MEMO

DATE: September 18, 2024
TO: Government Oversight Committee
FROM: Kari Hojara, OPEGA Senior Analyst
RE: GOC Action on 3 Tax Expenditures Up Next for Full Evaluation

Tax Expenditures Up Next for Full Evaluation

OPEGA has prepared proposals for the 3 tax expenditures up next for full evaluations. Information discovered in background research on these expenditures has prompted OPEGA to propose that these expenditures do not receive a full evaluation at this time. As context, OPEGA is making these proposals from the perspective of trying to make most effective use of two staff members available for the tax expenditure evaluations. For these 3 tax expenditures, we propose the following:

- Railroad Track Materials Sales & Use Exemption - propose reclassification and that the expenditure be moved to the No Review evaluation category.
- Refund of Sales Tax on Purchases of Parts and Supplies for Windjammers - propose that the expenditure be moved to the No Review evaluation category.
- Telecommunications Services Service Provider Tax Exemption – propose consultation with the Taxation Committee regarding the intended purpose of this expenditure. OPEGA suggests that the expenditure be moved to the No Review evaluation category if the Taxation Committee does not respond before December 1, 2024.

Attached are summary documents with more information about each of the 3 expenditures and about OPEGA's proposals for them.

Committee Process

A Committee vote on these proposals is needed if the Committee would like OPEGA to take action related to the 3 tax expenditures.

- Draft Motional Language: The Committee moves to [accept the proposals as written/accept the proposals with the following amendments...]

Railroad Track Materials Sales & Use Exemption

Enacted	Statute(s)	Taxpayers Affected	Est. Revenue Loss
1986	36 MRSA §1760(52)	Unknown	FY24 $909,000 FY25 $927,000

Source for Estimated Revenue Loss and Taxpayers Affected: Maine State Tax Expenditure Report 2024 – 2025.

Program Description

This is a sales and use tax exemption for railroad track materials to be used within the boundaries of Maine. Track materials include rail, ties, ballast, joint bars and associated materials, such as bots, nuts, tie plates, spikes, culverts, steel, concrete or stone, switch stands, switch points, frogs, switch ties, bridge ties and bridge steel.[1]

Proposed Reclassification

This exemption was originally classified for evaluation purposes as a Business Incentive and scheduled for a Full Evaluation. We have now gathered additional information about this exemption that suggests the exemption was implemented with a goal of providing equitable treatment of rail carriers compared to other transportation mode carriers.[2]

Based on this goal, OPEGA proposes the expenditure be reclassified to the Tax Fairness category. In addition to matters of equal tax treatment, the Tax Fairness category also includes expenditures like this one that are intended to address the public perception that it would not be fair to tax the item/transaction.

OPEGA further proposes that this expenditure be moved to the No Review evaluation category with all the other Tax Fairness expenditures.

[1] A taxpayer qualifying for this exemption may not require any landowner to pay any fee or charge for maintenance or repair or to assume liability for crossings or rights-of-way if the landowner was not required to do so prior to July 1, 1981. The taxpayer qualifying for this exemption must continue to maintain crossings and rights-of-way that it was required to maintain on July 1, 1981 and may not remove the crossings if there is any objection to their being removed.

[2] The exemption came from a February 1985 report from the Rail Policy Committee, (he2771_m2m34_1985a.pdf (mainelegislature.org)) charged with "developing and recommending State policy for future rail transportation that will adequately meet the present and future needs of Maine industry and the State's economy." The 1985 report stated the reason for the exemption as relating to equitable treatment of rail carriers vis-à-vis other modes of transportation as rail carriers provide their own roadway while other transporters do not.

Refund of Sales Tax on Purchases of Parts and Supplies for Windjammers

Enacted	Statute(s)	Taxpayers Affected	Est. Revenue Loss
2012	36 MRSA §2020	9	FY24 & FY25 $50,000 to $249,999

Source for Estimated Revenue Loss and Taxpayers Affected: Maine State Tax Expenditure Report 2024 – 2025. Estimated as a range of possible values because little or no data is available.

Program Description

This is a refund of sales tax paid for the purchase of parts and supplies for use in the operation, repair or maintenance of a windjammer. The purchaser may receive a refund of tax paid or the purchaser may be issued from the State Tax Assessor a certificate to present when purchasing eligible parts and supplies. The expenditure was established to "provide financial support to the businesses that sell cruises on windjammers."[3]

Recommendation for No Full Evaluation

This exemption was originally classified for evaluation purposes as a Business Incentive and scheduled for a Full Evaluation. Review of public information on this expenditure confirms that it was intended as a business incentive for a specific industry. However, given the nature of the refund and the option to make purchases with a certificate, public information on the revenue loss is limited. Additionally, information on the participating businesses is considered taxpayer confidential. While OPEGA can access confidential taxpayer information, OPEGA would likely be unable to summarize such a small number of taxpayers' information in a way that could be provided in a report. Gathering original data could be resource inefficient when considering the low estimated fiscal impact for this expenditure (between $50,000 and $249,999 annually).

OPEGA proposes that this expenditure not receive a full evaluation and be moved to the No Review evaluation category.

If the GOC would like more information on the expenditure, OPEGA could be tasked with gathering information directly from potential refund recipients on the amount of sales tax refunded. This information could provide the GOC with a better sense of whether the fiscal note for the expenditure is closer to the $50,000 or the $249,999 range of the MSTER revenue loss estimate and whether a review may be warranted.

[3] Maine State Tax Expenditure Report 2024-2025.

Telecommunications Services Service Provider Tax Exemption

Enacted	Statute(s)	Taxpayers Affected	Est. Revenue Loss	
2008	36 MRSA §2557(33)&(34)	Unknown	FY24 & FY25	$1,000,000-$2,999,999

Source for Estimated Revenue Loss and Taxpayers Affected: Maine State Tax Expenditure Report 2024 – 2025.

Program Description

This is a service provider tax exemption for sales of international and interstate telecommunication services to businesses. Consumer purchases of these services are taxable (starting in January 2016). There is little data available on the exemption, the taxpayers affected, and the revenue loss, which is estimated from a model.

Pending Questions Ahead of Full Evaluation

This exemption was originally classified for evaluation purposes as a Business Incentive and scheduled for a Full Evaluation. We have now consulted with Maine Revenue Services and reviewed legislative history associated with the exemption and lack clarity about its intended purpose. It may be intended as a Business Incentive, or it may be intended to prevent Tax Pyramiding under certain circumstances.[4]

If the exemption is because of Tax Pyramiding, other tax expenditures grouped in this rationale category do not receive full tax evaluations. If it is a Business Incentive, OPEGA recommends asking the Taxation Committee to set parameters around the intended goals and metrics to measure the expected performance of this exemption.

Next Steps

OPEGA recommends that the GOC consult with the Taxation Committee regarding the intended purpose of this expenditure. OPEGA suggests that the expenditure be moved to the No Review evaluation category if the Taxation Committee does not respond before December 1, 2024.

[4] Tax pyramiding occurs when the same good or service is taxed multiple times along its production process. MRS noted to OPEGA that this exemption could prevent tax pyramiding "particularly if the company purchasing telecom services sells tangible personal property or taxable services."