

Final Report of the

Task Force on Tax Preference Reform

To the Governor and the Legislature

November 15, 2010



TASK FORCE MEMBERS

Marty Brown

Director, Office of Financial Management

Amber Carter

Director of Government Affairs, Association of Washington Business

Paul Guppy

Vice President for Research, Washington Policy Center

Member, Citizen Commission for Performance Measurement of Tax Preferences

Ross Hunter

State Representative

Troy Kelley

State Representative

Chair, Joint Legislative Audit and Review Committee

William Longbrake

Governor's Council of Economic Advisors

Chair, Citizen Commission for Performance Measurement of Tax Preferences

James L. McIntire, *Chair*

State Treasurer

Andy Nicholas

Policy Analyst, Washington Budget & Policy Center

Ed Orcutt

State Representative

Phil Rockefeller

State Senator

Joseph Zarelli, *Vice Chair*

State Senator

State of Washington

TASK FORCE ON TAX PREFERENCE REFORM

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November 15, 2010

Governor Christine Gregoire
Senate Ways and Means Committee
Senate Transportation Committee
House Transportation Committee

House Ways and Means Committee
House Finance Committee
House General Government Appropriations Committee

I am pleased to provide you with the final report of the Task Force on Tax Preference Reform. I believe the report will prove valuable for improving and evaluating Washington State's tax policy.

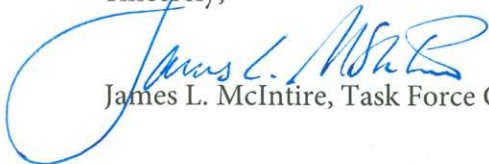
Over the course of several months, the Task Force reviewed various executive and legislative budget and policy practices associated with considering tax preferences. We also provided opportunity for public comment on these topics at each of our meetings.

The eleven-member Task Force included representation from citizens, legislators, and the executive branch. We reached consensus on ten recommendations. These recommendations address issues related to fiscal notes and economic analyses; declarations of intended legislative outcomes; taxpayer accountability reporting; and the current tax preference review process undertaken by the Citizen Commission on Tax Preferences and the Joint Legislative Audit and Review Committee (JLARC). The report includes one minority comment on the topic of economic analyses.

Two of our recommendations will require legislative action to implement, and the report includes proposed bill language for that purpose. The remaining recommendations do not require immediate legislation to pursue.

Additional information can be found on the Task Force web site (www.taxpreftaskforce.leg.wa.gov) or by contacting JLARC staff at 360-786-5171.

Sincerely,



James L. McIntire, Task Force Chair

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Introduction

The Legislature established the Task Force on Tax Preference Reform in the 2010 Supplemental Operating Budget (ESSB 6444, Section 103(10)). The legislation charged the 11-member task force with reviewing and assessing current executive and legislative budget and policy practices and procedures associated with tax preferences. The Task Force was directed to submit its recommendations in a report to the Governor and legislative fiscal committees by November 15, 2010. (See Appendices 3 and 4 for a summary of the legislation and the actual proviso language.)

Members included elected officials and members of the public as follows:

- ◆ The State Treasurer,
- ◆ The Chair of the Joint Legislative Audit and Review Committee (JLARC),
- ◆ The Director of the Office of Financial Management (OFM),
- ◆ Four legislators appointed by the Chair of each caucus, and
- ◆ Four non-legislators appointed by the Chair of each caucus.

The Task Force elected James McIntire, State Treasurer, as chair and Senator Joseph Zarelli as vice chair. The Task Force held five meetings over the course of four months to consider information researched and presented by legislative and executive branch staff, hear public comment, and develop recommendations (see Appendices 5 and 6 for meeting dates and presentation materials). JLARC staff provided support to the Task Force. Additional information and research was provided by staff from the House Office of Program Research, Senate Committee Services, the Office of the Code Reviser, the Office of Financial Management, and the Department of Revenue.

The Task Force unanimously endorsed 10 recommendations to improve processes and practices dealing with tax preferences.

This report fulfills the duties of the Task Force. The report includes the final recommendations reached by sufficient consensus, as well as a minority comment submitted by Marty Brown, Director of the Office of Financial Management.

Topics Reviewed by the Task Force

The statute required the Task Force to review current executive and legislative budget and policy practices and procedures associated with the recommendation, development, and consideration of tax preferences, and to assess the following areas:

- ◆ The effectiveness of budgeting requirements and practices;
- ◆ The justifications and evaluations typically provided during legislative consideration of tax preferences; and
- ◆ The role and value of methodologies currently used to measure the public benefits and costs of tax preferences.

The Task Force reviewed practices and procedures on the following topics, based on legislative and agency staff research and presentations and on Task Force Member discussion. The Task Force also provided an opportunity for public comment at each of its meetings.

Budgeting Requirements and Practices Dealing with Tax Preferences

- ◆ Practices of other states: treatment of tax preferences in budgeting
- ◆ Comments by OFM on the Governor's consideration of tax preferences in the budgeting process

Legislative Consideration of Tax Preferences

- ◆ The fiscal note process in Washington
- ◆ Practices of other states: what government entity prepares revenue fiscal notes and which states estimate the secondary effects of proposed revenue legislation on the economy
- ◆ Comments by the Economic and Revenue Forecast Council staff on involving Council staff in the fiscal note process
- ◆ Legislative intent and intended legislative outcomes
- ◆ Mechanisms for establishing or ending effective dates

Measurement of Public Benefits and Costs of Tax Preferences

- ◆ Issues and concerns from members of the Citizen Commission for Performance Measurement of Tax Preferences
- ◆ Taxpayer accountability surveys and reports

Task Force Recommendations

The Task Force developed recommendations by “sufficient consensus,” as directed by the enabling legislation. The members unanimously endorsed the 10 recommendations listed below.

Revenue Fiscal Notes

- 1) The Economic and Revenue Forecast Council should consider performing an economic effects analysis on selected exceptional tax preference and/or revenue proposals.

Implementation: No legislation required – direction for Forecast Council staff to conduct any such analysis would be subject to approval by the Forecast Council members. The Forecast Council Executive Director indicated these analyses would require additional resources.

- 2) OFM should continue to coordinate the preparation of fiscal notes, but legislators should be more clearly advised that they can raise concerns or objections through legislative committee staff, who can facilitate how and when to seek revision or rejection of a fiscal note.

Implementation: No legislation required – staff can inform legislators that legislators can raise concerns or objections regarding fiscal notes through committee staff.

- 3) The Legislature should authorize a new JLARC study to select certain fiscal notes for evaluation after implementation and recommend process improvements.

Implementation: Legislation or a budget proviso would be required to mandate a new study in the JLARC work plan (see attached sample budget proviso in Appendix 1).

Declarations of Intended Outcomes

- 4) The Legislature should include statements of purpose when enacting tax preferences, and the Legislature should clarify that these statements are intended to assist with policy evaluation. For existing preferences where no such statements exist in law, the Legislature should provide statements of purpose when recommended to do so in Citizen Commission reviews.

