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Senator Libby, Representative Terry, and Members of the Working Group to Review the Process of Ongoing Review of Tax Expenditures by the Legislature:

My name is Elizabeth Frazier and I am an attorney at Pierce Atwood. On behalf of our client, the Maine Real Estate and Development Association (MEREDA), as well as a number of other clients, I am pleased to provide these comments on Maine's tax expenditure review process.

Overview

The Maine Tax Expenditure Working Group (MTEWG) has been tasked with reviewing the current process for all tax expenditure reviews conducted by the Office of Program Evaluation and Government Accountability (OPEGA). The MTEWG has asked for public input with respect to three questions. These comments serve as a response to those three questions, summarized here and discussed in further detail below.

- **What is working well in the current process?** A great deal. Legislators and the public have trust in OPEGA and the GOC as nonpartisan, thoughtful, evidence-based decision making bodies. Both OPEGA and the GOC have credibility and the respect of the business community.
- **What are the challenges in the current process?** We believe some of the challenges are already in the past – specifically, the heavy lift of reviewing a tax expenditure for the first time. Most expenditures have now gone through at least one full review. However, challenges in the current process include timing and lack of action to effectuate recommendations in the reviews.
- **What ideas should the Working Group consider for change to and improvement of the current process?**
 - Create a long-term timeline for the review of tax expenditures to provide notice and predictability to the public and legislators who may have an interest in the expenditure program;
 - Differentiate between first-time tax expenditure reviews and later reviews while allowing OPEGA flexibility to develop a report based on information they can access in a timely manner; and
 - Align tax expenditure reviews with present day issues of concern, budgetary initiatives, and/or the State's 10-Year Economic Development Plan.

Discussion

What is working well in the current process?

Since 2015, OPEGA has been tasked with conducting regular reviews of Maine’s tax expenditures, including incentives, credits, exemptions and deductions. Certainly, Maine has one of the most comprehensive and robust tax expenditure review processes in the nation. That robust design gives assurance to both legislators and the public that the process is fair, practical, and predictable as well as nonpartisan.

The Government Oversight Committee (GOC) is a critical cog in the tax expenditure review process. Their careful approach to review has led to a number of smart and timely policy discussions. The members of the GOC, likely due to the committee’s nature as a non-policymaking body, are among the most considerate and thorough – their approach to analysis is comprehensive and evidence-driven. Both OPEGA and the GOC are a credit to Maine’s political and administrative processes – more of our policy-making entities could learn from their example.

What are the challenges in the current process?

Just as OPEGA exists to review the efficacy of tax expenditures, MEREDA applauds the work of this group to review the efficacy of the review process. There are a number of challenges with the current review process that necessitate the need for change and improvement. We believe that the tax expenditure review process is only useful to the extent it is actionable for policy-making. For that to happen, the review process needs to be more timely, and reviews for economic development initiatives could be examined within the context of other initiatives and the State’s economic development goals, as found in the 10-year Economic Development Strategy for Maine.

What ideas should the Working Group consider for change to and improvement of the current process?

Create a More Timely Review Process to Enable Actionable Policymaking

Today, the GOC establishes a schedule of ongoing review for those tax expenditures assigned for full or expedited review. However, once the GOC puts a review on the list, there is no telling how long it may take before the credit review is complete. Additionally, it is often the case that OPEGA’s recommendations are not effectuated by the Taxation Committee because of time constraints. This can make be a challenge for tax credit recipients or interested parties looking to engage with the process and prepare for potential changes to important economic incentive programs.

We recognize that some of the challenges are due to the “new” nature of the tax expenditure review process. When OPEGA dives into a tax expenditure for the first time, they are starting

from scratch and must look at everything from the mechanical structure of the program to the best practices for the program to the mountains of data that may or may not be available to understand the impact of the program. As Maine has implemented its tax expenditure review program over the last half-decade, much of this first look work on existing credits has now been completed.

Going forward, we would suggest that the first time a tax expenditure is reviewed, the review could be structured differently. In future, when a new tax expenditure program is established, it could be first reviewed by OPEGA for structure and best practices. Later expenditure reviews could then focus solely on the efficacy of the program. Additionally, later expenditures could be more expeditious, or OPEGA could have the flexibility to address only those matters they are able to address during a given time frame. For example, if they can't get data on a specific question, they could decline to respond to that question. This would leave some open questions, but significantly speed up the process and help expedite legislative action.

Align the Reviews with the State's Economic Development Goals

As mentioned at the first working group meeting, consideration of these initiatives in a vacuum is not conducive to understanding their actual effectiveness. OPEGA's staff has done a tremendous job following their mandate, but the mandate itself must change with respect to the review of tax expenditures, so that the reports can be more useful to policymakers. Otherwise, the reports are more or less useless to legislators because they cannot be used in the decision-making process. Additionally, legislators may be looking to take policy action on certain expenditures consistent with state budgeting and other legislative priorities in a given year. When the work of the GOC and OPEGA does not align with those efforts, the Taxation Committee does not have the information it needs to act. This can stymie economic development.

This problem could be remedied by either focusing on reviewing those expenditures that align with the State's economic development goals, or focusing on those expenditures that will be most pressing to the Taxation Committee any given legislative session.

Conclusion

There are many reasons to celebrate Maine's tax expenditure review process. It is one of the most comprehensive and robust tax expenditure review processes in the nation. In addition, the work done by OPEGA has been nothing short of extraordinary. However, as with most things, there is always room for improvement. We provide these comments in an attempt to help make Maine's tax expenditure review process more timely and better aligned with the State's economic development goals. Please do not hesitate to reach out with any questions or comments.

Best,

Elizabeth Frazier, Esq.