BETR & BETE Tax Incentive Programs
OPEGA Summary for the Government Oversight Committee
Updated for April 12, 2013

Program Background

- Business Equipment Tax Reimbursement (BETR)
  - Subject to 36 MRSA Chapter 915 and administered by Maine Revenue Service (MRS).
  - Companies submit applications to MRS seeking reimbursement of property taxes paid to municipalities on eligible qualified business property as defined in the statute. MRS determines eligibility and reimbursement amount based, in part, on information in the application supplied by the municipal assessor. MRS sends reimbursement directly to the companies.
  - Qualified business property is generally eligible for BETR if it was first placed in service in Maine between April 1, 1995 and April 1, 2007. Property placed in service after that is generally covered by the BETE program instead. Certain retail equipment, however, qualifies for BETR even if placed in service after April 1, 2007.
  - Certain businesses are ineligible for the BETR program, including public utilities, cable television companies and providers of radio paging, mobile communications, satellite TV or TV distribution services. Similarly certain items of property are ineligible including furniture, lighting, buildings, land, and certain gambling equipment. Property associated with retail sales facilities larger than 100,000 square feet ("big box stores) is also ineligible unless a particular revenue test specified in statute is met.
  - Reimbursements under BETR are a specified percentage of the property taxes assessed and paid with respect to each item of eligible property. The reimbursement rate is 100% for each of the first twelve years for which a reimbursement is made. The rate falls to 75% for the 13^{th} year in which a reimbursement is made and decreases by 5% for each subsequent year of reimbursement until reaching the 18^{th} year when it is 50% for that year and every year thereafter.
  - MRS estimates that approximately 2,000 taxpayers are receiving reimbursements under BETR and estimates close to $47.6 million in reimbursements will be paid in FY13.

- Business Equipment Tax Exemption (BETE)
  - Subject to 36 MRSA §691 and administered by MRS and municipalities.
  - The program reimburses municipalities for loss of municipal revenue arising from the exemption of qualified business equipment, as defined in the statute, from property tax. Companies submit applications for exemption directly to the municipality which determines eligibility and grants the exemptions. Municipalities provide MRS with the number and dollar amount of the total exemptions granted for each property tax year.

On the basis of this information, MRS reimburses municipalities a certain percentage of property tax revenue lost as a result of the exemption.

- Qualified business equipment is generally eligible for BETE if it was first placed in service in Maine after April 1, 2007.
- Businesses and equipment items that are ineligible for BETE are the same as those that are ineligible for BETR. In addition, equipment associated with retail sales facilities is generally ineligible under BETE unless particular conditions specified in statute are met.
- BETE reimbursements to the municipalities are a specified percentage of the total property tax revenue lost by reason of the exemptions granted. The reimbursement rate was 100% for exemptions granted in the property tax year beginning April 1, 2008 and declined 10% for each of the subsequent property tax years until reaching the property tax year beginning April 1, 2013. The reimbursement rate for that property tax year and for all subsequent tax years is 50%.
- MRS estimates that approximately 3,000 taxpayers are receiving property tax exemptions and 246 municipalities reported BETE exemptions to MRS in 2010. MRS estimates that close to $21.4 million in reimbursements will be paid to municipalities in FY13.

Reporting and Evaluation

- Both programs are included in two tax expenditure reports provided to the Legislature on a biennial basis. The first report, as per 5 MRSA §1666, is released as part of the documentation for the biennial budget recommendations. It provides the estimated revenue loss from each tax expenditure program during the most recently completed fiscal year and the year in progress, as well as projected losses for each fiscal year in the coming biennium. The second report, as per 36 MRSA §199-B, is provided to the Joint Standing Committee on Taxation. It provides a bit more detail as it includes a summary on each provision, information regarding beneficiaries, estimates of the costs and any issues or recommendations MRS might have regarding a particular provision.
- OPEGA observes that the costs of tax expenditure programs are generally discussed as "forgone revenue", i.e. revenue the State would have received if not for the tax exemption, credit or incentive. This is consistent with the definition of tax expenditure programs existing in 5 MRSA §1666. The costs associated with BETR and BETE, however, are technically not forgone State revenue as the exemptions and reimbursements provided are for property taxes which is a municipal, rather than State, revenue stream. Consequently, the costs associated with these programs are actually represent State expenditures through payments MRS makes to businesses and municipalities.
- BETR was one of 46 programs reviewed in OPEGA's 2006 report on Economic Development Programs in Maine. BETE was not an established program at the time of that review. OPEGA assessed the risk of each program related to potential inefficiency and ineffectiveness using 13 different factors. Information used in the risk assessment was provided by the agencies

responsible for administering the programs. BETR was one of the higher risk programs, rating as "high risk" for 8 of the 13 different factors: goals and objectives; performance measures; reports; overlap; administrative costs; funding review; external audit; and amount of funding.