Implementation: Proposed language would need to be included with the introduction of new tax preference bills – guidance to assist with this could be developed by the Code Reviser and fiscal committee staff. Proposed legislation would need to be sponsored to enact Citizen Commission or JLARC recommendations to clarify the policy objectives of existing preferences.

- 5) The Citizen Commission is encouraged to continue recommending when it believes a tax preference statement of purpose should be established or clarified by the Legislature.

Implementation: No legislation required.

Taxpayer Accountability Reporting

- 6) The legislative fiscal committees should consider seeking input from the Department of Revenue, the Citizen Commission, and affected taxpayers, on revising taxpayer accountability reporting to assist evaluations. The committees may consider the costs and benefits of additional information and the burden on taxpayers for proposed reporting revisions.

Implementation: No legislation required – fiscal committee chairs could convene committee work sessions to consider proposals for taxpayer reporting revisions.

Citizen Commission/JLARC Tax Preference Review Process (Chapter 43.136 RCW)

- 7) The Legislature should provide the Citizen Commission with flexibility to use criteria other than the year of enactment for scheduling tax preference reviews, such as grouping preferences by type of industry or policy focus. The Legislature should remove the limitation that expedited reviews can only be conducted on preferences of less than \$10 million in taxpayer savings per biennium, and it should instruct the Citizen Commission to determine the extent of the review. The Legislature should authorize JLARC to evaluate only those factors that are relevant to a specific tax preference under review.

Implementation: Legislation required (see attached sample bill in Appendix 2).

- 8) The Citizen Commission is encouraged to make general observations as to the Revised Code of Washington, its assumptions, premises, and clarity.

Implementation: No legislation required.

- 9) The Citizen Commission is encouraged to identify those tax preferences that are critical to defining the tax structure and omitting them from JLARC review.

Implementation: No legislation required.

- 10) The Citizen Commission is encouraged to recommend whether to continue, modify, or terminate a tax preference even if a legislative intent cannot be determined.

Implementation: No legislation required.

Citizen Commission Endorsement of Task Force Recommendations

On the following page is a letter from William Longbrake to the Task Force Chair expressing the unanimous endorsement of the Citizen Commission for Performance of Tax Preferences for recommendations relating to the statutory tax preference review process. The five recommendations include recommendation numbers 5 and 7 through 10.



Citizen Commission for Performance Measurement of Tax Preferences

William A. Longbrake,
Commission Chair

Lily Kahng, Vice Chair
Associate Professor
Seattle University Law School

James Bobst
Human Resource Manager
Pacific Fibre Products

Stephen Miller
Board Member
Washington Education Association

Paul Guppy
Vice President for Research
Washington Policy Center

Brian Sonntag
State Auditor

Representative **Troy Kelley**
Chair, Joint Legislative Audit
and Review Committee

October 15, 2010

Mr. James McIntire, Chair
Task Force on Tax Preference Reform

Dear Mr. McIntire:

As you will recall, the Task Force on Tax Preference Reform reached consensus on proposals related to the on-going evaluation of tax preferences at the Task Force's September 20, 2010 meeting. Five of these proposals are related to the statutory tax preference review process that involves the Citizen Commission for Performance Measurement of Tax Preferences and the Joint Legislative Audit and Review Committee (JLARC).

I would like to inform you that the Citizen Commission reviewed these five proposals at our September 24, 2010 meeting, and we unanimously adopted a motion endorsing them.

The five proposals were as follows:

- *Authorize the Citizen Commission flexibility to use scheduling criteria other than the year of enactment, such as grouping preferences in the schedule by type of industry or policy focus. Remove the limitation that expedited reviews can only be conducted on preferences of less than \$10 million, and instruct the Citizen Commission to determine the extent of review. Authorize JLARC to evaluate only those factors that are relevant to the tax preference.*
- *The Citizen Commission is encouraged to identify tax preferences that are critical to defining the tax structure and omitting them from JLARC review.*
- *The Citizen Commission is encouraged to recommend whether to continue, modify, or terminate a tax preference even if a legislative intent cannot be determined.*
- *The Citizen Commission is encouraged to continue recommending when it believes a statement of purpose should be established or clarified by the Legislature.*
- *The Citizen Commission should be empowered to make general observations as to the Revised Code of Washington, its assumptions, premises, and clarity.*

I believe these proposals will further strengthen and support the work of the Commission and JLARC. It will also allow us to focus our work more effectively for the benefit of the Legislature and the state's taxpayers.

The first proposal will require a change in statute. As Chair of the Commission, and a member of the Task Force, I would be happy to assist with supporting this change.

Citizen Commission for Performance Measurement of Tax Preferences

October 15, 2010

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On behalf of the Citizen Commission, I would like to thank the Task Force for its thoughtful discussion and support of our efforts to review the effectiveness of tax preferences.

Sincerely,



William Longbrake, Chair

Citizen Commission for Performance Measurement of Tax Preferences

- c: Members of the Task Force on Tax Preference Reform
- Members of the Citizen Commission for Performance Measurement of Tax Preferences
- Executive Committee of the Joint Legislative Audit and Review Committee
- Ruta Fanning, Legislative Auditor

Minority Comment

Marty Brown, Director of the Office of Financial Management, and a member of the Economic and Revenue Forecast Council submitted the following comment related to Task Force Recommendation #1.

On November 5, 2010 the Economic and Revenue Forecast Council discussed the concept of “dynamic fiscal notes” and decided to delay any further action or discussion of the matter until a later time.

Appendix 1: Draft Budget Proviso for JLARC Study of Fiscal Notes (Recommendation #3)

Within the amounts appropriated in this section, the committee shall conduct a review of the accuracy of executive branch fiscal note estimates. The study shall compare the accuracy of estimates included in fiscal notes to actual fiscal impacts experienced after the implementation of legislation, and identify potential methods for improving the accuracy of future fiscal notes.

Appendix 2: Draft Legislation to Revise Citizen Commission/JLARC Tax Preference Review Process (Recommendation #7)

Sec. 1. RCW 43.136.045 and 2006 c 197 s 4 are each amended to read as follows:

(1) The citizen commission for performance measurement of tax preferences shall develop a schedule to accomplish an orderly review of tax preferences at least once every ten years. In determining the schedule, the commission shall consider ~~The commission shall schedule tax preferences for review in the order the tax preferences were enacted into law, in addition to other factors including but not limited to grouping preferences for review by type of industry, economic sector, or policy area. except that~~ The commission may elect to include, anywhere in the schedule, a tax preference that has a statutory expiration date. The commission shall omit from the schedule tax preferences that are required by constitutional law, sales and use tax exemptions for machinery and equipment for manufacturing, research and development, or testing, the small business credit for the business and occupation tax, sales and use tax exemptions for food and prescription drugs, property tax relief for retired persons, and property tax valuations based on current use, and may omit any tax preference that the commission determines is a critical part of the structure of the tax system. As an alternative to the process under section 5 of this act, the commission may recommend to the joint legislative audit and review committee an expedited review process for any tax preference. that has an estimated biennial fiscal impact of ten million dollars or less.

(2) The commission shall revise the schedule as needed each year, taking into account newly enacted or terminated tax preferences. The commission shall deliver the schedule to the joint legislative audit and review committee by September 1st of each year.

