OPEGA Responses to Section 9 of PL 2023, Ch. 417

Sec. 9. Review by Director of Office of Program Evaluation and Government Accountability. By November 1, 2024, the Director of the Office of Program Evaluation and Government Accountability shall review the laws governing full evaluations of tax expenditures under the Maine Revised Statutes, Title 3, chapter 37 and identify and recommend to the Government Oversight Committee and the Joint Standing Committee on Taxation potential statutory changes to enhance the efficiency and effectiveness of the full evaluation process going forward, with particular attention to evaluation parameters and the schedule and pace of full evaluation reports. The Government Oversight Committee may submit legislation related to the recommendations of the director to the First Regular Session of the 132nd Legislature.

- Section 9 of PL 2023, Ch. 417 requires OPEGA to propose statutory changes which could enhance the efficiency and effectiveness of the tax expenditure review process, paying particular attention to evaluation parameters and the schedule and pace of full evaluations.
- The Director shall identify and recommend any changes to the GOC and Tax Committee by 11.1.24. The GOC may submit legislation.

Below are six topic areas in which OPEGA identified opportunities for increased effectiveness or efficiency. Although Ch. 417 only directed OPEGA to review the laws governing the process, we've also sought opportunities to improve the effectiveness and efficiency of the process's implementation. For each topic, we explain why it was identified for improvement, the changes already implemented or under development, and our recommendation for further efforts. We've also noted that two of the topics would require legislation, or other GOC or Tax Committee action, if they are to be advanced.

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<td>1. Parameters Process
Implemented</td>
<td><u>Why This Topic Area?</u>

Ch. 417, Section 9 specifically directs OPEGA to consider improvements to the parameters process. OPEGA staff and GOC Members have noted difficulties with establishing parameters for evaluating a tax expenditure when they were not originally established. It requires staff and GOC Members, sometimes years later, to attempt to discern the purposes those who enacted the tax expenditure had in mind for it. Establishing parameters well after enactment also requires additional time and resources for OPEGA to research the types of goals and measures that may have been intended and for the GOC to process and consider this research. Finally, when parameters are set just before the start of an evaluation, often the data needed to assess the expenditure based on those parameters has not been previously collected. The absence of readily available data impacts the efficiency of OPEGA's reviews and how effectively we can address the evaluation parameters.

<u>What Has Already Been Done?</u>

Changes Introduced by PL 2023, Chapter 417
Section 7 of Ch. 417 created a new process requiring the Tax Committee to review proposals to enact new tax expenditures, or change existing tax expenditures, for clarity of evaluation criteria and purpose. The Tax Committee must evaluate whether the proposal:
A. Identifies the purposes and goals of the tax expenditure;
B. Identifies the data needed to evaluate the tax expenditure and the entity responsible for collecting that data;
C. Requires the entity collecting the data to provide it to OPEGA; and
D. Provides the necessary framework for OPEGA to evaluate the tax expenditure.</td>
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	This type of Tax Committee review could produce a large efficiency gain for the parameters process if it results in tax expenditures with explicit goals and performance metrics in statute. However, OPEGA notes that the process was not exercised during the first session after its passage, and the process is only required to be applied to proposals that are: • determined by the Committee with jurisdiction over the proposal to have the support of the majority of Committee Members; and • subsequently determined by the Tax Committee to likely be assigned to the full evaluation category under §998(1)(A). If proposals do not meet the above two criteria, or if the Joint Standing Committees do not apply the process, then the efficiency gains this process is expected to deliver for the parameters process may not be realized. ***OPEGA Actions*** To support the new process enacted by Ch. 417, OPEGA has been performing outreach to the Tax Committee about the process and about OPEGA's availability to consult on the process as called for in statute. OPEGA has also supported establishment of statutory evaluation parameters in our reports by recommending that goals and measures for individual tax expenditures be added to statute or clarified where necessary. We have observed that many drafters of tax expenditure proposals have taken note of the Legislature's interest in having clearly established goals and performance measures and appear to be making an effort to include them in new proposals. When requested, we have provided informal input to those drafting tax expenditure bills about the evaluation sections of the bills and about the likelihood that the proposals would meet the definition to be categorized for a full evaluation. **What Work Remains to Be Done?** OPEGA will continue to support the establishment of clear statutory evaluation parameters for tax expenditures as outlined above and will particularly focus on outreach on this matter to the Tax Committee and its staff as the 132nd Legislature gets underway. There remain, however, many existing tax expenditures that are scheduled for full evaluation and do not have parameters in statute (17 of the 19 that have not yet had a full evaluation). Establishing parameters will continue to be more challenging when it is time for these expenditures to be evaluated. The 2021 Report of the Tax Expenditure Review Working Group recommended establishment of a one-time Legislative task force to assess whether existing statutes included the elements needed for those categorized for full evaluation and to recommend changes. This recommendation was not included in the legislation that was ultimately passed. However, the work this task force was intended to address could potentially be accomplished via a one-time project that OPEGA could support for the GOC or Tax Committees, or a collaboration of both. As discussed in topic area #3 below, there may be options for cooperative efforts between subgroups of the two Committees that do not require legislation.
2. Timing and Focus of Evaluations *Implemented*	**Why This Topic Area?** Ch. 417, Section 9 directs OPEGA to specifically seek opportunities for improvements regarding the schedule and pace of full evaluation reports. Over time, OPEGA had also

