Tax Expenditure Review Commission Public Meeting Minutes
September 30, 2022
Via Teleconference
10:00AM

Commission Members in Attendance:

Chairperson Rebecca Forter, MA Department of Revenue
Professor Michelle Hanlon, Governor’s Appointee
Sue Perez, Designee, MA Treasurer
Kerri-Ann Hanley, Designee, MA Auditor
Ted Thomas, Designee, Senate Minority Leader
Jacob Blanton, Designee, Senate Ways and Means Committee
Conor O'Shaughnessy, 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 Matthew Weinzierl, Governor’s Appointee

List of Documents:

1. Meeting Agenda
2. June 2022 TERC Report
3. Draft Minutes – May 6, 2022 Meeting
4. Draft Reports of Tax Expenditures:

1.030	Exclusion from Gross Income of Parking, T-Pass and Vanpool Fringe Benefits
1.423	Commuter Deduction
2.603	Vanpool Credit
3.308	Exemption for Materials, Tools, Fuels, and Machinery Used in Agricultural Production
3.417	Exemption for Commuter Boats
3.419	Exemption for Fuel Used in Operating Aircraft and Railroads
3.420	Exemption for Sales of Certain New and Used Buses

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

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 May 6, 2022 draft meeting minutes. Hearing none, members voted unanimously to approve the May 6, 2022 meeting minutes.

Chairperson Forter led a discussion on the June 2022 TERC report. The Commission drafted a report to address tax expenditures 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 was distributed to members for review prior to this meeting. Members voted to approve the final report with a minor change to the introduction addressing the repeal of 1.020 & 2.002 Exemption of Income from the Sale, Lease or Transfer of Certain Patents. The report will be posted on the Commission's website and submitted to legislature.

Sue Perez led a discussion on the Exclusion from Gross Income of Parking, T-Pass and Vanpool Fringe Benefits. This tax expenditure was adopted in 1992 and has a current annual revenue impact of $30.5-$41.2 million per year during FY20-FY24 with no sunset date. Starting with tax years beginning on or after January 1, 2022, Massachusetts conforms to the federal tax exclusion for employer-provided parking, transit pass, and vanpool benefits provided under Internal Revenue Code (the "Code") §132(f) as in effect on January 1, 2022. For prior years, Massachusetts conformed to §132(f) as in effect as of January 1, 2005. In 2022, the Massachusetts and federal exclusions are subject to monthly maximums of $280 for parking and $280 for combined transit pass and vanpool benefits. All states that tie to the Code for personal income tax purposes have this exclusion unless they have specifically decoupled (the Commission is not aware of any that have). The actual amount of the exclusion in each state may vary depending on the Code conformity date in that state. The Commission assumes that the goal of the expenditure is to help taxpayers defray the cost of commuting to work. Members voted to approve the Exclusion from Gross Income of Parking, T-Pass and Vanpool Fringe Benefits evaluation template with an additional comment to the effect that these benefits are more common for salaried employees in the corporate world, and therefore the TE may disproportionately benefit higher-income taxpayers.

Sue Perez led a discussion on the Commuter Deduction. This tax expenditure was originally enacted for the 2004 tax year only but was then adopted in its present form in 2006 (there was no deduction in the 2005 tax year). It has a current revenue impact of $7.8 - $10.9 million per year during FY20-FY24 with no sunset date. The tax expenditure provides individuals with a deduction for certain commuter expenses. The following commuter expenses qualify: (i) tolls paid through a Massachusetts EZ Pass account; and (ii) the cost of weekly or monthly passes for Massachusetts Bay Transit Authority (MBTA) transit, bus, commuter rail, or commuter boat service. Passes that provide a set number of rides are eligible if they allow for ten rides or more. However, stored value passes that do not provide for a set number of rides are not eligible. The deduction is limited to the portion of eligible expenses that exceeds $150 annually. The deduction is limited to $750 of such expenses per year. Joint filers may each deduct up to $750 if they each incur sufficient eligible expenses. The largest group of claimants by income bracket is $100,000-$150,000 of adjusted gross income, and by filing status is single filers. Pandemic restrictions and increased teleworking have resulted in a reduced number of commuters. Consequently, tax revenue loss from commuter deductions declined 14% from FY19 to FY20 and 16% from FY20 to FY21. By FY24, DOR estimates that revenue loss will be 26% less than the FY19 revenue loss. No neighboring states have a similar tax expenditure. The Commission assumes that the goal of the expenditure is to encourage commuters to use EZ Pass accounts or take public transportation. Members voted to approve the Commuter Deduction evaluation template with a change from Strongly Agree to Somewhat Agree for Easily Administer, Relevant Today, and Benefits a Broad Group of Taxpayers, with an additional comment addressing whether the EZ Pass portion of the tax expenditure is relevant today given there are no cash tolls in Massachusetts. Members noted that expanding eligibility to regional transit authority customers may increase the number of beneficiaries of this tax expenditure and promote group ridership.