(3) The commission shall provide a process for effective citizen input during its deliberations.

Sec. 2. RCW 43.136.055 and 2006 c 197 s 5 are each amended to read as follows:

(1) The joint legislative audit and review committee shall review tax preferences according to the schedule developed under section 4 of this act. The committee shall may consider, but not be limited to, the following factors in the review as relevant to each particular tax preference:

(a) The classes of individuals, types of organizations, or types of industries whose state tax liabilities are directly affected by the tax preference;

(b) Public policy objectives that might provide a justification for the tax preference, including but not limited to the legislative history, any legislative intent, or the extent to which the tax preference encourages business growth or relocation into this state, promotes growth or retention of high wage jobs, or helps stabilize communities;

(c) Evidence that the existence of the tax preference has contributed to the achievement of any of the public policy objectives;

(d) The extent to which continuation of the tax preference might contribute to any of the public policy objectives;

(e) The extent to which the tax preference may provide unintended benefits to an individual, organization, or industry other than those the legislature intended;

(f) The extent to which terminating the tax preference may have negative effects on the category of taxpayers that currently benefit from the tax preference, and the extent to which resulting higher taxes may have negative effects on employment and the economy;

(g) The feasibility of modifying the tax preference to provide for adjustment or recapture of the tax benefits of the tax preference if the objectives are not fulfilled;

(h) Fiscal impacts of the tax preference, including past impacts and expected future impacts if it is continued. For the purposes of this subsection, "fiscal impact" includes an analysis of the general effects of the tax preference on the overall state economy, including, but not limited to, the effects of the tax preference on the consumption and expenditures of persons and businesses within the state;

(i) The extent to which termination of the tax preference would affect the distribution of liability for payment of state taxes;

(j) Consideration of similar tax preferences adopted in other states, and potential public policy benefits that might be gained by incorporating corresponding provisions in Washington.

(2) For each tax preference, the committee shall provide a recommendation as to whether the tax preference should be continued without modification, modified, scheduled for sunset review at a future date, or terminated immediately. The committee may recommend accountability standards for the future review of a tax preference.

Appendix 3: Summary of Engrossed Substitute Senate Bill 6444 (2010), Section 103(10)

- ❖ **The Task Force for Reform of Executive and Legislative Procedures Dealing with Tax Preferences is established in ESSB 6444 (2010 Supplemental Operating Budget).**
- ❖ **Task force duties:**
 - ◆ Review current executive and legislative budget and policy practices and procedures associated with the recommendation, development, and consideration of tax preferences;
 - ◆ Assess the effectiveness of budgeting requirements and practices;
 - ◆ Assess the general rigor of justifications and evaluations typically provided during legislative consideration of tax preferences; and
 - ◆ Assess the role and value of methodologies currently used to measure the public benefits and costs, including opportunity costs, of tax preferences.
- ❖ **Task force recommendations:**
 - ◆ May make recommendations to improve the effectiveness of the review process conducted by the Citizen Commission on Performance Measurement of Tax preferences; and
 - ◆ May recommend changes and improvements in the manner in which both the executive branch and Legislature address tax preferences, including those in effect and those that may be proposed to protect the public interest and assure transparency, fairness, and equity in the tax code.
- ❖ **Task force report due to the Governor and Legislature by November 15, 2010.**
- ❖ **Task force members:**
 - ◆ The State Treasurer
 - ◆ The Chair of JLARC
 - ◆ The Director of OFM
 - ◆ Four legislators appointed by the Chair of each caucus
 - ◆ Four persons who are not legislators appointed by the Chair of each caucus; these should be individuals who have a basic understanding of state tax policy, government operations and public services
 - ◆ Task force must elect a Chair from among its members
- ❖ **JLARC must provide clerical, technical, and management personnel to serve as the task force staff.**
 - ◆ Staff of the legislative fiscal committees, legislative counsel, and OFM must provide technical assistance.
 - ◆ The Department of Revenue must provide necessary support and information to the task force.

Appendix 4: Language of Engrossed Substitute Senate Bill 6444 (2010), Section 103(10)

(10)(a) The task force for reform of executive and legislative procedures dealing with tax preferences is hereby established. The task force must:

(i) Review current executive and legislative budget and policy practices and procedures associated with the recommendation, development, and consideration of tax preferences, assess the effectiveness of budgeting requirements and practices, the general rigor of justifications and evaluations typically provided during legislative consideration of tax preferences, and the role and value of methodologies currently used to measure the public benefits and costs, including opportunity costs, of tax preferences, as defined in RCW 43.136.021.

(ii) Consider but not be limited to, the factors listed in RCW 43.136.055.

(b) The task force may make recommendations to improve the effectiveness of the review process conducted by the citizen commission on performance measurement of tax preferences process as described in chapter 43.136 RCW. The task force may also recommend changes or improvements in the manner in which both the executive branch and legislative branch of state government address tax preferences generally, including those in effect as well as those that may be hereafter proposed, in order to protect the public interest and assure transparency, fairness, and equity in the state tax code.

(c) The task force may recommend structural or procedural changes that it feels will enhance both executive and legislative procedures and ensure consistent and rigorous examination of such preferences.

(d) The task force must report its recommendations to the governor and legislative fiscal committees by November 15, 2010.

(e) The task force has eleven voting members as follows:

(i) One member is the state treasurer;

(ii) One member is the chair of the joint legislative audit and review committee;

(iii) One member is the director of financial management;

(iv) A member, four in all, of each of the two largest caucuses of the senate and the two largest caucuses of the house of representatives, appointed by the chair of each caucus; and

(v) An appointee who is not a legislator, four in all, of each of the two largest caucuses of the senate and the two largest caucuses of the house of representatives, appointed by the chair of each caucus.

(f) Persons appointed by the caucus chairs under (e)(v) of this subsection should be individuals who have a basic understanding of state tax policy, government operations, and public services.

(g) The task force must elect a chair from among its members. Decisions of the task force must be made using the sufficient consensus model. For the purposes of this subsection, "sufficient consensus" means the point at which the substantial majority of the commission favors taking a particular action. The chair may determine when a vote must be taken. The task force must allow a minority report to be included with a decision of the task force if requested by a member of the task force.

(h) The joint legislative audit and review committee must provide clerical, technical, and management personnel to the task force to serve as the task force's staff. The staff of the legislative fiscal committees, legislative counsel, and the office of financial management must also provide technical assistance to the task force. The department of revenue must provide necessary support and information to the joint task force.

(i) The task force must meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the task force. The members of the task force must be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

XXXXXXX

Appendix 5: Meeting Schedule

The Task Force met six times from July through November 2010 to gather information, seek public comment, develop recommendations, and approve the report.

| Meeting Date | Time | Location |
|--------------------|------------------------|---|
| July 22, 2010 | 9:00 a.m. – 11:00 a.m. | Senate Hearing Room 3 John A. Cherberg Building Olympia |
| August 18, 2010 | 9:00 a.m. – 12:30 p.m. | Senate Hearing Room 3 John A. Cherberg Building Olympia |
| August 31, 2010 | 9:00 a.m. – 12:30 p.m. | Senate Hearing Room 3 John A. Cherberg Building Olympia |
| September 20, 2010 | 9:00 a.m. – 12:30 p.m. | Senate Hearing Room 3 John A. Cherberg Building Olympia |
| October 27, 2010 | 9:00 a.m. – 12:30 p.m. | Senate Hearing Room 3 John A. Cherberg Building Olympia |


Videos of the Task Force meetings can be found on the TVW website (www.tvw.org).