	observed that the process needed to be more responsive to the Legislature's timing needs and to areas of particular interest to sitting GOC and Tax Members. **<u>What Has Already Been Done?</u>** Although statute sets the framework for tax expenditure reviews, it includes a level of flexibility that has allowed OPEGA to make adjustments within the required objectives to achieve faster reviews and focus on the areas of greater interest to Legislators. To meet legislative timing requirements, OPEGA has taken steps such as flexing staff resources and the breadth of reviews. This has allowed us to be timely in completing reviews for which there are Committee timing expectations or statutory deadlines. We have also begun adjusting our staffing and evaluation approach, when possible, to prioritize completing reviews of tax expenditures for which there is pending legislation. The evaluations of the Research Expense Tax Credit and the Historic Restoration Tax Credit are two examples of projects that OPEGA successfully delivered to the Legislature during sessions when bills on those tax expenditures were under consideration. OPEGA has also made adjustments to better address areas of legislative interest. We have done this within existing resources by emphasizing some review objectives over others, where appropriate. For example, for the objective related to administration, OPEGA now typically performs a high-level review and only gets into more detail if risks are identified. Spending less time reviewing the details of administration leaves more staff resources to focus on objectives we frequently hear are of interest to legislators, such as the degree to which the tax expenditure is achieving its goals. **<u>What Remains to Be Done?</u>** OPEGA will continue working to perform reviews efficiently, being responsive to the Legislature's timing needs and to areas of Legislator interest. We will also continue increasing outreach to help identify areas of interest. Relatedly, we also recognize that there is legislative interest in further analysis for some review objectives, such as the cost-effectiveness of a tax expenditure and how it compares with that of other potential uses of state funds. These are challenging topics to address for tax expenditure evaluators across the states, in part because interest in them is more recent and hence research and underlying data have not historically been robust. As part of OPEGA's continual improvement efforts, we will continue working to research and develop new methods and analyses for addressing these objectives and will monitor emerging approaches in peer offices and academic literature.
3. GOC & TAX Coordination *Under Development*	**<u>Why This Topic Area?</u>** The 2021 Report of the Tax Expenditure Review Working Group noted "the overall process of tax expenditure review would be enhanced by improving coordination between and engagement of the major joint standing committees with an interest in and responsibilities for tax expenditure reviews and process." OPEGA has noted this as well. Over time, members of both Committees have expressed interest in acting on tax expenditure reports, but the details of how to proceed have been difficult. Both Committees have full plates and tax expenditures are also just one piece of their workload. Often OPEGA's recommendations for Legislative consideration identify bigger picture issues that could be addressed in a variety of ways and that need

	policymaker input to consider the options and determine a path forward. That work can stretch over many meetings and can be difficult for either Committee carve out time for among their other competing priorities. **<u>What Has Already Been Done?</u>** The Tax Expenditure Review Working Group considered several options for addressing this topic. In its 2021 report, the Working Group recommended improving coordination via the following steps: 1. adjusting the composition of the GOC to include two members of the Tax Committee, and one member of the Committee on Innovation, Development, Economic Advancement and Business (IDEAB); and 2. authorizing the Tax Committee to meet year-round for its tax expenditure review responsibilities. These two measures passed in PL2023, Ch. 417, Section 1 and Section 3, respectively and may improve coordination between the 132nd GOC and Tax Committee. OPEGA has also been working to identify ways staff can more effectively work with the two Committees to aid their coordination. One piece of this has included increased OPEGA outreach to the Tax Committee. We have also increased our monitoring of Tax Committee actions on matters in which the GOC is engaged, and we have endeavored to keep the GOC apprised of these matters. **<u>What Remains to Be Done?</u>** OPEGA suggests that in future the GOC and Tax Committee could, as needed, assign subgroups of members to meet jointly as needed for tax expenditure review work. These assignments could happen without any statutory changes and the work of the subgroups could be supported by OPEGA staff. The subgroups could then report back to the GOC or the Tax Committee and one of those Committees could report out legislation or take other action as needed. A joint subgroup could improve coordination between the two Committees and could be a useful venue for exploring tax expenditure review topics that don't readily fit into either Committee's routine work. For example, a subgroup could delve into tax expenditure report recommendations around approaches that could be used instead of single-entity tax credits for delivering targeted incentives to specific businesses, or improvement of data collection. If there is interest in establishing a structure for the GOC and Tax Committee to work together on tax expenditure review matters, OPEGA will work with the Committees to identify opportunities and develop a process for this collaborative work.
4. Information to Support Consideration of Legislation Related to Tax Expenditures *Under Development*	**<u>Why This Topic Area?</u>** The 2021 Report of the Tax Expenditure Review Working Group identified "a need by the Taxation Committee for information as it reviews legislation amending existing tax expenditures, which must be considered during a legislative session when those tax expenditures have not yet been evaluated or are in the early stages of evaluation." The report also noted "a challenge for the Taxation Committee to obtain relevant information and analysis in a timeframe responsive to legislative needs during sessions and outside of the regular tax expenditure review process."

