

ALICE Model Tax Expenditure Sunset and Review Act¹

Rationale: The Great Recession has shrunk state budgets across the country and exposed the systematic failure of states to account for billions of dollars spent each year through hundreds of special tax exemptions, credits, preferential rates, and other tax preferences or “tax expenditures.” Governments do use such tax tools—deductions, credits and exemptions—to advance public policy goals in areas like economic development, education and human services. Like direct spending, these can be effective, but the problem is that they don’t receive the same scrutiny that budgetary expenditures do, despite having the same effect on the state’s bottom line. Since there is no required review and evaluation of tax expenditures (referred to as a “sunset” provision), it is likely that some are no longer effectively advancing public policy goals. In tight fiscal times, it is all the more important than only tax expenditures yielding new jobs and more state revenue be continued.

As well, many tax expenditures are not well targeted and primarily benefit upper-income individuals who would have engaged in many subsidized activities regardless of the availability of the tax benefits. Some tax expenditures are written so narrowly that they benefit only a few or even just one company, often a payoff to a particular special interest enacted in one year that never comes up for review in the future and therefore continues year after year. Such narrow tax expenditures means higher costs on the majority of taxpayers – individuals and companies – that don’t benefit from such tax expenditures and must pay more themselves to fund public services. A sunset clause provides a scheduled review of each tax expenditure’s costs, benefits, and relevance and requires the legislature to actively renew a tax expenditure. This imposes both greater transparency on the tax expenditure part of the state budget and imposes greater fiscal discipline. And by requiring legislators to actively renew specific tax expenditures every few years, it imposes regular accountability on elected officials if they continue to approve special interest deals.

Summary: The [act] provides for the appraisal of tax expenditures and their automatic expiration unless renewed by the legislature, and provides for reappraisal of tax expenditures every five years after they are renewed. The act requires the Tax Commissioner and the Legislative Service Commission to prepare reports for each expiring tax expenditure, which assess the tax expenditure's effectiveness in achieving its intended purpose. It requires bills creating or renewing a tax expenditure to specify the purpose served by the tax expenditure, the date on which the tax expenditure expires, the class of taxpayers that will benefit from the tax expenditure, and methods to be used to appraise the tax expenditure. It creates the Tax Expenditure Sunset Review Committee to appraise tax expenditures and to make recommendations to the legislature regarding their renewal or expiration.

¹ This model was drafted by ALICE staff. ALICE would like to thank all those who provided feedback on this draft.

SECTION 1. SHORT TITLE. This [act] may be cited as the “Tax Expenditure Sunset and Review [Act]”.

SECTION 2. DEFINITIONS. In this act, “tax expenditure” means any tax provision which exempts, in whole or in part, certain persons, income, goods, services, or property from the impact of established taxes, including, but not limited because of failure of enumeration, to those devices known as tax deductions, tax allowances, tax exclusions, tax credits and tax exemptions.

SECTION 3. EXPIRATION OF FUTURE TAX EXPENDITURES. A tax expenditure created on or after [day of act’s enactment] expires at the end of the [thirty-first day of December] of the [fifth year] after the year in which it was created, unless, before its expiration date, it is renewed by the [legislature]. A tax expenditure does not apply to the taxable year that begins in the year the tax expenditure expires.

SECTION 4. TAX EXPENDITURE CREATION RULES. An act creating a tax expenditure shall specify:

- (a) The purpose served by the tax expenditure;
- (b) The date on which the tax expenditure expires;
- (c) The class of taxpayers that will benefit from the tax expenditure; and
- (d) Methods to be used to appraise the tax expenditure's effectiveness in serving its purpose.

SECTION 5. RENEWING TAX EXPENDITURES. The [legislature] may renew a tax expenditure by enacting an act that:

- (a) Addresses only that subject;

(b) Fulfills the criteria specified in Section 4, including specifying a new expiration date for the tax expenditure; and

(c) Improves the tax expenditure's effectiveness in serving its purpose; redefines the tax expenditure's purpose to serve or better serve a public need; retains or improves the statutes that enhance, or amends or repeals statutes that impede, the tax expenditure's effectiveness in serving its purpose; improves the tax expenditure's effectiveness in promoting economic growth and development; reduces the amount of revenue lost as a result of the tax expenditure; or re-enacts the tax expenditure to continue it without change.