Further information on the Task Force, including agendas, minutes, meeting materials, and this report, can be found on the Task Force website (www.taxpreftaskforce.leg.wa.gov) or by contacting JLARC staff.

Appendix 6: Papers and Presentations to the Task Force by Legislative and Agency Staff

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1. Overview of Tax Preference Performance Reviews



Overview of Tax Preference Performance Reviews

Presentation to Task Force on Tax Preference Reform
August 18, 2010

Keenan Konopaski, JLARC Audit Coordinator



Tax Preference Reviews

EHB 1069 (2006):

- Mandated performance reviews of Washington's tax preferences – over 10 years
- Outlined specific questions to be answered in reviews
- Created a Citizen Commission for Performance Measurement of Tax Preferences (Tax Preference Commission)

Tax Preference Performance Reviews August 18, 2010 2

What is a State Tax Preference?



- Definition includes:
 - Exemptions, exclusions or deductions from the base of a tax
 - Credits against a tax
 - Deferrals of a tax
 - Preferential tax rates
- There are currently almost 590 tax preferences enacted in state law

Tax Preference Performance Reviews

August 18, 2010

3

Main Provisions of EHB 1069



- Citizen's Commission establishes a schedule of tax preferences to be reviewed over ten years
- Joint Legislative Audit and Review Committee (JLARC) staff independently conduct the reviews
- Reviews are conducted in accordance with generally accepted auditing standards
- Commission adds comments to the JLARC report, but cannot modify it
- Legislature holds hearings, may take action to continue, terminate or modify a preference

Tax Preference Performance Reviews

August 18, 2010

4

Schedule Requirements

- Review of tax preferences over 10 years
- In the order that the tax preferences were enacted into law, except those with an expiration date may be included earlier
- Certain exemptions (about 50) are omitted from review per statute
- Other “critical” exemptions may be omitted by Citizens Commission
- Exemptions with impact under \$10 million may have an expedited review
- 10 year schedule revised annually

Tax Preference Performance Reviews August 18, 2010 5

Highlights of Reviews

- Legal History / Current Law
- Answers to Select Tax Preference Review Questions
 - Public Policy Objectives
 - Achievement of Objectives & Areas of Uncertainty
 - Beneficiaries
 - Taxpayer Savings
- Recommendations and Comments

Tax Preference Performance Reviews August 18, 2010 6

Possible JLARC recommendations

- JLARC issues audit recommendations (not policy recommendations)
- Recommendations may be to:
 - Continue;
 - Modify/clarify;
 - Add an expiration date and conduct another review prior to the expiration date; or
 - Terminate
- Citizens Commission comments may endorse recommendations or take other positions

Tax Preference Performance Reviews August 18, 2010 7

Contact Information

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Task Force on Tax Preference Reform:
www.taxpreftaskforce.leg.wa.gov

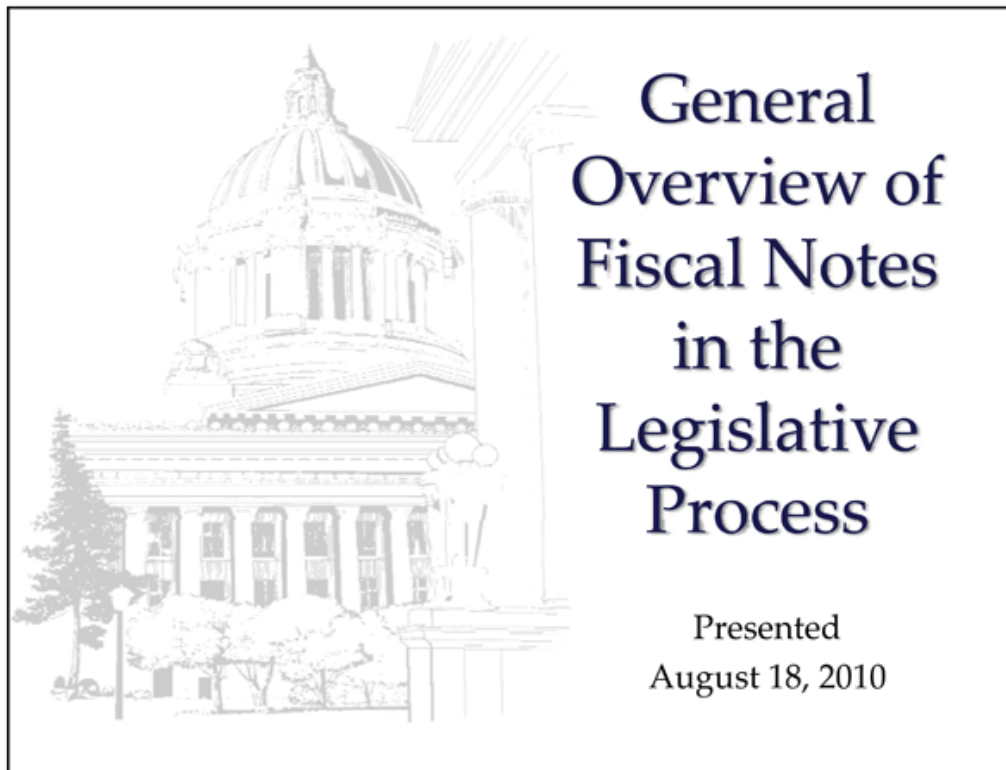
Tax Preference Performance Reviews August 18, 2010 8

