Tax & Budget

WEAK REVIEW:

Tax Expenditure Review Committee should balance tax breaks against Ohio's needs

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The state spends taxpayer revenues through the budget, but also through the tax code, in tax breaks, known as tax expenditures. Ohio's lawmakers watch the budget carefully but just started to look at spending through the tax code this year. In this policy brief, Policy Matters Ohio examines the initial activities of the new Tax Expenditure Review Committee and finds that hearings have been far less rigorous than budget hearings. More scrutiny is needed.

Tax expenditures lower tax liability for a person, business or other entity. They represent revenue forgone, or taxpayer dollars the state could take in but has decided not to. The Tax Expenditure Review Committee (TERC) will look at all of Ohio's 129 tax breaks over eight years and are to recommend continuing, modifying or repealing each. This year they looked at 15 items, all sales tax exemptions, with a value of $5.5 billion in total.

Table 1

Total value of state and local sales tax exemptions reviewed by the Tax Expenditure Review Committee in 2018 (millions of dollars)

Tax Expenditure	2018	2019	% change	Proponent testimony
Sales to churches and other non-profits	$756.1	$789.9	4.5%	N
Sales to state and subdivisions of the state	$148.7	$148.7	0.0%	N
Sales by churches and other non-profits	$58.8	$61.8	5.1%	N
Sales of TPP and materials used in manufacturing*	$2,752.3	$2,862.5	4.0%	Y
Sales of TPP and materials used in packaging*	$317.7	$329.6	3.7%	Y
Sales of TPP for electricity providers	$363.9	$372.7	2.4%	N
Sales of TPP used in agriculture and mining*	$482.7	$489.2	1.3%	YY
Sales of agricultural tile and portable bins	$1.4	$1.4	0.0%	Y
Materials and equipment used in production of printed materials*	$12.2	$12.3	0.8%	N
Sales of TPP used in storing, preparing and serving food	$50.9	$52.5	3.1%	N
Sales of TPP for use in egg production	$4.7	$4.8	2.1%	Y
Sales of building and construction materials for certain structures	$265.2	$266.8	0.6%	N
Sales of TPP for public utility services*	$144.8	$144.8	0.0%	N
Parts and labor on repair of product under warranty	$64.9	$65.4	0.8%	N
Sales of motor vehicles used in other states	$64.1	$65.3	1.9%	Y
Total value of tax exemptions by the TERC in 2018	$5,488.4	$5,667.7	3.3%	-----

Source: Policy Matters Ohio, based on Tax Dept. state revenue estimates provided to the Tax Expenditure Review Committee on April 11, 25th and May 9, 2018, and Ohio Legislative Service Commission local revenue estimates presented in testimony to the committee on April 11, 2018 and via memo, April 25, 2018. Estimates marked with an asterisk are from last year's tax expenditure report; others are updated projections for next year's report; these estimates may change before final publication next year. Estimates for impact in FY 2020 and 2021, not shown here, were provided for updated items. State estimates for the agriculture and mining exemption are taken from the Tax Dept. memos but local government estimates are from LSC memo "Estimated fiscal costs" (5/8/18) which combines agricultural and mining tax breaks. Note that the mining exemption as well as the agricultural exemption received proponent testimony; that is why there are two "Ys" in that cell. TPP means 'Tangible personal property;' the definition of which for the sales tax is available https://www.tax.ohio.gov/sales_and_use/information_releases/st200306.aspx

The TERC held three hearings on the items in Table 1. Unlike budget oversight committees, this committee was not funded, so it had no dedicated staff nor did it contract for legal, accounting or economic expertise. The Department of Taxation and the Legislative Service Commission (LSC) provided summary information on each item. Hearing notices invited stakeholders to provide testimony and address criteria for evaluation, including purpose, need and effectiveness. Eight of the 15 items reviewed received no proponent testimony. The Committee wrapped up its oversight in three sessions of about an hour each.

While the Committee complied with the law, its review has not yet provided to the public complete - or, in many cases, any - answers to the criteria suggested in the statute.
There are good reasons to take a closer look. Tax expenditures represent an estimated $9 billion in annual revenues foregone by the state. Some have been on the books for 80 years. They have been widened by legislation over time. They grow faster than inflation. The National Council of State Legislatures (NCSL) found the neighboring states of Indiana, Kentucky, Michigan, Pennsylvania and West Virginia have narrower exemptions or tax items Ohio exempts in several categories reviewed this year.

The committee's 2018 report has not yet been released, but at this point, far more information is needed for it to make the decisions the statute calls for. After three hearings there is no information on the number of beneficiaries of each tax break, or the purpose of most, when both should be a precondition for a serious analysis of whether they remain necessary and effective. Scrutiny of budgetary spending is far more rigorous. To meet its mandate and provide careful oversight, TERC should operate like the Joint Medicaid Oversight Committee or the Joint Education Oversight Committee and be provided with the resources to do so.

The committee should refuse to recommend continuing the 15 sales tax breaks examined to date before a more extensive investigation that would determine needed modifications. It should defer judgement on the eight tax expenditures which received no supporting testimony, at least until some explanation is provided for why these are needed. Most importantly, the committee should carefully evaluate each tax break against Ohio's needs. Many witnesses asked the committee to do so. The state has cut funding for libraries and local governments and underfunded early childhood education, public transit and other services relative to need. Yet tax expenditures – which have every bit as much impact on the state budget – have continued to grow and proliferate.

The TERC should evaluate those tax breaks that are broader than neighboring states for reduction, narrowing or addition of guardrails. For business tax breaks, it should define good corporate behavior, documenting how beneficiaries pay their workers and whether they fully comply with state law. The committee should consider adding guardrails to ensure recipients pay taxes, comply with state laws and provide information that allows for thorough review.

The LSC estimated that counties and transit authorities lost nearly $1.1 billion in 2018 for the 15 sales-tax breaks. The committee should ask the Department of Taxation to break down the impact of each sales-tax exemption by county and transit agency. The report also includes recommendations on some of the specific tax breaks the committee examined.

Beyond a review of specific tax expenditures, the Tax Expenditure Review Committee should look to cut back on tax breaks. As the tax counsel to the Ohio Manufacturers' Association told the 2020 Tax Policy Commission two years ago, "To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged."