

7 Maine tax breaks we should talk about cutting

BY ALBERT A. DIMILLO JR.
SPECIAL TO THE BDN

The Maine Clean Election initiative approved by voters Tuesday is to be funded by the elimination of certain business tax benefits, specifically \$6 million every two years in “low performing, unaccountable” corporate tax exemptions, deductions or credits “with little or no demonstrated economic development effect.”

The March 1, 2015, Maine Revenue Services report presented to the taxation committee estimated the fiscal year 2016 business “tax expenditures” to be about \$1.7 billion. In addition, the report estimated that individuals benefited from about \$2.5 billion in tax expenditures and that there was an additional \$200 million-plus for nonprofits and governmental organizations.

In total, the loss of revenue is estimated to be \$4.4 billion a year.

The tax expenditure reports have been reviewed by the Legislature and special committees several times in the past with no real changes.

When you look at the detail of the \$1.7 billion in business tax expenditures, I believe there is only about \$45 million that should be examined to determine if it should be reduced or eliminated.

Here’s how I get to that number: by eliminating tax expenditures that are both consistent with other states and that are fairly consistent or equitable with tax expenditures received by individuals. As I noted above, individual tax expenditures are \$800 million greater than the business tax expenditures.

Let me break it down further. Of the sales tax expenditures, \$2.3 billion came from the exemption of sales tax on services, with businesses receiving \$1.3 billion and individuals receiving about \$1 billion. Despite the recent attempts to tax services in Maine, the fact is very few states tax services purchased by either individuals or businesses.

In terms of equity and consistency, Maine’s sales tax treatment of services does not create an unfair “tax break” for businesses, and, accordingly, the taxation of services should be eliminated from the \$1.7 billion in business tax breaks on

the table for review.

That reduces the \$1.7 billion down to \$400 million. About another \$285 million in sales tax expenditures relates mainly to the exclusion of sales tax on the costs of the manufacturing process and the equipment used in manufacturing. The vast majority of states have the same exclusions, so Maine is consistent with other states.

While there are no direct comparisons to sales tax exclusions for manufacturing on the individual side, the tax expenditures that benefit individuals include about \$368 million from the exclusion of sales tax on food, medical costs and home utilities.

Based on equity and consistency, there are no significant sales tax changes that should be made related to business at this time.

At this point we are down to about \$115 million in business tax expenditures, which consist of about \$45 million in various income tax credits and about \$70 million in property tax benefits on business equipment.

Maine’s treatment of property tax on business equipment is consistent with the majority of states. With regard to consistency with individuals, Maine does not tax individuals’ personal property, so the tax treatment is relatively consistent with the business treatment.

Accordingly, the only remaining business tax expenditures that should be examined in detail are the approximately \$45 million in income tax credits.

The \$45 million in tax credits is different than the other tax expenditures in that the others are the exclusion of items from a tax, while the \$45 million represents a cash payment or a tax credit to businesses to reward them for what is deemed to be an act that will have economic benefit for the state of Maine.

Most businesses (despite claims otherwise) should be able to demonstrate how the credits affected their business decisions and be able to illustrate why the state of Maine should continue the credits. Most businesses do detailed cost-benefit analyses before making any significant investments, and the state tax consequences, if any, are part of that analysis.

My experience as a corporate tax



The U.S.S. Rafael Peralta, the 35th Arleigh Burke class missile destroyer to be built by Bath Iron Works. BIW receives a \$2.9 million shipbuilding tax credit from the state.

My experience with state tax incentives — in all 50 states — is that the vast majority of the incentives are very ineffective, and their cost greatly exceeds their benefit to the states

director for 20 years and from my associations with other tax directors is that state tax incentives are never a major factor in business investment decisions.

Finding \$6 million or more in ineffective tax credits from this group should not be difficult.

The loss of these tax breaks would have no impact on Maine’s economy for two reasons: because the number is so small and because the tax breaks were never a major factor in businesses’ decision to make investments in Maine.

Here’s what makes up the \$45 million in tax credits:

- \$14 million for employment tax increment financing.
- \$13 million for the rehabilitation of historic properties.
- \$9 million for the new markets capital investment credit.
- \$3 million for pine tree development zones.
- \$2.9 million for the Bath Iron Works shipbuilding credit.

— \$1.8 million for the seed capital investment credit.

There are several other credits that are estimated to be less than \$500,000 each. All of the credits, except for the historic rehabilitation credit, are similar in that they are economic development “incentive” credits.

All of the economic development credits should be examined in detail to see if they are effective and that the benefits are greater than their cost. The historic rehabilitation credit should be examined both to see if it is effective and to ask whether saving these historical properties should be accomplished with taxpayer dollars.

In addition to the above credits, there is one individual credit that should be examined: the educational opportunity tax credit. This credit was estimated to cost \$7 million in 2016, but it was recently increased, and the cost may be more than \$10 million in the future.

While this credit claims it helps to keep Maine college graduates from leaving the state, I doubt it is effective. It should be examined as closely as the business credits.

The review of these tax credits cannot be done by the Legislature or a committee they choose, as the politics and lack of expertise will make it fail, as in the past.

The review must be done by a small, independent group of experts with significant tax and business experience, and the group needs to have the authority to audit the businesses that are currently claiming the credits.

My experience with state tax incentives — in all 50 states — is that the vast majority of the incentives are very ineffective, and their cost greatly exceeds their benefit to the states.

Sadly, the jobs created are often the thousands of new accounting, tax, legal, lobbying and consultant jobs created to capitalize on the multi-state tax incentives industry.

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Maine’s drone law: Privacy protection or police obstacle?

BY CHRISTOPHER BURNS
BDN STAFF

New rules governing when, where and how police departments can deploy drones in Maine took effect last month after the governor’s unsuccessful attempt to veto it and 64 other bills. The drone law ushers in a change that legislators and civil liberties advocates say will shield Mainers’ right to privacy from abuse.

Over the last few years, drones have skyrocketed in popularity. As they’ve grown more popular, concerns about privacy have grown more common as well.

The Federal Aviation Administration since 2012 has been developing rules to integrate drones into the national airspace, but these address only safety. The FAA has left it up to state or federal government to enact legal protections against misuse of drones.

Using drones, operators can gain vantage points that they can’t in manned aircraft much less from standing on the ground. Operators can outfit their drones with high-resolution and infrared camera, night vision capabilities, license plate readers and facial recognition technology. The prospect concerns many, who worry that operators — particularly law enforcement — might deploy drones to snoop on private citizens.

In Maine, the new law might assuage some of those concerns. It requires police to obtain a war-

rrent to fly a drone in an investigation, and it prohibits law enforcement from equipping drones with weapons and facial recognition technology.

In 2013, the Maine Department of Public Safety crafted a model set of guidelines for how law enforcement use drones in investigations. But supporters of the bill said this policy wasn’t enough. Instead, they said legislation is needed to make restrictions on law enforcement drone use part of state law.

“A policy can be changed at any time,” said state Rep. Diane Russell, D-Portland, who sponsored the bill. “I commend them for [writing that policy]. But if you’re going to have a policy, why not have it codified?”

Aside from Maine, 14 states have placed limits on how law enforcement can use drones, from requiring warrants to how long data collected by drones can be stored.

“This is one targeted way for us to protect citizens’ privacy before drones become ubiquitous,” Russell said. “Just because we have new technology doesn’t mean the protections put in place by the Constitution are gone.”

Despite concerns about privacy violations, no Maine law enforcement agency has started to use drones as part of its work. Maj. Christopher Grotton of the Maine State Police said these concerns aren’t warranted. The model drone policy and Fourth Amendment case law already



An Aerial MOB drone. The eight-rotor model is capable of carrying a 22-pound camera and flying at 40 mph. The company, with offices in Los Angeles, San Diego and Vancouver, provides unmanned aerial cinematography services.

offer sufficient privacy protection, he said.

Much of the debate about drones has focused on hypotheticals, not actual law enforcement abuse of the technology. Grotton said. Private citizens have been responsible for the bulk of drone misuse, he added.

The FAA recorded 764 incidents between November 2014 and August 2015 of drones flying too close to commercial aircraft. That number includes one incident last March at the Portland International Jetport.

So far, Maine law is silent on holding drone hobbyists accountable for privacy violations.

