

Factors 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 (DOR) and Department of Administrative Services. For the purpose of the report, 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.” (ORS 291.201)

The purpose of this paper is to lay out how the Research Section of DOR determined what to include or exclude in the 2019-21 edition of the Oregon Tax Expenditure report.

This definition of tax expenditures for the report is unique to Oregon; definitions used for similar reports by other states or federal agencies generally require that the law be a deviation from a “normal,” “ideal,” or “reference” tax system. The different definitions used in various states result in some difficulty comparing tax expenditures across states, but the difficulty would remain even if the same definition were used. There is not always a clear difference between what is and isn't a tax expenditure under any definition.²

Because this is a complex and nuanced area of analysis, there can be differences of opinion about whether or not a particular provision of tax law constitutes a “tax expenditure” under the definition in Oregon law. For the purposes of deciding what to include in the 2019-21 edition of the Tax Expenditure Report a number of factors were considered, and are explained below. Ultimately, a number of provisions were included in the report that some may not consider to be tax expenditures, but they are included in the report for informational purposes and may be revised in later editions.

Factors Used in Identifying Tax Expenditures for Reporting Purposes

Generally a provision of law was reported as a tax expenditure in this report if it met some of these factors:

- It is reflected on an assessment record, tax return, tax statement, or other tax filing document as a deduction, exclusion, subtraction, exemption, deferral, preferential tax rates, or tax credit.
- It applies only to a targeted group of taxpayers and reduces the tax owed through some other mechanism. For example, specifying a formula for appraising certain property so that it results in a lower taxable value.
- It reduces tax revenue for a tax program. Reductions in penalties, interest, or “fees” owed are not included.
- It is reported by the federal Joint Committee on Taxation as a reduction in federal taxable income, and that reduction flows through to Oregon's treatment of that income. This applies to personal and corporate income taxes.

¹ Sections 62, 63, and 65 of Oregon Laws 1995, Chapter 746 (HB 2255). Now codified in ORS Chapter 291.

² For example, Oregon enacted a statewide transient 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, and added explicit exemptions for hospital stays and other lodging types. Because it appears that hospital stays were never intended to be taxed, despite the explicit exemption added in statute, 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.”

Generally a provision of law was not reported as a tax expenditure in this report if it met any of these factors:

- It is a filing status, tax rate, or other mathematical feature of the tax calculation that applies to all taxpayers. Some examples:
 - The standard deduction is viewed as an extension of a zero rate tax bracket.
 - Constitutional limits on property values for taxation and amounts of property taxes (e.g. Measure 5 and 50) are seen to define the established tax for Oregon’s property tax system.
- It is an exclusion implemented when the tax was created, as a way to define the tax base.
- It is a subtraction of ordinary and necessary expenses in a business that operates for profit.
- It is a reduction in tax that is necessary to avoid double-taxation of income.
 - For example, credit for “claim of right” or credit for taxes paid to another state.
- It is a rebate or other spending program. The program may appear to be tied to taxes, but occurs separately.
 - For example, Oregon Greenlight Labor Rebate.

Factors 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 combined or separated provisions based on the following factors:

- 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.
 - For example, the special assessment for farm property (2.123 in the report) is spread across several different Oregon statutes.
- A single statute can describe multiple tax expenditures if the provisions have distinct and different purposes.
 - For example, ORS 825.017 contains several exemptions from Oregon’s weight-mile tax that cover a variety of different public purposes.
- A single statute can have multiple tax expenditures if the purposes for enactment are distinct, or administration of the provisions are distinct.

Issues with Using the Tax Expenditure Reporting Definition for Other Purposes

Because Oregon’s law defining tax expenditures is unique, and because all definitions require 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. Changes in revenue impacts and the number of tax expenditures listed may not be as substantial as they appear because they may only represent changes in interpretation.

Because the definition of tax expenditures in Oregon law is intended to specify requirements for reporting, using the definition for other purposes may be problematic. For instance, there have been proposals in Oregon to limit or reduce all tax expenditures. However, because the reporting definition in law is open to interpretation it might not be clear which provisions would be covered by such a proposal. For example, if there was a proposal to reduce tax expenditures by 10%, would that mean that 10% of property owned by religious organizations (2.085 in the report) should be taxed? Also, even though revenue impact estimates can be made for the various tax provisions described in the report, it may not be possible to actually change the law to tax the associated income (or property, etc.)³.

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).