Kerri-Ann Hanley led a discussion on the Vanpool Credit. This tax expenditure was adopted in 1987 and has a current negligible annual revenue impact per year during FY20-FY24 with no sunset date. The tax expenditure allows business corporations a credit equal to 30% of the cost of company shuttle vans used in Massachusetts in an employer-sponsored ridesharing program. The credit applies to the cost of purchasing or leasing the shuttle vans. The shuttle vans must be used for transporting employees to and from the workplace. If the credit did not exist, the cost of acquiring vans used in vanpools would be borne entirely by employers, who might then be less inclined to provide their employees with vanpool services. Historically, very few taxpayers claimed this credit and no credits were claimed in recent years. Only Maryland provides a similar credit against corporate tax. Connecticut and Washington allow a sales and use tax exemption for vehicles purchased for employer-sponsored vanpools. The Commission assumes that the goal of the expenditure is to encourage corporations to provide transportation for employees as a means of reducing traffic congestion and providing employees a low-cost way of commuting to and from work. Members agreed the legislature may wish to either encourage use of or repeal this tax expenditure, since it is not being used. Members voted to approve the Vanpool Credit evaluation template with a change from Somewhat Disagree to Somewhat Agree for Easily Administered.

Jacob Blanton led a discussion on the Exemption for Materials, Tools, Fuels, and Machinery Used in Agricultural Production. This tax expenditure was adopted in 1968 and has a current annual revenue impact of $16.2-$26.3 million per year during FY20-FY24 with no sunset date. The tax expenditure provides an exemption from the sales and use tax on the purchase or use of materials, tools, fuels, and machinery, including spare parts, used directly and exclusively in agricultural production as well as purchases of certain animals and animal feed, and seeds and plants used to grow food for human consumption. Most states that impose a sales and use tax adopt a similar exemption for items used in agriculture. For example, Connecticut, Maine, New York, Rhode Island, and Vermont allow such an exemption. California allows a partial exemption for farming equipment but not for fuels or other consumables used in agriculture. The Commission assumes that the goal of the expenditure is to exempt items used in agricultural production from sales and use tax, thus preventing tax paid by producers from being incorporated into food prices paid by consumers. Members agreed that this tax expenditure benefits lower income taxpayers as 94.2% of farms in Massachusetts are small scale and individually owned, generating less than $250,000 in sales per year. Members voted to approve the Exemption for Materials, Tools, Fuels, and Machinery Used in Agricultural Production evaluation template as presented.

Professor Hanlon led a discussion on the Exemption for Commuter Boats. This tax expenditure was adopted in 1990 and has a current annual revenue impact of $6.5-$7.1 million per year during FY20-FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for purchases of boats that will be used exclusively to provide scheduled commuter passenger service. The exemption also applies to repair and replacements parts for such commuter boats and to materials and tools used for maintenance and repair. It does not apply to boats that transport cargo. Maine provides a refund of sales and use tax paid on the purchase of parts and supplies for certain sailing ships used primarily for providing overnight passenger cruises but does not have a general exemption for commuter boats. New York has an exemption for ferry boats used to provide ferry service for vehicles and passengers. The Commission agreed that the purpose of the tax expenditure is unclear but assumes the goal of this expenditure is to support and promote the use of water transport in Massachusetts. Members voted to approve the Exemption for Commuter Boats evaluation template as presented.