2. Issues/Concerns Related to EHB 1069 Review of Tax Preferences

Issues/Concerns Related to EHB 1069 Review of Tax Preferences

| Issues/Concerns | | Explanation/Example |
|-----------------|---|---|
| 1. | Legislative intent may be missing, making it difficult to determine the public policy objective. | Most tax preferences, especially those provided before the 1990s, lack a statement of intent. |
| 2. | Legislative intent may be unclear, overly broad, or lack a targeted outcome. | The Legislature may state its intent to provide jobs, but may not specify how many jobs or whether those jobs are to be high wage jobs. Does the addition of a few low-wage jobs meet the objective? |
| 3. | How does the Legislature evaluate the success of “little used” preferences? | For example, the wood biomass fuel exemption reviewed in 2008 had no participants. |
| 4. | What does an expiration date imply about the Legislature’s intent? | Does an expiration date mean the preference was intended to be temporary or simply revisited at a set date? |
| 5. | Data to analyze some tax preferences is not required to be reported. | Most use tax exemptions are not required to be reported by the beneficiary. |
| 6. | Taxpayer reports and surveys do not always contain adequate information for analysis. | For instance, surveys ask beneficiaries to report wages by three broad wage bands. It is impossible to determine an average wage from this information. |
| 7. | Taxpayer report and survey responses may be unreliable. | Questions about part-time employment and new jobs creation may not be interpreted consistently. Not all of the questions are verified by DOR. |
| 8. | Some tax preferences must be reviewed too soon after enactment, before data is available for analysis. | The candy manufacturer B&O tax credit must be reviewed in 2011 after only two quarters of taxpayer return information is available. |
| 9. | Statute directs JLARC to determine how the termination of a tax preference would affect the “distribution of liability for payment of state taxes.” | Does the Legislature mean the distribution of tax liability between: <ul style="list-style-type: none"> • Households and businesses? • Households of different income levels? • Shifts among payers of a specific tax, such as property tax? |
| 10. | Prioritizing staff resources. | Should economic impact analysis be limited to tax preferences intended to promote economic development? Statute allows for expedited review of preferences with \$10 million or less in fiscal impact. Should factors other than fiscal impact determine the level of analysis? |
| 11. | Lack of standards to identify which tax preferences to omit from review. | There are no criteria in statute for identifying preferences that are a “critical part of the structure of the tax system.” Under the enabling statute, RCW 43.136.045, these preferences may be omitted from review. |

1. General Overview of Fiscal Notes in the Legislative Process



What is a Fiscal Note?

- ▶ An estimate of the direct revenue and expenditure impacts of a bill or amendment over 3 biennia (10 years for I-960 revenue bills). Applies to capital, operating, and transportation budget impacts.
- ▶ The fiscal note analysis compares the legislative proposal to current law (including the enacted budget).
- ▶ Prepared by executive branch agencies and approved by the Office of Financial Management (OFM)
- ▶ Accountability measures include review by legislative staff (can request revisions when appropriate) and members (raise questions on fiscal notes).
- ▶ The Department of Commerce prepares estimates of local government impacts.
- ▶ The Administrative Office of the Courts prepares Judicial fiscal notes.

How is it used?

- ▶ A fiscal note is one of many pieces of information legislators consider when making decisions on legislative measures.
- ▶ Fiscal notes are a useful consideration when leadership refers a bill that is voted out of a policy committee (whether to send to Rules or a fiscal committee), or that has passed the opposite chamber.
- ▶ Fiscal notes from previous sessions may be useful in current budget discussions between the Legislature, OFM, and state agencies.

▶ 3

Prepared by House Ways & Means Committee Staff, OPR

8-18-2010

A fiscal note should...

- ▶ Represent the best estimate that can be prepared within the time available.
- ▶ Be timely, objective, and clear, and prepared without regard to the policy views of the agency, Governor, or local governments.
- ▶ Represent a coordinated and consistent view of the bill.
- ▶ Clearly articulate any/all assumptions.
- ▶ Be prepared without regard to the Governor's budget proposal.
- ▶ Be prepared without regard to bill language that directs an agency to absorb the costs of implementation.

▶ 4

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8-18-2010

A fiscal note...

- ▶ *Does not* include ripple effects into other programs.
- ▶ *Is not* the final word on program budget costs or impacts (just as the agency or Governor's request budget is not the final word on the budget), but generally is used to determine balance sheet impacts on revenue legislation.
- ▶ *Does not* prevent the legislature from making budget decisions like directing an agency to absorb the cost of implementing a bill or assuming different implementation funding levels or approaches.

▶ 5

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8-18-2010

Relevant Statutes

- ▶ Fiscal note processes and requirements are laid out in statute and in instructions prepared by OFM.
- ▶ Chapter 43.88A RCW – Legislative Fiscal Notes
 - ▶ OFM develops the process in coordination with the Legislature.
 - ▶ OFM publishes instructions.
 - ▶ Fiscal notes related to measures that fall under I-960 take precedence.
 - ▶ Legislators can request a fiscal note on any legislative proposal.
 - ▶ Lack of a fiscal note does not preclude either house from considering a bill, and an inaccurate fiscal note (or no fiscal note) does not affect the validity of any measure enacted by the legislature.
- ▶ Chapter 43.132 RCW – Local Government Fiscal Notes.
- ▶ Note also RCW 29A.72.025 – Fiscal impact of an initiative or referendum.

▶ 6

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8-18-2010

Potential Fiscal Note Challenges

- ▶ Timeliness.
- ▶ Accuracy.
- ▶ Trade offs between content, speed, volume and quality.
- ▶ Perception of possible bias.
- ▶ Estimate of direct impacts, not indirect impacts, not dynamic, not cost/benefit analysis.
 - ▶ While additional information on dynamic/indirect impacts can be helpful in decision making, challenges to changing the process to consider dynamic /indirect impacts include accommodating analysis that takes more time and is more speculative and subjective.
 - ▶ Including dynamic/indirect impacts may present additional long-term risks to the budget.

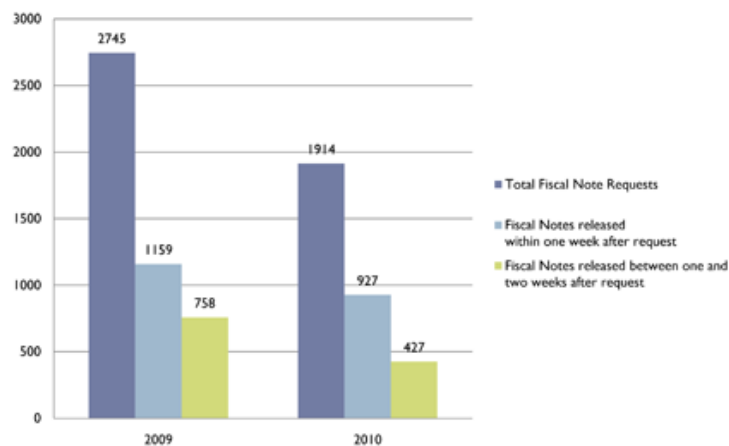
▶ 7

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7-1-10

Appendix

**Fiscal Note Requests
Sessions 2009 and 2010**




▶ 8

Prepared by House Ways & Means Committee Staff, OPR

8-18-2010

2. Department of Revenue: The Fiscal Note Process

Fiscal Note Process




Workload:

- For the 2009-11 Biennium the Research Division completed 803 fiscal notes
- 2009 – 490 fiscal notes
- 2010 – 313 fiscal notes
- In 2010 we completed 73 I-960 fiscal notes – 23% of total
- Our average turnaround was 2.5 days
- Delivered 184 out of 196 notes (94%) to legislative staff at least 4 hours before hearing
- In 2010 we completed 472 fiscal estimates

1


Fiscal Note Process



Elements of a Fiscal Note


- Bill Description
- Expenditure Impact
- Revenue Impact

2

Fiscal Note Process 

- **Bill Description:**
 - Current law vs. Proposed Legislation
- **Expenditure Impact:**
 - First Year Costs
 - Ongoing Costs

3

Fiscal Note Process 

Revenue Impact:

- Six year estimate – Ten year estimate for I-960 fiscal notes
- Available data / Assumptions
- Targeted to Forecast Council's November Forecast
- Review / Approval Process

4

Fiscal Note Process



Tax Preferences – Fiscal Notes Principles

- The impact of large, unique construction projects have been based on historical patterns (Nucor) or expected demand (Sumas)
- The revenue impact of economic incentive bills is based on the expected level of activity under current law

5

Fiscal Note Process



What economic impacts are addressed in a fiscal note

- Revenue impacts at current level of activity
- Immediate economic impacts
- Noncompliance

What economic impacts are not addressed in a fiscal note

- No secondary or “long-term” economic impacts
- Benefits from the legislation – job creation

6

3. Bills Introduced to Modify the Revenue Fiscal Note Process

DRAFT

Bills Introduced to Modify Revenue Fiscal Note Process

2010 SSSB 6374

Required the Department of Revenue (DOR) and the Office of Financial Management (OFM) to perform economic modeling of three examples of economic development legislation enacted in 2010. Required the DOR and the OFM to compare actual results of the legislation. Did not pass.

