

**PRESENTATION BY  
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To the Tax Expenditure Review Working Group  
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Senator Libby, Representative Terry, and members of the Tax Expenditure Working Group – good morning, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. On behalf of Maine Revenue Services and the Office of Tax Policy (MRS/OTP) I am responding to your request for a presentation that responds to three questions regarding our experience with the Office of Program Evaluation and Government Accountability’s (OPEGA) review of tax expenditures over the last 5 years.

The first question we were asked to address is “What is working well?”. Over the last 5 years the working relationship between OPEGA and MRS/OTP has evolved through continued communication and accommodation on both sides. Both OPEGA and MRS/OTP seem accustomed to the review format and stages, OPEGA has been responsive to meeting with us on occasion to hear our broad areas of concern about the process, and the process is moving forward on a cordial and professional basis.

The second question is “What are the challenges?”. The primary challenge for MRS/OTP has been the number and constancy of OPEGA tax expenditure reports. As several members of this working group know, during the legislative session MRS/OTP is heavily involved in providing administrative, legal, and

economic analysis to the Administration and the Joint Standing Committee on Taxation (TAX) and other committees on the numerous bills proposed each session affecting Maine taxes. In addition to legislative work, the primary responsibility of MRS administrative staff is to oversee their respective tax programs. While OPEGA has been understanding of these commitments and flexible in the timing of our responses to their requests, there have been a number of cases where MRS has been unable to fully review and comment on OPEGA tax expenditure reports.

The current tax expenditure review process seems to look equally to both OPEGA's basic program audit functions and to its tax policy review and evaluation function. The OPEGA mission statement on their website states that OPEGA "exists to support the Legislature in monitoring and improving the performance of State government by conducting independent, objective reviews of State programs and activities with a focus on effectiveness, efficiency and economical use of resources." It appears that, from that mission statement, the primary purpose of OPEGA is to audit the administration of programs of immediate concern to the Government Oversight Committee (GOC). If this is what the GOC and TAX committees view the role of OPEGA to be in the tax expenditure review process, then it makes sense that the policies and procedures OPEGA applies to their other reports should apply to the tax expenditure reports as well. But, if the *primary purpose* of the tax expenditure reports is to determine if the tax policy enacted by the Legislature is incentivizing taxpayers to change their behavior to achieve those policy goals, it is suggested that some of the OPEGA processes required in the reviews be modified for the tax expenditure reviews.

One specific challenge from the application of OPEGA general policies and procedures for their reports to tax expenditure reviews is OPEGA's general requirement that there be no communication between executive

departments/agencies for those tax expenditures that are jointly administered until OPEGA publicly releases their report. Again, if the primary purpose of the tax expenditure review is to determine if the tax policy objective(s) is being achieved, then executive branch agencies should be able to discuss and comment on OPEGA's work product with one voice consistent with the views of the Administration.

The final issue the working group asked that we address is if we had any "ideas for change and improvement".

Here is a summary of our recommendations, which I will then briefly elaborate on:

1. Identify the type of tax expenditures that should be the subject of full review.
2. Focus full reviews on the tax policy of the expenditure using empirical and survey findings and other methods to analyze the effectiveness of the expenditure in incentivizing intended activity.
3. Limit the number of full reviews to one full tax expenditure review per year and focus on expenditures of particular importance to TAX.
4. Remove the expedited review process.
5. Allow expenditure review communications during the review process within and between MRS, DAFS, Governor's Office, Office of Attorney General, and, for jointly administered programs, across Executive Branch departments.

(1) Identify the type of tax expenditures that should be the subject of full review.

Section 1.II of the most recent Maine State Tax Expenditure Review (MSTER) discusses the theory and complexity of identifying what parts of Title 36 should be considered "tax expenditures" and, therefore, included in the MSTER. I urge the working group members to review that section and identify which of the many estimates included in the report they want OPEGA to review on a regular

basis. Based on comments made during your first meeting, it appears that some members of the working group would prefer to focus on “economic development incentives,” which would be a much smaller group of tax expenditures for OPEGA to review compared to the much larger number of tax expenditures included in the MSTER.

- (2) Focus full reviews on the tax policy of the expenditure using empirical and survey findings and other methods to analyze the effectiveness of the expenditure in incentivizing intended activity.

While an understanding of the administrative cost of a tax expenditure program relative to its benefits is an important factor to consider, we recommend that the focus of the OPEGA reports be on whether the tax policy objectives of the tax expenditure are being achieved. This is not an easy task, especially when a business accesses multiple State expenditure programs, including multiple State tax expenditure programs.

- (3) Limit the number of full reviews to one full tax expenditure review per year and focus on expenditures of particular importance to TAX.

Given the complexity and time required to issue a full review, we recommend that the OPEGA tax expenditure review process be limited to one comprehensive review a year. The subject of the review can be determined by focusing on (1) a tax expenditure scheduled to sunset in the near term, (2) a program that is the subject of numerous bills before TAX, or comes before TAX on a regular basis, or (3) tax expenditures that may not be achieving their tax policy objective based on the number of taxpayers affected and foregone revenue. The reviews could be done between legislative sessions, providing OPEGA, MRS/OTP, and other affected agencies the time and resources necessary for such comprehensive studies.

(4) Remove the expedited review process.

It is our view that the expedited reviews are not adding sufficient value beyond the information reported in MSTER to justify the resources devoted to completing them and can be eliminated without a loss of information to TAX.

(5) Allow expenditure review communications during the review process within and between MRS, DAFS, Governor's Office, Office of Attorney General, and, for jointly administered programs, across Executive Branch departments.

If the focus of the full reviews is whether the tax expenditure's policy objective is being achieved, then comments and analysis of OPEGA reports by Executive Branch departments/agencies should reflect the Administration's view of how the tax expenditure fits into their overall tax policy goals. Prohibiting communications between departments and agencies that administer the tax expenditure under review prior to the public release of the OPEGA report limits the feedback that OPEGA receives during the development of the report.

Finally, I would like to address the issue raised by some members of the working group concerning the collection of data for OPEGA reviews. Taxpayer information required to properly administer the tax system is a delicate balance between limiting taxpayer compliance burden and ensuring that the tax administrator has the information necessary to properly determine eligibility and benefit amount. MRS strives to develop tax returns, worksheets, and forms that only require the information needed to administer the tax expenditure program effectively and efficiently, and in a cost-effective manner. In addition, taxpayer confidentiality remains a top priority for MRS. Confidentiality leads to increased take-up of tax expenditure programs and increases voluntary compliance. We respectfully request that the working group take these issues into consideration

when discussing potential expansions of the tax data needed to be reported by taxpayers and collected and stored by MRS.

MRS/OTP looks forward to working with the working group over the coming weeks; representatives from MRS/OTP will be available for future meetings of the Working Group to provide additional information and to respond in detail to the Committee's questions.