

Summary of Principles Used in Identifying Tax Expenditures Included in Oregon's Tax Expenditure Report

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In 1995, Oregon passed the Budget Accountability Act¹ requiring the Governor to produce a Tax Expenditure Report each biennium with the assistance of the Department of Revenue and Department of Administrative Services. The law defined tax expenditure as, "...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."

This reporting definition is unique to Oregon, because definitions used for reports by other states or federal agencies require a deviation from a "normal," "ideal," or "reference" tax system. While the different definitions result in some difficulty comparing across states, the difficulty would remain even if the definitions were the same. There is not always a clear delineation between what is and isn't a tax expenditure under any definition.²

Because this is a complex and nuanced area of analysis, the principles used may change or need clarification over time. What follows reflects the most current implementation of the statutory definition of tax expenditures.

Principles Used in Identifying Tax Expenditures for Reporting Purposes

A set of guiding principles has been developed to identify Oregon tax expenditures for purposes of reporting. Generally, a provision of law is reported as a tax expenditure if it has all of the following characteristics:

- It reduces taxes (not penalties, interest, or "fees") owed;
- It is reported by the Federal Joint Committee on Taxation as a reduction in federal taxable income and that reduction flows through to Oregon taxable income; or it listed in Oregon laws as a specific reduction of income taxable by Oregon, or a credit against Oregon tax;
- It is not a filing status, tax rate or other mathematical feature of the tax calculation that applies to all taxpayers (e.g. the standard deduction is viewed as an extension of a zero rate tax bracket);
- It is not a subtraction of ordinary and necessary expenses in a business that operates for profit;
- It is not a reduction in tax that is necessary to avoid double-taxation of income (e.g. credits for "claim of right" or taxes paid to another state); and
- If it is in Oregon law, it is reflected on a tax return or tax statement. It is not a rebate that occurs separately from tax filing (even if it reduces net tax receipts -- e.g. Oregon Greenlight Labor Rebate).

¹ Sections 62, 63, and 65 of Oregon Laws 1995, Chapter 746 (HB 2255).

² For example, Oregon enacted a statewide lodging tax in 2003. The tax was to only apply to tourism and travel related lodging types. For illustrative purposes it is useful to focus on hospital stays as non-tourism related lodging. The lodging tax laws were changed in 2005 using broader language to describe the lodging subject to tax. As a result, explicit exemptions for hospital stays and other lodging types were added to ensure they weren't taxed. Since hospital stays were never intended to be taxed, despite the explicit exemption, that exemption may not be a tax expenditure required to be included in Oregon's Tax Expenditure Report because it may not be a deviation from "established taxes."

Principles Used in Combining or Separating Statutes for Tax Expenditure Reporting

In addition to determination of whether a provision is a tax expenditure, the number of tax expenditures reflected in one or more provisions of law is also open to interpretation. Generally, we combine or separately report provisions based on the following principles:

- A single tax expenditure in Oregon law is generally contained within a single statute.
- Multiple statutes can allow a single tax expenditure if they have the same purpose and are administered with the same mechanisms.
- A single statute can describe multiple tax expenditures if the purposes of the provisions are distinct.
- A single statute can have multiple tax expenditures if the purposes for enactment are distinct, or administration of the provisions are distinct.

Problems Using the Tax Expenditure Reporting Definition for Other Purposes

Because Oregon's law defining tax expenditures is unique, and because all definitions require significant interpretation to identify and enumerate tax expenditures, using the Tax Expenditure Report in some ways may be problematic. For instance, it is difficult to interpret comparisons of the number of listed tax expenditures, or the revenue impact of tax expenditures between years or states. Observed changes may not be as substantial as they appear because they may only represent changes in interpretation.

The definition of tax expenditures in Oregon law is intended to specify reporting requirements. Using the definition for other purposes may be problematic. For instance, there have been proposals to limit or reduce all tax expenditures. However, since the reporting definition is open to interpretation it might not be clear which provisions are covered. Also, even though estimates of the tax reduction due to a provision can be made, the income (or property, etc.) may not be taxable for another reason³.

³ There are many reasons that income or property may not be taxable. For instance, federal law prohibits tax on federal agencies. Another example is that some "income" is exempt from taxation because the amount is not known (such as the difference between income measured by cash accounting versus accrual accounting).