2009 HB 2336

Moved responsibility for preparing fiscal notes from OFM to the Legislature. Notes were to be prepared jointly by the House and Senate nonpartisan staff. Did not pass.

SB 5741

Required dynamic impact statements based on the behavioral response of taxpayers directly impacted and the effect of those changes on the overall economy. Notes may not be made unless revenue impact is greater than \$10 million. Established a Dynamic Fiscal Impact Statement Advisory Committee. Reintroduced in 2010. Did not pass.

HB 1458

Required fiscal notes that would increase or decrease state revenues to be made available before final passage of bills. Did not pass.

2005 HB 2022

Required the DOR to prepare fiscal notes on both the direct impact on revenues as well as changes in the overall economy. Did not pass.

2004 HB 3118

Required final incidence estimates for proposed legislation that changed tax revenue by more than \$10 million a year. Notes shall report on the changes in the distribution of the tax burden by income class or other taxpayer characteristics. Did not pass.

2001 HB 2114

Moved responsibility for preparing fiscal notes from OFM to the Legislature. Notes were to be prepared jointly by the House and Senate nonpartisan staff. Did not pass.

SB 5071

Required final incidence estimates for proposed legislation that changed tax revenue by more than \$5 million a year. Notes shall report on the changes in the distribution of the tax burden by income class or other taxpayer characteristics. Did not pass.

The Fiscal Note Process Focused on Tax Preferences

1999 HB 1879

Required final incidence estimates for proposed legislation that changed tax revenue by more than \$5 million a year. Notes shall report on the changes in the distribution of the tax burden by income class or other taxpayer characteristics. Did not pass.

1992 SSB 6188

Moved responsibility for preparing fiscal notes to the Fiscal Note Council. Members of the Council included four members of the Legislature and the directors of OFM and Department of Community Development (now Commerce). Where necessary, notes were to include cost-benefit analysis. Did not pass.


1985 SB 4253

Moved responsibility for preparing fiscal notes from OFM to the Legislative Budget Committee and the Legislative Evaluation and Accountability Program Committee. Did not pass.

1977 Chapter 25 § 5, 1st Ex. Sess.

Required OFM to develop a coordinated procedure to prepare fiscal notes of proposed legislation.


1. Treatment of Tax Preferences in Budgeting



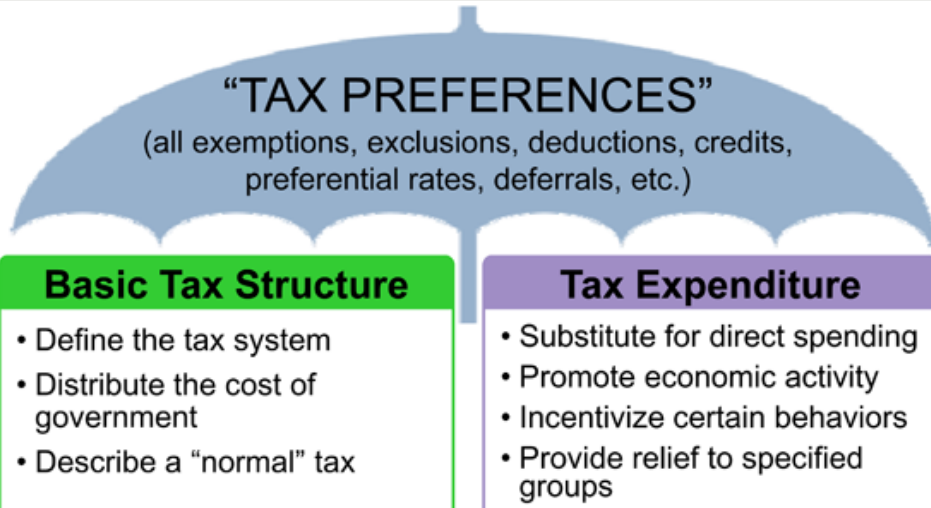
Practices of Other States: Treatment of Tax Preferences in Budgeting

Task Force on Tax Preference Reform
August 31, 2010

Mary Welsh,
JLARC Staff



What is a Tax Expenditure?




“TAX PREFERENCES”
(all exemptions, exclusions, deductions, credits, preferential rates, deferrals, etc.)

| Basic Tax Structure | Tax Expenditure |
|---|---|
| <ul style="list-style-type: none">• Define the tax system• Distribute the cost of government• Describe a “normal” tax | <ul style="list-style-type: none">• Substitute for direct spending• Promote economic activity• Incentivize certain behaviors• Provide relief to specified groups |

Task Force on Tax Preference Reform August 31, 2010 2


Examples



| Basic Tax Structure | Tax Expenditure |
|---|--|
| <ul style="list-style-type: none">• Not final consumption<ul style="list-style-type: none">- Sale for resale- Ingredients/components• Taxed under an alternate system<ul style="list-style-type: none">- Insurance premiums• Not considered income<ul style="list-style-type: none">- Bad debt• Conformity among states<ul style="list-style-type: none">- Nonresident exemptions | <ul style="list-style-type: none">• Promotes social policy<ul style="list-style-type: none">- Exemptions food and clothing• Economic development<ul style="list-style-type: none">- R&D credit• Conservation of natural resources<ul style="list-style-type: none">- Property tax exemptions for conservation land |

Task Force on Tax Preference Reform August 31, 2010 3


What Are “Tax Preference Reports” and “Tax Expenditure Budgets”?



