Tax Expenditure Review Commission Public Meeting Minutes

April 27, 2023

Via Teleconference

10:00AM

Commission Members in Attendance:

Chairperson Rebecca Forter, MA Department of Revenue

Stephen Maher, Designee, Joint Revenue Committee, Senate Co-Chair

Professor Matthew Weinzierl, Governor’s Appointee

Kerri-Ann Hanley, Designee, MA Auditor

Hailey Jenkins, Designee, Senate Ways and Means Committee

Representative Michael Soter, Designee, House Minority Leader

Commission Members Absent:

Tim Sheridan, Designee, House Ways and Means Committee

Ryan Sterling, Designee, Joint Revenue Committee, House Co-Chair

Sue Perez, Designee, MA Treasurer

Professor Michelle Hanlon, Governor’s Appointee

Chris Anderson, Designee, Senate Minority Leader

List of Documents:

1. Meeting Agenda
2. Draft Minutes – March 9, 2023 Meeting
3. Draft Reports of Tax Expenditures

Chairperson Forter welcomed the Commission members. 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 March 9, 2023 draft meeting minutes. Hearing none, members voted unanimously to approve the March 9, 2023 meeting minutes.

Chairperson Forter opened the discussion to members to comment on the Commission’s current review process. Members discussed tax expenditure administrability, policy proposals, and the evaluation template. DOR will include its perspective of tax expenditure administrability in future summary reports. Members agreed to add a new checkbox to the evaluation template identifying whether the tax expenditure is flagged for legislative review. Members agreed to further utilize the evaluation template comment section to reflect potential issues to be raised, including policy proposals and potential changes to tax expenditures.

Kerri-Ann Hanley led a discussion on the Septic System Credit. This tax expenditure was adopted in 1967 and has an annual revenue impact of $8.5 - $8.9 million during FY20 - FY24 with no sunset date. The tax expenditure allows a personal income tax credit for the cost incurred in repairing or replacing a failed septic system in a residential property as required under Massachusetts environmental laws, or in connecting to a municipal sewer system as required by a court order, administrative consent order, state court order, consent decree, or similar mandate. The credit is equal to 40% of the cost (less any interest subsidy or grant from the Commonwealth) or $6,000, whichever is less. Only $1,500 of the credit can be used per tax year, but unused credits may be carried forward for up to 5 years. The Commission is not aware of any other states that have similar tax expenditures. Hawaii had a temporary tax credit for upgrading septic systems that expired in 2022. The Massachusetts Department of Environmental Protection (DEP) states in its regulations that the purpose of the law requiring repair or replacement of failed septic systems is to provide for the protection of public health and the environment by requiring the proper siting, construction, and maintenance of septic systems. See 310 CMR 15.001. The Commission assumes that the purpose of the credit is to provide relief for taxpayers required by law to repair or replace their septic systems. Members voted to approve the Septic System Credit evaluation template with a change from “Somewhat Disagree” to “Somewhat Agree” on the question of whether the expenditure benefits lower income taxpayers, and add additional comments noting that (i) other states have similar programs but they are typically in the form of grants or loan programs, (ii) MA has a number of local programs; municipalities are talking it upon themselves to help residents, (iii) there is a pending proposal to double the cap on this credit, (iv) the cap on this credit has not increased since 1997, although associated costs have increased, and (v) this is an ongoing issue on the south shore, especially on the Cape.

Professor Weinzierl led a discussion on the Exemption for Fuel used for Heating Purposes. This tax expenditure was adopted in 1967 and has annual revenue impact of $70 - $84 million during FY20 - FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for sales of (i) fuel used for residential heating purposes, (ii) fuel used for heating purposes by certain small businesses and (iii) fuel used for heating purposes in industrial plants. Most states that impose a sales and use tax exempt sales of fuel used to heat residences or industrial plants at least in part. California, Connecticut, Maine, and Rhode Island provide exemptions for residential and industrial users. New York and Vermont exempt only residential use. The Commission is not aware of any other state that provides an exemption for purchases of heating fuel by small businesses. The Commission assumes that the goal of the expenditure is to shield households, small businesses, and manufacturers from sales and use tax on heating fuel, as adequate heating is viewed as a necessity for households and workers. Members voted to approve the Exemption for Fuel used for Heating Purposes evaluation template with a change from “Somewhat Disagree” to “Somewhat Agree” on the question of whether the benefit justifies the fiscal cost and whether the expenditure is claimed by a broad group of taxpayers.