- It is unclear to what degree both BETR and BETE were encompassed in the independent evaluation that produced the 2008 Maine Comprehensive Economic Development report contracted for by the Department of Economic and Community Development. It appears that the surveys sent to organizations receiving assistance from State economic development programs went to BETR recipients but not BETE recipients. Some percentage of the BETR recipients surveyed were probably also BETE recipients. The report itself contains little data related specifically to BETR or BETE, but survey data related to these programs may be available from the evaluators who conducted the independent review. OPEGA had previously obtained a listing of free form comments survey respondents had provided. There were a number of comments specific to BETR that related to the following areas: importance of the program to the company, administrative burden for organizations applying, and the timeliness of reimbursement payments from MRS.
- Both BETR and BETE were included in the 2010 report required under Resolve Chapter 199 (To Increase Transparency and Accountability and Assess the Impact of the Tax Expenditure Programs). The working group that produced this report provided information on the purposes and functioning of the respective programs but stopped short of providing an assessment of the programs' risk or success as this was not the intent of the report. The report did, however, provide recommendations in regard to an approach for measuring the economic impact of tax expenditure programs in the future. It does not appear that these recommendations have been enacted.
- Detailed data on the items of property each company seeks BETR reimbursement for, and the municipalities the items are located in, is available at the State level on the reimbursement applications submitted to, and maintained by, MRS. However, the amount of detailed data readily available in electronic format for reporting and analysis is limited. Detailed data on companies and items of property receiving exemptions under BETE is not available at the State level. The detail on which companies are seeking property tax exemptions, and which items of property are included, should reside at the municipalities granting the exemption. OPEGA does not know what BETE records municipalities maintain, what level of detailed data those records include or what form (electronic or hard copy) the records may be in. These data limitations mean that any analysis requiring detailed data, or a comparison of those companies who receive assistance under both programs, would likely involve significant time and resources to request, process and analyze individual company applications – from MRS in the case of BETR, and from each municipality MRS has reimbursed in the case of BETE.

Proposals in the Governor's Proposed FY14/15 Budget

- The Governor's proposed budget for the FY14/15 biennium contains the following, which results in approximately $11.7 million of revenue recognition over the biennium from the repeal of the BETR program and the expansion of the BETE program:
  - Part K
    - Eliminates eligibility under the Business Equipment Tax Exemption (BETE) program for property located at certain large retail sales facilities (those that exceed 100,000 square feet and whose Maine based operations derive less than 30% of their total annual revenue from sales made at a retail facility located in the state).
    - Sunsets the Business Equipment Tax Reimbursement (BETR) program with respect to property taxes paid after 2012. Property that would have otherwise qualified for the BETR program, except the property located at retail sales facilities, is to be treated as eligible business equipment for purposes of the BETE program for property tax years beginning on or after April 1, 2014.
    - Increases the municipal reimbursement rate under the BETE program from 50% to 60% for the property tax year beginning April 1, 2014, and 55% for the property tax year beginning April 1, 2015. The rate for subsequent property tax years would return to 50%.
  - Part O
    - Provides that the additional reimbursement under the Business Equipment Tax Exemption of certain qualified property is conditioned on the municipality including an approved professional appraisal with its claim for reimbursement.

- If enacted, the proposed budget initiative would make BETE the primary tax incentive program for property taxes on business equipment. It also appears to effectively make all property associated with any retail sales facilities ineligible for the program. Other equipment that was eligible under BETR would be made eligible under BETE. The proposal also modifies the eligibility criteria as well as the reimbursement rate for BETE.

- The Taxation and Appropriations and Financial Affairs Committees heard public testimony on the BETR/BETE budget initiative on March 13, 2013. Points raised in testimony given included:
  - migrating BETR to BETE is a good idea / supported
  - businesses object to the 15 month lapse in reimbursement as BETR transitions to BETE (no reimbursement from January 1, 2013 to April 1, 2014)
  - timing of this is difficult as businesses have already budgeted for this year; and

    - other states do not have a Personal Property Tax on Business Equipment so the 15-month lapse in reimbursement will be seen as a tax increase and reduce Maine's competitiveness

- In regard to this testimony, OPEGA sought to confirm whether or not other states have this type of tax. Based on information provided by the National Conference of State Legislatures, OPEGA determined that 11 other states do NOT have a tax. All remaining states do have some form of like tax and vary in what exemptions to the tax are allowed. The summary provided by NCSL is attached.