- Tax Preference Report
 - Provides information about tax preferences to the Legislature and the public
- Tax Expenditure Budget
 - Integrates a tax preference report into the budgeting process

Task Force on Tax Preference Reform August 31, 2010 4


What Are the Elements of a “Tax Preference Report?”



| | States | In WA |
|----------------------|--------|------------|
| Periodic publication | 43 | DOR, JLARC |
| Description | 16 | DOR, JLARC |
| Purpose | 12 | DOR, JLARC |
| Fiscal impact | 34 | DOR, JLARC |
| Evaluation | 5 | JLARC |

Task Force on Tax Preference Reform August 31, 2010 5

What Are the Elements of a “Tax Expenditure Budget?”



| | States | In WA |
|----------------------------|--------|---|
| Released with budget | 12 | No |
| Classify by budget area | 11 | No |
| Identify tax expenditures | 22 | No |
| Recommendation | 2 | <i>JLARC (but not for budgetary purposes)</i> |
| Require legislative action | 0 | No |

Task Force on Tax Preference Reform August 31, 2010 6

Oregon Has Many of the Elements of Both Report and Budget

Oregon's governor submits a tax expenditure budget each biennium since 1995

| Tax Preference Report | Tax Expenditure Budget |
|-----------------------|---------------------------------------|
| Periodic publication | Released with budget |
| Description | Classify by budget area |
| Purpose | Identify tax expenditures |
| Fiscal impact | Recommendation |
| Evaluation | Require legislative action |

Task Force on Tax Preference Reform August 31, 2010 7

Oregon: A Closer Look

Evaluation

- Evaluations are done by 27 different agencies responsible for program areas
- These agencies conclude that most preferences are achieving their purpose

Recommendation

- The Governor is required to recommend whether an expiring preference should be extended
- For preferences expiring in 2009-11, the Governor recommended all 10 be extended

Task Force on Tax Preference Reform August 31, 2010 8

Washington's Reports Have Elements of Report and Budget

...but the elements are not integrated with the budgeting process

| Tax Preference Report | Tax Expenditure Budget |
|-----------------------|---------------------------------------|
| Periodic publication | Released with budget |
| Description | Classify by budget area |
| Purpose | Identify tax expenditures |
| Fiscal impact | Recommendation |
| Evaluation | Require legislative action |

Task Force on Tax Preference Reform August 31, 2010 9

Contact Information

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www.citizentaxpref.wa.gov

Task Force on Tax Preference Reform:
www.taxpreftaskforce.leg.wa.gov

Task Force on Tax Preference Reform August 31, 2010 10

2. Which States Have Elements of a Tax Preference Report?

WHICH STATES HAVE ELEMENTS OF A TAX PREFERENCE REPORT?

| State | Periodic Publication of Tax Preference Report | Description of Preference & Beneficiaries | Purpose of Preference | Fiscal Impact of Major Taxes (sales/use, property, income taxes, etc.) | Evaluation of Effectiveness |
|--------------------------|---|---|-----------------------|--|-----------------------------|
| Alabama (No Report) | | | | | |
| Alaska (No Report) | | | | | |
| Arizona | ✓ | ✓ | | ✓ | |
| Arkansas | ✓ | | | | |
| California | ✓ | ✓ | ✓ | ✓ | ✓ |
| Colorado | ✓ | | | | |
| Connecticut | ✓ | | ✓ | ✓ | |
| Delaware | ✓ | ✓ | ✓ | ✓ | ✓ |
| Florida | ✓ | | | ✓ | |
| Georgia | ✓ | | | ✓ | |
| Hawaii | ✓ | ✓ | | | |
| Idaho | ✓ | | | ✓ | |
| Illinois | ✓ | | | ✓ | |
| Indiana (No Report) | | | | | |
| Iowa | ✓ | ✓ | | | ✓ |
| Kansas | ✓ | ✓ | | ✓ | |
| Kentucky | ✓ | | | ✓ | |
| Louisiana | ✓ | | ✓ | ✓ | |
| Maine | ✓ | ✓ | ✓ | ✓ | |
| Maryland | ✓ | | | ✓ | |
| Massachusetts | ✓ | | | ✓ | |
| Michigan | ✓ | ✓ | | ✓ | |
| Minnesota | ✓ | ✓ | | ✓ | |
| Mississippi | ✓ | | ✓ | ✓ | |
| Missouri | ✓ | | | ✓ | |
| Montana | ✓ | ✓ | ✓ | ✓ | |
| Nebraska | ✓ | | | ✓ | |
| Nevada (No Report) | | | | | |
| New Hampshire | ✓ | | | | |
| New Jersey | ✓ | | | ✓ | |
| New Mexico (No Report) | | | | | |
| New York | ✓ | ✓ | | ✓ | |
| North Carolina | ✓ | | | ✓ | |
| North Dakota | ✓ | | | | |
| Ohio | ✓ | | | ✓ | |
| Oklahoma | ✓ | | | ✓ | |
| Oregon | ✓ | ✓ | ✓ | ✓ | ✓ |
| Pennsylvania | ✓ | ✓ | ✓ | ✓ | |
| Rhode Island | ✓ | ✓ | | ✓ | |
| South Carolina | ✓ | | | | |
| South Dakota (No Report) | | | | | |
| Tennessee | ✓ | | | ✓ | |
| Texas | ✓ | | | ✓ | |
| Utah | ✓ | | | | |
| Vermont | ✓ | ✓ | | ✓ | |
| Virginia | ✓ | | ✓ | | |
| Washington | ✓ | ✓ | ✓ | ✓ | ✓ |
| West Virginia | ✓ | | ✓ | ✓ | |
| Wisconsin | ✓ | | | ✓ | |
| Wyoming (No Report) | | | | | |
| Total | 43 | 16 | 12 | 34 | 5 |

Source: "Tax Expenditure Budgets, Budget Policy." Public Budgeting & Finance, Winter 2002, John Mikesell; Promoting State Budget Accountability Through Tax Expenditure Reporting, Center on Budget & Policy Priorities, 2009; National Association of State Budget Officers, 2008; and other sources.

Practices of Other States: Treatment of Tax Preferences in Budgeting

HOW ARE STATES INTEGRATING TAX PREFERENCE REPORTS INTO BUDGET PROCESSES?

| State | Released With Budget | Classify by Budget Area | Identify Tax Expenditure | Recommendation | Require Legislative Action |
|--------------------------|----------------------|-------------------------|--------------------------|----------------|----------------------------|
| Alabama (No Report) | | | | | |
| Alaska (No Report) | | | | | |
| Arizona | | | | | |
| Arkansas | | | | | |
| California | | ✓ | ✓ | | |
| Colorado | | | | | |
| Connecticut | | ✓ | ✓ | | |
| Delaware | | ✓ | ✓ | | |
| Florida | | | | | |
| Georgia | ✓ | | | | |
| Hawaii | | | | | |
| Idaho | ✓ | | ✓ | | |
| Illinois | | | ✓ | | |
| Indiana (No Report) | | | | | |
| Iowa | | | ✓ | | |
| Kansas | | | ✓ | | |
| Kentucky | | | ✓ | | |
| Louisiana | | ✓ | ✓ | | |
| Maine | ✓ | ✓ | ✓ | | |
| Maryland | | | ✓ | | |
| Massachusetts | | | ✓ | | |
| Michigan | ✓ | | ✓ | | |
| Minnesota | | | ✓ | | |
| Mississippi | | ✓ | ✓ | | |
| Missouri | ✓ | | ✓ | | |
| Montana | | ✓ | ✓ | | |
| Nebraska | | | | | |
| Nevada (No Report) | | | | | |
| New Hampshire | | | | | |
| New Jersey | ✓ | | | | |
| New Mexico (No Report) | | | | | |
| New York | ✓ | | ✓ | | |
| North Carolina | | | ✓ | | |
| North Dakota | | | | | |
| Ohio | ✓ | | ✓ | | |
| Oklahoma | | | | | |
| Oregon | ✓ | ✓ | | ✓ | |
| Pennsylvania | ✓ | ✓ | ✓ | | |
| Rhode Island | | | | | |
| South Carolina | | | | | |
| South Dakota (No Report) | | | | | |
| Tennessee | ✓ | | | | |
| Texas | | | | | |
| Utah | | | | | |
| Vermont | | | | | |
| Virginia | | ✓ | | | |
| Washington | | | | ✓ | |
| West Virginia | | ✓ | ✓ | | |
| Wisconsin | ✓ | | | | |
| Wyoming (No Report) | | | | | |
| Total | 12 | 11 | 22 | 2 | 0 |

Source: "Tax Expenditure Budgets, Budget Policy." Public Budgeting & Finance, Winter 2002, John Mikesell; Promoting State Budget Accountability Through Tax Expenditure Reporting, Center on Budget & Policy Priorities, 2009; National Association of State Budget Officers, 2008; and other sources.