Chairperson Forter led a discussion on the Exemptions for Fuel Used in Operating Aircraft and Railroads. These tax expenditures were adopted in 1967 (fuel used in the operation of aircraft) and 1977 (fuel used in the operation of railroads) and have a current annual revenue impact of $19.3-$95.3 million per year during FY20-FY24 with no sunset date. These tax expenditures provide an exemption from the sales and use tax for purchases of fuel used in the operation of aircraft or railroads. There is no other tax on railroad fuel, but there are two excises that possibly apply to aircraft fuel. First, MGL c. 64A adopts a state-level excise on gasoline, including aviation gasoline. The excise tax on aviation gasoline is 7.5% of the average price per gallon (as determined by the Commissioner) computed to the nearest 10th of a cent per gallon. The minimum tax is $0.10/gallon. In Fiscal Year 2022, DOR collected $0.7 million from the excise imposed on aviation gasoline tax. The excise under MGL c. 64A does not apply to jet fuel. Second, MGL c. 64J allows cities and towns to impose a local excise on jet fuel. Revenue from the excise is not deposited into the Commonwealth's General Fund. DOR administers and collects the excise on behalf of cities and towns that adopt it, and then distributes it to those cities and towns. Currently, eight cities and towns have enacted jet fuel excise. The excise tax rate on jet fuel is 5% of the average price per gallon (as determined by the Commissioner) computed to the nearest 10th of a cent per gallon; the minimum tax is $0.05/gallon. In Fiscal Year 2022, DOR collected $25.7 million in local excise on jet fuel. The excise under MGL c. 64J does not apply to aviation gasoline. California, Connecticut, Maine, New York, and Vermont allow sales and use and fuel tax exemptions for purchases of fuel by airlines and railroads. Rhode Island subjects aircraft fuel to a fuel excise but exempts it from sales tax and subjects railroad fuel to sales and use tax but exempts it from fuel excise. The Commission questioned whether the legislature should incentivize fuels considering climate concerns. The Commission concluded this may be a competitiveness issue; if Massachusetts does not offer this exemption consumers may be incentivized to refuel out-of-state. Members voted to approve the Exemptions for Fuel Used in Operating Aircraft and Railroads evaluation template as presented.

Jacob Blanton led a discussion on the Exemption for Sales of Certain New and Used Buses. This tax expenditure was adopted in 1973 and has a current annual revenue impact of $5.8-$7.0 million per year during FY20-FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for new and used buses that a common carrier uses to provide scheduled intra-city local service. The exemption also extends to the purchase of replacement parts, materials and tools used to maintain or repair these buses. "Common carrier" is a general term that applies to an entity that transports goods or passengers for compensation. To claim the exemption common carriers must obtain a certificate of public convenience or necessity from the Department of Public Utilities ("DPU certificate"). See M.G.L. c. 159A, § 7. Based on court decisions and DOR practice, the exemption has been broadly interpreted to extend to all bus purchases and maintenance activities for any carrier that has at least one valid DPU certificate for any one of its routes. Thus, the exemption could be claimed by a holder of one valid certificate for the purchase of buses that are used for other purposes, such as recreational touring. Indiana, Maryland, and New Jersey provide a similar exemption. California has a partial, temporary exemption for low emission buses. No similar exemption is provided by Connecticut, Maine, New York, Rhode Island, or Vermont. The Commission agreed the intent of this expenditure is not clear, which makes it difficult to evaluate its effectiveness. The Commission assumes the original intent was to incentivize private companies to offer local bus service, but the exemption is available to any business with a DPU certificate, regardless of whether the bus is used on a local intracity route. Members voted to approve the Exemption for Sales of Certain New and Used Buses evaluation template as presented.

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-November. Chairperson Forter concluded the meeting at 11:22AM.