

Tax Expenditure Review Commission Public Meeting Minutes
October 7, 2021
Via Teleconference
10:00AM

Commission Members in Attendance:

Chairman Kevin Brown, MA Department of Revenue
Auditor Suzanne Bump, MA Auditor
Chairman Adam Hinds, Joint Revenue Committee, Senate Co-Chair
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

Commission Members Absent:

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

List of Documents:

1. Meeting Agenda
2. Draft Minutes – March 12, 2021 Meeting
3. Draft Reports of Tax Expenditures:

2.101	Deferral of Tax on Certain Shipping Companies
3.609	Exemption for Vessels or Barges of 50 Tons or Over
3.610	Exemption for Rental Charges for Refuse Containers
3.611	Exemption for Honor Trays
3.606	Exemption for Trade-in Allowances for Motor Vehicles and Trailers
3.112	Exemption for Aircraft & Aircraft Parts

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. Once the minutes are approved, the recording will be deleted.

Chairman Brown requested that Commission members provide any changes to the March 12, 2021 draft meeting minutes. Hearing none, members voted unanimously to approve the March 12, 2021 meeting minutes.

Chairman Brown informed members that an additional staff member will be joining DOR to work on Commission matters. Cole Doherty-Crestin will be reaching out to members in the coming weeks to introduce himself and provide meeting updates and materials.

Chairman Brown stated that while it is not the role of the Commission to recommend policy changes, following its first report to the legislature, some tax expenditures were repealed in the final FY22 state budget, including the Harbor Maintenance Credit, Medical Device User Fee Credit, and the Energy Patent Deduction. Members discussed adding a column to the full tax expenditure list to track the status of each item following the Commission's review. Chairman Brown responded that this may be administratively challenging given the volume of tax expenditures and various legislative vehicles policymakers may utilize for policy reconsiderations.

Professor Weinzierl led a discussion on Deferral of Tax on Certain Shipping Companies. This tax expenditure was adopted in 1987 and has a current annual revenue impact of approximately \$800,000. There is a federal deduction for certain boat building expenses, with which all states are coupled. Approximately 600 people are employed in the Massachusetts ship-building industry. Members voted to approve the Deferral of Tax on Certain Shipping Companies review template as presented.

Auditor Bump and Greg Sullivan led a discussion on the Exemption for Vessels or Barges of 50 Tons or Over. Activity for building these types of vessels and barges in Massachusetts is nearly indiscernible but is exempt from sales tax. Dr. Kazim Ozyurt, DOR's Chief Economist, stated that the method of analysis DOR uses when researching and drafting tax expenditure reports includes national data. As a result, each state reflects some degree of activity according to the NAICS codes. Auditor Bump stated that the adoption of this exemption in 1967 could be tied to the formerly robust shipbuilding industry at the Fore River Shipyard in Quincy. Chairman Brown suggested the draft report include additional background information provided by Greg Sullivan and Auditor Bump. Members agreed to revisit the exemption during the next Commission meeting to allow for updates to the review template, including background information and noting the uncertainty of exemption beneficiaries and cost.

Professor Hanlon led a discussion on the Exemption for Rental Charges for Refuse Containers. This tax expenditure was adopted in 1982 and has a current annual cost of approximately \$900,000. Chairman Brown stated that the expenditure may have been the legislature's response to a Supreme Judicial Court ruling on sales tax collections on refuse container rentals. Chairman Brown stated that services are not taxable in Massachusetts and the normal rule is that if a service is being provided that requires transfer of tangible property, the customer is generally not taxed on it. Sales tax is supposed to arise at the retail level, but if a service provider breaks down a charge for renting tangible property, it then becomes taxable. Whether something is considered a service or rental property has spurred litigation. Dr. Ozyurt and Chairman Brown discussed the challenges that sales tax presents for data collection. For example, DOR can easily identify which vehicles retailers are largely selling, but some retailers sell multiple types of property that are not broken down on Massachusetts sales tax return filings. Members voted to approve the Exemption for Rental Charges for Refuse Containers review template with the addition of a note stating that the revenue cost is an estimate.

Sue Perez and William Burke led a discussion on the Exemption for Honor Trays, which are often set out by companies to allow employees to purchase food items with the expectation of payment without a formal transaction. This tax expenditure was adopted in 1993 and has a current annual cost estimate of

approximately \$200,000. Members discussed the burden of tracking sales tax on these types of purchases without this exemption, which supports its administrative simplicity. Members voted to approve the Exemption for Honor Trays review template with a change from Strongly Disagree to Strongly Agree that its benefits outweigh the cost.

Jacob Blanton and Chairman Brown led a discussion on the Exemption for Trade-in Allowances for Motor Vehicles and Trailers. This tax expenditure was adopted in 1967 and has a current annual cost estimate of approximately \$107 - \$135 million. Chairman Brown stated that purchases subject to sales tax are also taxable on the value of the transaction. For example, if a new car is purchased with the value of a trade-in offsetting the cost, the general rule is that the full amount of the new car is taxable. This tax exemption carves out the value of the trade-in from taxation. The major benefit of the exemption is to encourage new vehicle purchases, though it does not benefit those without a trade-in. Dr. Ozyurt stated that DOR is confident in the reported revenue cost given the directness of the data. Jacob Blanton and Chairman Brown discussed the possibility of driving up trade-in values and new vehicle sticker prices due to the exemption offsetting sales tax for buyers with trade-ins. A detriment the legislature may want to consider is whether this exemption encourages vehicle purchases rather than mass transit. Professor Weinzierl asked about private "driveway sales" of used vehicles. Chairman Brown responded that driveway sales are taxable transactions and ineligible for the exemption. It only applies to transactions involving dealers but does also apply to "new" used vehicle purchases. The vehicle must only be new to the purchaser offering a trade-in. Members agreed to changing the review template from Slightly Agree to Slightly Disagree that the exemption benefits outweigh its cost. Members further agreed to revisit the exemption during the next Commission meeting to allow DOR to draft comments regarding the policy question for the legislature on encouraging car sales versus mass transit, given the significant annual cost of the expenditure.

Chairman Brown led a discussion on the Exemption for Aircraft & Aircraft Parts. This tax expenditure was adopted in 2002 and has a current annual cost estimate of approximately \$25 million. It was supported by local airports maintaining they were losing business to surrounding states offering similar exemptions. Supporters sought to exempt aircraft parts from sales tax; however, the adopted version of the exemption also exempted commercial carriers and aircraft purchases. Aircraft are also not subject to state excise tax though there may be local property tax associated with planes where registered. Members agreed to revisit the exemption during the next meeting to allow DOR to provide a further breakdown of purchases of aircraft versus aircraft parts, as well as research on other applicable taxes.

Members discussed producing an annual legislative report instead of the biennial March report required by the Commission's enabling legislation. Members agreed to schedule a meeting prior to Thanksgiving. Chairman Brown concluded the meeting at 11:48AM.