	OPEGA has observed that this challenge seems to persist despite efforts the office has made to conduct tax expenditure reviews in a manner, and on a timeline, responsive to legislative needs (as discussed above in topic area #2). **<u>What Has Already Been Done?</u>** PL2023, Ch. 417 carved out some new roles for OPEGA staff support of the Tax Committee within the tax expenditure review and legislative process: • Limited Analysis Projects, wherein the Tax Committee can request up to 2 limited analysis projects related to legislation before it be completed by OPEGA during each legislative session, subject to GOC approval (3 MRS §998(6)); and • Being available to consult with the Committee about whether tax expenditures that are the subject of pending legislation are likely to be assigned for full evaluation and contain the provisions necessary to support an evaluation (3 MRS §1002). OPEGA has been in contact with the Tax Committee about these new roles but has not yet been called upon to fulfill them. We have also begun to monitor legislation before the Tax Committee more actively, and to reach out to the Committee Chairs when legislation before them pertains to tax expenditure that OPEGA has reviewed. We also offer copies of the report or other related materials, as appropriate, and have attended Tax Committee work sessions, when requested, to speak to how legislation interacts with recommendations or conclusions from tax expenditure reviews. **<u>What Remains to Be Done?</u>** OPEGA stands ready to fulfill the roles assigned to staff via Ch. 417 to support the Tax Committee's tax expenditure review work. At the start of the 132nd Legislature, we will also include discussion of these two roles in the orientation materials for the 132nd GOC and Tax Committee. OPEGA will also continue seeking additional ways that the office can better support legislative committees in their tax expenditure review work, as appropriate and within existing resources.
5. Annual Categorization Deadline *Would Require Committee Action*	**<u>Why This Topic Area?</u>** Title 3 §998(3) requires that by October 1st of each year, the GOC, in consultation with the Tax Committee, reviews and makes any necessary adjustments to category assignments of tax expenditures (full review, expedited, and no review) and to the schedule for conducting full evaluations. Over the years, the October deadline has often been suboptimal for both the GOC and OPEGA. Additionally, the current timeframe does not align with the commencement of work for new GOC and Tax Committees. As such, outgoing Committees may be setting the schedule and prioritization for future GOCs and Tax Committees not yet seated and may not be present to see the results of the work they have scheduled. It is often not possible to update the categories and schedule before the current statutory deadline of October 1st because the documents that underpin this work are

	not ready until after the summer. While OPEGA could review all enacted legislation for relevant changes, this work is already being done by MRS and would represent a duplication of effort. Instead, we use MRS's document as the basis for our updates, and there is often not enough time available after the release of that summary document for us to achieve the October 1st deadline. **What Has Already Been Done?** OPEGA and the GOC have done their best to meet this deadline, but it has not always been achievable from session to session. **What Remains to Be Done?** OPEGA recommends that moving the deadline to January or early February of each year may better align with the beginning of new sessions. This would allow the GOC to consider priorities for the tax evaluation schedule alongside the annual review of OPEGA's non-tax evaluation work plan and with the benefit of knowing which tax expenditures are subject to pending legislation. This timing would also provide ample time for OPEGA staff to review the relevant changes to tax expenditure legislation from the most recently completed legislative session and to prepare a proposed categorization and schedule for the Committee's consideration.
6. Incentive Data Centralization *Would Require Committee Action*	**Why This Topic Area?** A recurring finding of OPEGA's tax expenditure evaluations has been that the data available to analyze incentives is often either not available, or not maintained to a standard needed to support legislative oversight. This is a barrier to transparency generally, and it reduces the efficiency with which OPEGA can conduct evaluations. Having a repository of basic usage data for tax expenditures would increase the efficiency of the tax expenditure evaluations, but would also address legislator interest in the co-use of incentives by business and allow OPEGA to more readily provide information on review Objective (f) "The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary, or duplicative." **What Has Already Been Done?** OPEGA has raised this issue in past tax expenditure evaluations where it is applicable. Office staff also continue to discuss this matter, and related issues, with the agencies that administer tax expenditures and with other interested parties. **What Remains to Be Done?** OPEGA suggests that the state would benefit from a system, such as a data portal, that is centralized under the management of a designated entity, to ensure the consistency, reliability, and completeness of the tax expenditure data. If there is interest in pursuing such a system, OPEGA could support next steps for the GOC or Tax Committees, or a collaboration of both.