3. How are States Integrating Tax Preference Reports into Budget Processes?

Examples of Taxpayer Accountability/Eligibility Reporting:

California New Jobs Credit

An income tax credit of up to \$3,000 for each additional full-time employee hired. The credit is available to small businesses with 20 or fewer employees. Beneficiaries must have a net increase in qualified full-time employees compared to the number of full-time employees employed in the preceding taxable year.

- Companies claim the credit on their annual income tax return.
- The claim form includes information on number of employees and amount of wages.

Illinois New Small Business Job Creation Tax Credit

An income tax credit of \$2,500 per job for employers with 50 or fewer total employees who hire new, full-time Illinois employees paying wages of \$13.75 an hour or more.

- Companies must register online that they have created a new position
- A year after filling the new position, companies file supporting job information in order to be issued tax credit certificates.

Iowa New Jobs Tax Credit

A corporate income tax credit available to a company that has agreed to expand their Iowa employment base by 10% or more. The amount of this one-time tax credit will depend upon the wages a company pays and the year in which the tax credit is first claimed.

- Companies claim the credit on their annual income tax return.
- The claim form includes information on qualifying new employees and amount of credit claimed.

Michigan Economic Growth Authority Tax Credit Program (MEGA)

A refundable credit for businesses that make capital investments and create and retain jobs in Michigan. The minimum number of jobs to be created or retained varies depending on the type and location of the business and if the business is expanding or locating the state.

- Companies that have been awarded tax credits submit forms showing that they have met the job and wage requirements.
- MEGA staff review the requests and grant certificates.
- Staff select a sample and conduct post audits of businesses to verify job count and salary information.

Vermont Employment Growth Incentive:

An incentive in the form of cash from Vermont's income tax withholding revenue for businesses that create new, full-time jobs filled by Vermont residents. Applicants must meet the "but for" test which means that the proposed economic development would not occur "but for" the incentive.

- Companies apply to the Vermont economic progress council.
- Application must include the base number of jobs and payroll at the time of application and jobs and payroll targets for the award period.
- The Council reviews the application, determines if the company meets the "but for" test, determines the costs and benefits of the project, and awards the incentive amount.
- Companies earning incentives must file an annual claim form by February 28 each year. Companies must report the number of full-time employees and the total payroll for the award year.
- Authorization to earn incentives may be rescinded when the company fails to file an annual VEGI claim by the statutory filing date.

Prepared by JLARC Staff, 9/3/10

Practices of Other States: Revenue Fiscal Notes

1. Preparation of Fiscal Notes in Selected States?

What Government Entity Prepares Fiscal Notes?

| State | Tax Collection Agency | Other Executive Agency | Legislature Committee Staff | Legislature Other Office | Joint Tax Agency & Legislature |
|----------------|-----------------------|------------------------|-----------------------------|--------------------------|--------------------------------|
| Alabama | | | | | |
| Alaska | | | | | |
| Arizona | | | ✓ | | |
| Arkansas | ✓ | | | | |
| California | | | ✓ | | |
| Colorado | | | | | |
| Connecticut | | | | ✓ | |
| Delaware | | | | ✓ | |
| Florida | | | | | ✓ |
| Georgia | | | | | |
| Hawaii | | | | | |
| Idaho | | | | ✓ | |
| Illinois | ✓ | | | | |
| Indiana | | | | | |
| Iowa | | | | ✓ | |
| Kansas | | ✓ | | | |
| Kentucky | | | | | |
| Louisiana | | | | | |
| Maine | | | | ✓ | |
| Maryland | | | | | |
| Massachusetts | ✓ | | | | |
| Michigan | ✓ | | | | |
| Minnesota | ✓ | | | | |
| Mississippi | | | | | |
| Missouri | | | | | |
| Montana | | | | | |
| Nebraska | | | | ✓ | |
| Nevada | | | | | |
| New Hampshire | | | | | |
| New Jersey | | | | | |
| New Mexico | | | | | |
| New York | ✓ | | | | |
| North Carolina | | | | ✓ | |
| North Dakota | ✓ | | | | |
| Ohio | | | | | ✓ |
| Oklahoma | ✓ | | | | |
| Oregon | | | | ✓ | |
| Pennsylvania | | | | | ✓ |
| Rhode Island | | | | | |
| South Carolina | | | | | |
| South Dakota | ✓ | | | | |
| Tennessee | | | | ✓ | |
| Texas | | | | | |
| Utah | | | | ✓ | |
| Vermont | | | | ✓ | |
| Virginia | | | | | |

Practices of Other States: Revenue Fiscal Notes

| State | Tax Collection Agency | Other Executive Agency | Legislature Committee Staff | Legislature Other Office | Joint Tax Agency & Legislature |
|---------------|-----------------------|------------------------|-----------------------------|--------------------------|--------------------------------|
| Washington | ✓ | | | | |
| West Virginia | ✓ | | | | |
| Wisconsin | ✓ | | | | |
| Wyoming | | | | | |
| Total# | 12 | 1 | 2 | 11 | 3 |

Source: WA DOR listserv survey/28 states responded, CCH and state statutes

2. Dynamic Revenue Estimating: Use of Secondary, Macroeconomic Analysis for State Tax Proposals

DYNAMIC REVENUE ESTIMATING Use of Secondary, Macroeconomic Analysis for State Tax Proposals January 25, 2010

| | |
|------------|--|
| Arizona | Joint Legislative Budget Committee is required to add the “behavioral response” of taxpayers to fiscal note impacts, unless it is “unreasonable” to do so. Typically, the REMI model is used only for two analyses per year. |
| Arkansas | Reported 2-3 dynamic estimates annually in 2003; discontinued since then. |
| California | Developed in the 1990s to evaluate proposals with at least \$10 million impact. The requirement had a sunset provision in 2000 and this is no longer used. |
| Iowa | Although not required as a part of the state budgetary process, occasionally a REMI model is used to evaluate large policy proposals. |
| Louisiana | Legislative Fiscal Office produces dynamic revenue impacts for proposals with large budgetary impacts for unofficial, informational purposes only. |
| New Mexico | A two year pilot program to explore use of dynamic revenue estimating was undertaken several years ago. The REMI model is not currently being used. |
| New York | