

# **TASK FORCE ON TAX EXPENDITURES**

## **Minutes of the 1st Meeting of the 2018 Interim**

**June 28, 2018**

### **Call to Order and Roll Call**

The 1st meeting of the Task Force on Tax Expenditures was held on Thursday, June 28, 2018, at 3:00 PM, in Room 154 of the Capitol Annex. Representative Ken Fleming, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Christian McDaniel, Co-Chair; Representative Ken Fleming, Co-Chair; Senators David P. Givens, Dennis Parrett, and Wil Schroder; Representatives Jason Petrie, Steven Rudy, Diane St. Onge, James Tipton, and Susan Westrom.

Guests: Greg Harkenrider, Deputy Executive Director, Governor's Office of Economic Analysis, Office of State Budget Director (OSBD); Dr. Michael Jones, Deputy Executive Director, Governor's Office for Policy Research, OSBD; Dan Bork, Commissioner, Department of Revenue; John Bevington, Commissioner, Department for Business Development, Cabinet for Economic Development (CED); Jessica Burke, General Counsel/Executive Director, Office of Legal Services, CED; Sarah Butler, Director, Incentive Administration Division, CED; Regina Stivers, Deputy Secretary, Tourism, Arts, and Heritage Cabinet (TAHC); Jay Hall, Executive Director, Kentucky Office of Film Development, TAHC; and Craig Potts, Executive Director, Kentucky Heritage Council and State Historic Preservation Officer, TAHC.

LRC Staff: Amit Shanker, Katy Jenkins, Micah Johnson, and Ben Thompson.

### **Overview of the Tax Expenditure Analysis 2018-2020**

Mr. Harkenrider and Dr. Jones testified on the contents of the Tax Expenditure Analysis that is produced by OSBD.

In response to a question from Senator Givens, Dr. Jones said when businesses fail to comply with sales tax law, it is hard to determine whether noncompliance is due to ill-intent or being ill-informed. Mr. Harkenrider gave an example of noncompliance as a farmer buying tax exempt and non-exempt items at a farm supply store, then using an agricultural certificate to buy all of the items together, circumventing sales tax on the non-exempt items. At least 30 percent of sales tax noncompliance is due to malicious intent.

In response to questions from Chair Fleming, Mr. Harkenrider noted that due to Metropolitan College's repeated qualification for tax exemption, OSBD has netted the actual numbers out, leaving the figure to show as \$0 on the Tax Expenditure Analysis. Dr. Jones noted that sometimes businesses earn tax credits that are unused due to other tax credits that have already eliminated that liability.

### **Interaction between the Department of Revenue and Tax Expenditures**

Commissioner Bork presented on the Department of Revenue's dealings with tax expenditures.

In response to a question from Chair Fleming, Commissioner Bork said that the Department of Revenue provides direction and interpretation on tax expenditures only in cases where it could be debated whether something is taxable or not. As an example, since it is clear in the law that hair care is not taxed, the Department of Revenue would provide no input on that issue.

In response to questions from Representative Petrie, Commissioner Bork noted that certain nonprofits had taken the position that their tax exempt status pertained to sales tax as well as property tax, but a recent Kentucky Supreme Court ruling determined that nonprofits were exempt only from property taxes.

### **Overview of the Cabinet for Economic Development Programs**

Commissioner Bevington, Ms. Burke, and Ms. Butler testified on the different incentives that CED uses to convince businesses to relocate to, or remain in, Kentucky.

In response to a question from Chair Fleming, Ms. Butler said Limited Liability Entity Tax (LLET) credits are often not utilized because businesses are not familiar with how to claim those credits. Commissioner Bevington noted that businesses have to run a profitable operation in order to retain LLET credits.

In response to questions from Representative Petrie, Commissioner Bevington noted that it is hard to determine a return on investment for economic development incentives. Commissioner Bevington stated that the negative impact would be tremendous if Kentucky provided no economic development incentives. Ms. Burke stated that CED can show the number of jobs created and the exact amount of capital spent, but a traditional return on investment formula would require large assumptions. Commissioner Bevington stated that 1,100 applications have been approved for the Kentucky Business Investment Program that lures new business into the state and 60 applications have been approved for the Kentucky Reinvestment Act incentive that keeps businesses from leaving the state.

In response to a question from Senator Parrett, Commissioner Bevington stated that CED is analyzing data from other states regarding up-front cash incentives for new business.

In response to a question from Representative St. Onge, Commissioner Bevington said CED tracks proposed projects. Commissioner Bevington stated that a company that outperforms its goals still only receives the incentive that was agreed upon, while a company that underperforms will receive a reduced incentive.

In response to a question from Representative Westrom, Ms. Burke noted that all incentives and payments are tracked and stored publicly on the CED website.

**Overview of the Tourism, Arts, and Heritage Cabinet Programs**

Deputy Secretary Stivers, Mr. Hall, and Mr. Potts testified about the tax incentives offered by TAHC.

There being no further business, the meeting was adjourned at 5:04 PM.