Kerri-Ann Hanley led a discussion on the Exemption for Gas. This tax expenditure has annual impact of $167.3 - $233.3 million during FY20 to FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for sales of (i) gas used for residential purposes, (ii) gas purchased for use by certain small businesses and (iii) gas purchased for use in an industrial plant. Most states that impose a sales and use tax exempt sales of gas used in residences or industrial plants at least in part. California, Connecticut, Maine, and Rhode Island provide exemptions for residential and industrial users. New York and Vermont exempt only residential use. The Commission is not aware of any other state that provides an exemption for purchases of gas by small businesses. The Commission assumes that the goals of the expenditure are (i) to shield households from sales and use tax on gas used for residential heating, which can be viewed as a necessity, (ii) to reduce the cost of doing business for small businesses and (iii) to prevent pyramiding of the sales and use tax when the gas is used by manufacturers to power, light and heat industrial plants that produce items for sale. Members voted to approve the Exemption for Gas evaluation template with a change from “Somewhat Disagree” to “Somewhat Agree” on the question of whether the expenditure is claimed by a broad group of taxpayers, and to add an additional comment noting the environmental costs of incentivizing the purchase of heating fuels. Members also observed that the term “small business” is defined differently for purposes of the exemption than it is for other purposes in the General Laws.

Profession Weinzierl led a discussion on the Low-Income Housing Tax Credit. This tax expenditure was adopted in 1999 and has an annual revenue impact of $100 - $180 million during FY20 to FY24 with no sunset date. The Low-Income Housing Tax Credit (LIHTC) is available to corporate excise and personal income taxpayers that invest in low-income housing projects that meet federal and state eligibility rules. The credit is part of a federal program that authorizes a federal credit for such investments and subsidizes state credits in states that opt into the program. The Massachusetts Department of Housing and Community Development (DHCD) determines eligibility for, and the amount of, the credit pursuant to federal guidelines. A number of states allow low-income housing tax credits. These states include California, Connecticut, Maine, New Hampshire, New York, Rhode Island and Vermont. The Commission assumes that the goal of the expenditure is to increase the amount of low-income housing in the Commonwealth by subsidizing the construction, development, preservation, and improvement of low-income housing projects. Members voted to approve the Low-Income Housing Tax Credit evaluationtemplate with additional comments noting that(i) for tax years 2021 through 2025, the Massachusetts LIHTC is subject to an annual statewide cap of $40 million, plus an additional $5 million to preserve and improve existing state or federally-assisted housing, (ii) for tax years 2026 and later, the statewide cap is $20 million, plus an additional $5 million to preserve and improve existing state or federally-assisted housing, and (iii) DHCD generally allocates to the full amount of the cap each year.

Chairperson Forter led a discussion on the Certified Housing Development Tax Credit. This tax expenditure was adopted in 2010 and has an annual revenue impact of $8.8 - $10.0 million during FY20 – FY24 with no sunset date. A personal income tax and corporate excise credit is allowed for up to 25% of costs incurred in constructing or rehabilitating housing in areas designated by the Department of Housing and Community Development (DHCD). Eighty percent of the housing must be available for rent or sale at market rate prices. Designated areas must be located in a city or town identified by statute as a gateway municipality. The DHCD determines eligibility for, and the amount of, the credit. A number of states offer general investment tax credits. However, the Commission is not aware of any other state that provides a specific credit for developing housing that is available for rent or sale at market rate prices. The goal of the tax expenditure is to promote increased residential growth, expanded diversity of housing supply, neighborhood stabilization, and economic development in gateway municipalities. Membersvoted to approve the Certified Housing Development Tax Credit evaluation template with changes from “Somewhat Disagree” to “Strongly Disagree” on the question of whether the expenditure benefits small businesses and low income taxpayers, a change in the goals of the expenditure from “health/environment” to “investment,” and additional comments noting that (i) until January 1, 2024, the total amount of credits awarded in a calendar year cannot exceed $10 million, including any carryforwards of credits from prior years estimated to be claimed in the calendar year, and (ii) for calendar years beginning January 1, 2024 or after, the total amount of credits awarded each year cannot exceed $5 million.

At 11:15 AM a Commission member disconnected from the teleconference due to internet connectivity issues. Remaining members continued to discuss tax expenditure evaluation ratings and proposed changes. Formal voting for the following tax expenditures will occur at the next Commission meeting.

Hailey Jenkins led a discussion on the Exclusion of Certain Foster Care Payments. This tax expenditure was adopted in 1983 and has an annual revenue impact of $3.7 - $4.4M during FY20 - FY24 with no sunset date. Massachusetts conforms to the federal income tax exclusion for payments by state and local social services agencies to taxpayers that provide foster care to children in need. States that conform to the Internal Revenue Code for personal income tax purposes adopt the exclusion unless they have specifically decoupled. The Commission is not aware of any state that has decoupled. The Commission assumes that the goal of the expenditure is to ease the financial burden of caring for foster children. Members proposed a change to the Exclusion of Certain Foster Care Payments evaluation template from “Somewhat Disagree” to “Somewhat Agree” on the question of whether the expenditure is easily administered. Members will vote on the evaluation template at the next Commission meeting.

Hailey Jenkins led a discussion on the Rent Deduction. This tax expenditure was adopted in 1980 and has an annual revenue impact of $145.7 - $159.9 million during FY20 - FY24 with no sunset date. Renters may deduct one-half of the rent paid for a principal residence located in Massachusetts up to a maximum deduction of $3,000 per year. The deduction is available to all renters, regardless of age or income. No other state provides a deduction to all taxpayers for rent paid, regardless of age, income level, or whether property taxes were paid through rent. Several other states have rent deductions or credits available to the elderly or to low-income taxpayers or for property taxes paid through rent. These states include California, Indiana, Maine, New Jersey, New York, and Vermont. The Commission assumes that the goal of the expenditure is to provide a subsidy to renters. Members proposed to include additional comments to the Rent Deduction evaluation template noting that (i) this tax expenditure benefits wealthier taxpayers; filers with a net adjusted gross income (AGI) above $100,000 claimed 14.3% of all deductions; filers with a net AGI below $50,000 account for slightly more than half of all deductions (53.6% in count and 52.2% in dollar amount); and the average deduction per claimant tends to increase as net AGI increases, and (ii) there is a pending proposal to raise the rent deduction from $3,000 to $4,000. Members will vote on the evaluation template at the next Commission meeting.

Hailey Jenkins led a discussion on the Exemption for Electricity. This tax expenditure was adopted in 1990 and has an annual revenue impact of $340.1 - $470.2 million during FY20 - FY24 with no sunset date. The tax expenditure provides a sales and use tax exemption for sales of (i) electricity for residential use, (ii) electricity purchased by certain small businesses, and (iii) electricity purchased for use in an industrial plant. Most states that tax the sale of electricity exempt sales for residential use and use in industrial plants at least in part. Connecticut, Maine, and New York provide exemptions for residential and industrial users. Vermont exempts only residential use. California and Rhode Island do not tax sales of electricity. The Commission is not aware of any other state that provides an exemption for purchases of electricity by small businesses. The Commission assumes that the goal of the expenditure is to shield residential users and small businesses from sales and use tax on electricity and to provide industrial plants powered by electricity an exemption similar to the exemption available to manufacturing facilities powered by other fuels. The exemption may prevent pyramiding of the sales and use tax when the electricity is used by manufacturers to power, light, and heat industrial plants that produce items for sale. Members proposed a change to the Exemption for Electricity evaluation template from “Somewhat Disagree” to “Somewhat Agree” on the question of whether the expenditure is easily administered, and a change from “Strongly Agree” to “Somewhat Agree” on the question of whether the amount claimed per taxpayer is meaningful. Members will vote on the evaluation template at the next Commission meeting.

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- to late-June. Chairperson Forter concluded the meeting at 11:45 AM.