiaries of the insurance policy or annuity. Thus, taxation of income received by insurance policies or annuities is deferred until distributed to the policy holder. The deferral becomes permanent if the increase is distributed to policy beneficiaries when the policy holder dies. Death benefits paid in installments that include interest earned on the benefit after the policy holder's death are taxable. In the absence of the tax expenditure, increases in policy or annuity values would result in taxable income to the policy holder each year and death benefits would be taxable when received by insurance policy or annuity beneficiaries. This would make insurance policies and annuities less attractive to taxpayers.

All states that impose an income tax adopt the tax expenditure, unless they decouple from Code § 101. The Commission is not aware of any state that has decoupled. States that adopt the tax expenditure include California, Connecticut, Maine, New Hampshire (interest and dividends tax), New York, Rhode Island, and Vermont. The Commission assumes that the purpose of this expenditure is to encourage taxpayers to purchase cash value life insurance thereby providing themselves and their families a measure of financial security after the taxpayer's death. Members discussed the fact that this expenditure benefits individuals at all income levels. Stephen Lisauskas suggested that perhaps the exemption should be means-tested. Some members suggested that a means test may not be reasonable given the scale of this tax expenditure while other members questioned whether it was the role of the Commission to suggest such a change. Members voted not to flag this tax expenditure for legislative review, with Stephen Lisauskas dissenting. Members voted to approve the evaluation template as drafted, with Stephen Lisauskas dissenting.

Members discussed the next batch of tax expenditures to be reviewed at the next Commission meeting. Members agreed to schedule the next meeting for the week of November 13th or the week of November 27th. Chairperson Forter stated that Cole Doherty-Crestin will distribute a poll to members to determine the next meeting date. Chairperson Forter concluded the meeting at 2:29PM.