

Oregon Tax Expenditures: Definition and Automatic Sunsets

Legislative Revenue Office

April 29, 2021

State of Oregon

LEGISLATIVE REVENUE OFFICE





Report Purpose

- Describe situations where differences of opinion may occur regarding the identification of a tax expenditure
- Suggest possible solutions for legislative consideration

State of Oregon

LEGISLATIVE REVENUE OFFICE





Statutory Definitions

Tax Expenditure Definition

ORS 291.201

- ...any law of the federal government or this state that exempts, in whole or in part, certain persons, income, goods, services or property from the impact of established taxes, including but not limited to tax deductions, tax exclusions, tax subtractions, tax exemptions, tax deferrals, preferential tax rates and tax credits.

Automatic Sunset Provision

ORS 315.037(3)

- Any tax expenditure enacted by the Legislative Assembly on or after January 1, 2014, shall apply for a maximum of six tax years beginning with the initial tax year for which the tax expenditure is applicable, unless the Legislative Assembly expressly provides for another period of applicability.





Identification Issues

- Meaning of “established tax”
- Tax base or tax expenditure
- In-lieu payments
- **Core Challenge:** How to administer the automatic sunset without universal agreement on tax expenditure interpretation?





Core Tax Calculation

Tax Base

×

Tax Rate

=

Tax

Income

×

%

=

\$



Examples from the 2021-23 TER

➤ Fuel Taxes

- **TER 3.005 Natural Gas and Propane Vehicles:** Organizations and people who use natural gas or propane as fuel in a motor vehicle may pay an annual special use license fee in lieu of a per-gallon tax.
- “According to the Oregon Department of Transportation, this provision does not meet the definition of a tax expenditure in ORS 315.037 and therefore does not have a sunset date. It is included in the report for informational purposes only.” – Oregon Tax Expenditure Report, 2021-23

➤ Corporate Activity Tax

- **TER 19.006 Milk:** Receipts from the sales of fluid milk by dairy farmers who are not members of an agricultural cooperative are not subject to the corporate activity tax.
- “Because it is not clear if the legislation enacting this statute expressly provided a period of applicability for this tax expenditure, ORS 315.037(3) may establish that this tax expenditure shall apply for a maximum of six years beginning with the initial applicable tax year. If this holds, then the last applicable tax year is 2025.” – Oregon Tax Expenditure Report, 2021-23

State of Oregon

LEGISLATIVE REVENUE OFFICE





Tax Expenditure Reports

Current Reports

- Federal and State Reports
- Policy analysis
 - Purpose
 - Effectiveness
- Spending and budget review
 - Biennial cost
- Administrative function?

Minnesota Criteria

- has an impact that is applied statewide;
- confers preferential treatment
- results in reduced tax revenue
- is not included as expenditure item in the state budget
- is included in the defined tax base for that tax
- is not subject to an alternative tax
- can be amended or repealed by a change in state law





Policy Options

- Assign authority for tax expenditure identification/determination
- Update the definition of a tax expenditure
 - Analytical value of the TER
 - Administrative role of the sunset
- Repeal the automatic sunset
 - Policy environment
 - Role of the TER



For More Information

- Legislative Revenue Office
- 900 Court St. NE, Room 160
- Salem, OR 97301
- 503-986-1266
- <https://www.oregonlegislature.gov/lro>