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Senate

State of Minnesota

S.F. No. 1102 – Tax expenditure review provisions; establishing a tax expenditure review commission

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This bill proposes requirements for new or renewed state tax expenditures, establishes a legislative commission to review state tax expenditures, and modifies the requirements for the tax expenditure report and tax incidence report.

Section 1. Requirements for new or renewed tax expenditures. Modifies existing law requiring a purpose statement for new tax expenditures to also require that any bill creating a new tax expenditure or extending an expiring tax expenditure must sunset after eight years. Effective beginning with the 2022 legislative session.

Section 2. Tax expenditure review commission.

Subdivisions 1 and 2. Establishment; Definitions. Establish the commission and list definitions applicable to the section. The definitions applicable to the commission's mandate appear in section 6.

Subdivision 3. Membership. Sets forth the membership of the commission. Members must be appointed by January 31 of a regular session in an odd-numbered year. The chair of the house or senate taxes committees are not required to be appointed to the commission, but if the chair is not appointed, that person is an ex officio, non-voting member. The commission consists of:

- Two senators appointed by the senate majority leader and two senators appointed by the senate minority leader;
- Two representatives appointed by the speaker of the house and two representatives appointed by the house minority leader; and
- The commissioner of revenue or their designee.

Subd. 4. Duties. Requires the commission to complete an initial review of state tax expenditures in the first three years after the commission is established, if none was identified in the legislation enacting the expenditure. The commission may identify criteria for evaluating the effectiveness of a tax expenditure.

Each year following the initial review, the commission must review and evaluate Minnesota's tax expenditures on a regular, rotating basis and ensure that each expenditure is evaluated at least once every ten years. The schedule may evaluate expenditures affecting particular constituencies or policy areas in the same year but must evaluate a similar number of expenditures from each tax type each year. The commission may opt to exclude from review a tax expenditure that is adopted by reference to federal law. The commission must hold a public hearing on an expenditure before December 1 of the year the commission issues a report reviewing that expenditure.

Subd. 5. Components of review. Sets forth the minimum requirements for a review of a tax expenditure. The commission may omit a component if evaluation is not feasible due to lack of data, third-party research, staff resources, or lack of a majority of support for a recommendation. The components include:

1) estimation of the annual revenue loss resulting from the expenditure;
2) identification of the purpose of the tax expenditure if none was identified in the enacting legislation;
3) estimation of the measurable impacts and efficiency of the tax expenditure in accomplishing its purpose;
4) comparison of the effectiveness of the tax expenditure and a direct expenditure with the same purpose;
5) identification of potential modifications to the tax expenditure to increase its efficiency or effectiveness;
6) estimation of the amount by which the tax rate for the relevant tax could be reduced if the revenue lost due to the tax expenditure were applied to a rate reduction;
7) estimation of the incidence of the tax expenditure and the effect of the expenditure on the incidence of the state's tax system (if the tax expenditure is a significant tax expenditure);
8) consideration of the cumulative fiscal impacts of other state and federal taxes providing benefits to taxpayers for similar activities; and
9) recommendation regarding whether the expenditure be continued, repealed, or modified.

Subd. 6. Department of Revenue; research support. Requires the Tax Research Division of the Department of Revenue to provide data required to complete the review in provisions 1, 6, 7, and 8 above. The Tax Research Division must provide the commission with summary data in support of a review, if so requested. The data must comply with current law governing statistical studies that ensure no identifiable taxpayer information is disclosed.

Subd. 7. Report to legislature. Requires the commission to submit a report to the house and senate taxes committees by December 15 each year. The report must include the results of the commission's previous year review of tax expenditures including components 1 to 9 listed above. In the initial three-year period of review, the report may be limited to purpose statements and metrics for evaluating effectiveness of tax expenditures and may include relevant publicly available data on an expenditure. The house and senate taxes committees must hold a public hearing during the regular legislative session in the year following the year the report was submitted.

Subd. 8. Terms; vacancies. Provides that commission members' terms begin upon appointment and end at the beginning of the regular legislative session in the next odd-numbered year. Vacancies must be filled by the appropriate appointing authority and members may be removed or replaced at the pleasure of the appointing authority. If a commission member is no longer a member of the legislative body from which they were appointed, the member vacates their position on the commission.

Subd. 9. Officers. Requires the commission to elect a chair and vice-chair, who must alternate every two years between members of the house and senate. The chair and vice-chair may not be from the same legislative body.

Subd. 10. Staff. Requires the Legislative Budget Office staff to provide professional and technical assistance to the commission as necessary.

Subd. 11. Expenses. Provides that the commission and its staff must be reimbursed for expenses incurred in carrying out their duties, in accordance with polices adopted by the LCC.

Effective the day following final enactment. Appointing authorities must made initial appointments by January 15, 2022 and the speaker of the house must designate one commission member to convene the first meeting by July 1, 2022. The commission's first report is due December 15, 2022.

Section 4. Preparation; submission. Changes the submission date for the tax expenditure budget report from February 1 to November 1 of each odd-numbered year. Effective for tax expenditure budget reports due on or after November 1, 2023.

Section 5. Contents. Modifies the requirements for the contents of the tax expenditure budget report to include the purpose of the expenditure as identified under current law or by the commission; the incidence of the expenditure if it is a significant sales or income tax expenditure, and the revenue-neutral amount by which the applicable tax rate could be reduced if the expenditure were repealed. Strikes requirements relating to inclusion of purpose statements and tax burden distribution in the tax expenditure report. Effective for tax expenditure budget reports due on or after November 1, 2023.

Section 6. Definitions. Provides terms relevant to the provisions of the Report, effective for tax expenditure budgets due on or after November 1, 2023:

- **"Business tax credit"** means a credit claimed by a corporation against corporate franchise tax or claimed by a pass-through entity against the individual income tax;
- **"Pass-through entity"** means a partnership, LLC, or S corporation;
- **"Significant tax expenditure"** means a tax expenditure, excluding an expenditure that is incorporated by reference to a federal definition of income, results in a revenue reduction of less than $10 million per biennium; or is a business tax credit;
- The definition of **"tax expenditure"** is modified to include provisions used to mitigate "tax pyramiding"; and
- **"Tax pyramiding"** means imposing sales taxes on business-to-business transactions rather than on sales to final consumers.

Section 7. Biennial report. Changes the submission date for the tax incidence report from March 1 of each odd-numbered year to March 1, 2024 and each even-numbered year thereafter. Effective for tax expenditure budgets due on or after November 1, 2023.