(d) A repeal of a tax expenditure that has expired shall not be combined in an act renewing a tax expenditure.

SECTION 6. APPRAISAL OF TAX EXPENDITURES. Not later than the date that is twenty-four months before a tax expenditure expires, the [tax commissioner] shall notify the tax expenditure sunset review committee of the tax expenditure's expiration. The committee thereupon shall prepare a schedule for appraising the tax expenditure so that the appraisal and the report required under Section 9 will be completed not later than the date that is twelve months before the tax expenditure expires. The schedule shall provide for a public hearing on the tax expenditure. The committee chairperson shall send a copy of the schedule to the [tax commissioner], and the [commissioner] shall publish the schedule in the [register].

SECTION 7. REPORT ON TAX EXPENDITURES.

(a) For each tax expenditure scheduled for appraisal by the tax expenditure sunset review committee, the [tax commissioner], and any other state official responsible for administering the tax expenditure, shall submit to the committee a report that:

- (1) Explains the tax expenditure's purpose;
- (2) Expresses an opinion as to the public need for the tax expenditure;

(3) Expresses an opinion as to whether the tax expenditure has been impeded or enhanced by existing statutes;

(4) Describes how, if at all, the tax expenditure promotes economic growth and development;

(5) Provides an estimate of the amount of tax revenue lost each fiscal year as a result of the tax expenditure;

(6) Expresses an opinion as to whether the tax expenditure should be allowed to expire or be renewed; and

(7) Contains any other information relevant to the committee's appraisal of the tax expenditure.

(b) The report shall be submitted to the committee on or before the date scheduled for the tax expenditure's public hearing under Section 6.

(c) Each year, the [Tax Commissioner] shall prepare and submit to the committee a report that describes each tax expenditure created on or after [day of act's enactment] or renewed under Section 5; identifies the tax expenditure's intended purpose; and appraises the tax expenditure's effectiveness using the methods prescribed in the act creating the tax expenditure.

SECTION 8. HEARINGS ON TAX EXPENDITURES. At the time and place specified in the schedule, the tax expenditure sunset review committee shall hold a public hearing on the tax expenditure, at which any person may present testimony or tangible evidence relevant to the tax expenditure. After the hearing, the committee shall appraise the tax expenditure. In making its appraisal, the committee shall consider the reports submitted under Section 7 and knowledge gleaned from the hearing, but is not limited to these sources. Upon the committee's request, the [Department of Taxation], [Office of Budget and Management], and any other state agency shall provide the committee with any information in its possession the

committee requires to appraise the tax expenditure. The [Legislative Service Commission] shall provide drafting and clerical support to the committee.

SECTION 9. REPORTS ON TAX EXPENDITURES.

(a) The tax expenditure sunset review committee shall prepare a report of its appraisal of a tax expenditure that contains:

- (1) A statement of the purpose served by the tax expenditure;
- (2) An appraisal of the tax expenditure's effectiveness in serving its purpose;
- (3) An evaluation of whether the tax expenditure's purpose serves a public need;
- (4) An evaluation of whether other statutes have enhanced or impeded the tax expenditure's effectiveness in serving its purpose;
- (5) An appraisal of whether the tax expenditure promotes economic growth and development;
- (6) An estimate of the amount of revenue lost each fiscal year because of the tax expenditure;
- (7) A recommendation as to whether the tax expenditure should be allowed to expire or be renewed; and
- (8) Any other information the committee considers relevant.

(b) In an appendix to its report, the committee shall include a draft of a bill that would implement its recommendation and, if the tax expenditure is recommended for renewal, complies with Section 5. If the committee recommends renewal of the tax expenditure, the appendix shall include a commentary to the bill draft explaining how renewal of the tax expenditure complies with Section 5.

(c) The committee shall provide a copy of the report to the governor, the [Tax Commissioner], the [Director of Budget and Management], and each member of the [legislature]. The report is a public record.

SECTION 10. CREATION OF TAX EXPENDITURE SUNSET REVIEW COMMITTEE.

(a) There is created the tax expenditure sunset review committee composed of [nine] members. The [President of the Senate], within [fifteen days] after the first day of the first regular session of the [legislature] occurring after the effective date of this [act], shall appoint three members of the senate to the committee, not more than [two] of whom are members of the same political party. The [Speaker of the House of Representatives], within [fifteen days] after the first day of the first regular session of the [legislature] occurring after the effective date of this [act], shall appoint [three] members of the House of Representatives to the committee, not more than [two] of whom are members of the same political party. The Governor, within [fifteen days] after the first day of the first regular session of the general assembly occurring after the effective date of this [act], and with the advice and consent of the Senate, shall appoint [three] members to the committee, not more than [two] of whom are members of the same political party.