“There is no specific law that gives us the authority to do anything about private individuals misusing drones,” Grotton said. While there is the potential for

misuse, drones also can be a valuable tool for police and public safety agencies. Law enforcement tout the potential of drones to aid in search and rescue operations, monitoring chemical spills and fires, and surveying road accidents. They also have the benefit of keeping people out of dangerous situations, such as stand-offs, and can allow police officers to say out of harm’s way until a situation is resolved.

Maine’s drone law allows police the flexibility to deploy drones in these situations, but Grotton said policies that restrict the use of new technology could unintentionally hinder law enforcement from protecting the public.

“It would be a shame to not be able to leverage that technology to help the public,” he said.

Cianchette

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“us versus them” narrative of the ballot questions and other candidates. They recognized most businesses are led by good people who want to do right by their employees, development is necessary to create new housing and spaces for businesses to grow, and suing everyone is not governance. Rather than accept artificial divisions, Tuesday was a victory for “We.” It bodes well for a more level-headed, solution-focused Portland.

2016? So, what can these results teach us about the next major election, 12 short months away?

The first answer is dollars alone do not carry the day, although they help. Ben Chin spent nearly \$18 per vote; his three center-right opponents spent \$2.40 per vote on average. Question 1 supporters spent \$11 per vote, while opponents spent around 30 cents. A well-organized campaign with moderate resources can run with or defeat a better-resourced campaign. Of course, that lesson isn’t new; you could also learn it in business, military and athletic settings.

The second answer is: this election can’t teach us much else. With a presidential race, state legislative seats, and nearly a dozen referenda expected on the ballot, 2016 will be very different. The silver lining is we are free from road signs. For now.

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Steed

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will observe, religious narratives and interpretations have rallied people in the name of justice by way of Martin Luther King Jr. and Malcolm X. Pope Francis is a compelling figure today because he employs these narratives to inspire people to talk about the realities of economic inequality.

It is not, I’ve realized, association with God that makes something good or bad. Rather, it is heart, intent, character and the ability to assess oneself critically and honestly. Without these, both the person and the person of reason are in trouble.

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Real ID

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unmet Real ID provisions would cost up to \$1 million, which the Legislature would have to authorize, Dunlap said.

But the Legislature has shown no interest in complying with the federal government, and legislative action seems unlikely at least until 2017.

None of the 32 bills the Legislature is set to consider next session, which begins in January, concern Real ID compliance. Two senators who serve on the Legislature’s Transportation Committee, which oversees the state’s Bureau of Motor Vehicles, said they haven’t seen any legislation coming forward.

Since legislation isn’t on the radar for 2016 — unless legislative leaders allow an emergency bill to be considered or Gov. Paul LePage proposes a Real ID measure — that leaves 2017 as the next time when lawmakers can take up Real ID.

This, of course, is after the end of Maine’s current extension. The Department of Homeland Security could exercise its authority to grant another extension, but to get one, Maine would have to demonstrate it is making progress toward compliance and explain why it hasn’t met outstanding requirements.

“Homeland Security could keep giving extensions every year,” Dunlap said. “They haven’t stopped yet.”

And lawmakers on the Transportation Committee could discuss the issue in the coming

months and receive a status update, said Sen. William Diamond, D-Windham. He said he expects the committee to have a conversation during the second session to find out where Maine is on the path to implementation and whether it can be achieved by next October.

“We have to have some answers,” he said. “We’re kind of in limbo mode here right now and waiting to see what happens with the extension.”

Grounded

But it’s unclear when the Department of Homeland Security will require compliant identification for boarding airplanes. The department said it plans to announce a plan by the end of the year.

If Maine still isn’t in compliance at that time, Mainers aren’t

likely to be turned away at the airport terminal, Dunlap said. Imposing separate identification requirements on Mainers and travelers from other noncompliant states would require a separate process at airports across the country.

“It wouldn’t just affect Bangor International Airport,” he said. “It’s not small potatoes — there are Mainers all across the country.”

Mainers have the option to present other forms of identification in lieu of a driver’s license, Dunlap said. They still can use a U.S. passport or passport card, for instance.

If Mainers lack acceptable alternative identification, they can still catch their flights by going through additional screening to verify their identity against publicly available databases.