(b) Legislative members of the committee hold office until their successors are appointed or until they earlier cease to be members of the [Senate] or [House of Representatives]. Members appointed by the Governor hold office for terms ending on the [thirty-first day of December] of each even-numbered year. A member appointed by the governor continues to hold office after the expiration of the member's term until the member's successor is appointed, or until [thirty days] have elapsed, whichever occurs first.

(c) In the first regular session of the General Assembly occurring after the effective date of this [act], the committee shall elect a member of the [House of Representatives] as chairperson of the committee and a member of the [Senate] as vice-chairperson of the committee. In the second regular session of the [legislature] occurring after the effective date of this [act], the committee shall elect a member of the [Senate] as chairperson of the committee and a member of the [House of Representatives] as vice-chairperson of the committee.

(d) A vacancy on the committee shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy occurring before the expiration of the term to which the member's predecessor was appointed holds office for the remainder of the unexpired term.

(e) Members of the committee shall serve without compensation, but shall be reimbursed for actual and necessary expenses they incur in performance of their duties.

(f) The committee shall meet as often as necessary to perform its duties.

(g) [Five] members of the committee constitute a quorum. The committee shall not take any action without the concurrence of at least [five] members. So long as a quorum is present, a vacancy on the committee does not impair the ability of the remaining members to perform the committee's duties.

SECTION 11. EXPIRATION OF CURRENT TAX EXPENDITURES. A tax expenditure in existence on [day of enactment], expires at the end of [December 31], of the following year, unless, before the expiration date, it is renewed under Section 4. A tax expenditure in existence on [the day of enactment], that expires does not apply to taxable years beginning in the year of expiration

SECTION 12. PROCEDURES FOR REVIEWING TAX EXPENDITURES. On or before [January 1], [year after enactment], the [Tax commissioner] shall prepare a list of the tax

expenditures in existence on [day of enactment], and shall provide a copy of the list to the chairperson of the tax expenditure sunset review committee. The committee thereupon shall prepare a schedule under Section 6 for appraising the listed tax expenditures so that the appraisal and the report required under Section 9 will be completed no later than [November 1], [year after enactment]. The schedule shall provide for a public hearing on each tax expenditure. The chairperson of the committee shall send a copy of the schedule to the [Tax Commissioner], and the [Tax Commissioner] shall publish the schedule in the [Register] . On or before the date scheduled for a tax expenditure's public hearing, the [Tax Commissioner], and any other state official responsible for administering the tax expenditure, shall submit the reports required under Section 9. The committee shall proceed to appraise the listed tax expenditures under Section 8, and to report upon its appraisal of the listed tax expenditures under Section 9.

SECTION 13. INITIAL APPOINTMENT TO TAX EXPENDITURE SUNSET REVIEW COMMITTEE.

(a) Not later than [thirty days] after [day of enactment], the Governor, with the advice and consent of the [Senate], shall make initial appointments to the tax expenditure sunset review committee under Section 10. The members thus appointed hold office for terms ending on [December 31], [year after enactment]. Thereafter, Gubernatorial appointments and terms of office shall be as prescribed in Section 10.

(b) Not later than [thirty days] after [day of enactment], the [President of the Senate] and the [Speaker of the House of Representatives] shall make initial appointments to the tax expenditure sunset review committee under Section 10. The members thus appointed hold office for terms ending as prescribed in Section 10.

SOURCE LAWS.

Ohio HB 61 (2006) – http://www.legislature.state.oh.us/bills.cfm?ID=126_HB_61

Oregon HB 2067 (2009) – <http://www.leg.state.or.us/09reg/measpdf/hb2000.dir/hb2067.en.pdf>

Reports & Articles:

[*Promoting State Budget Accountability Through Tax Expenditure Reporting*](#), Center on Budget Policy and Priorities.

[*Tax Code Sunsets and the Dawn of Majority Rule*](#), Oregon Center for Public Policy

[*Don't forget the tax expenditures: The need for sunset dates*](#), Washington State Budget & Policy Center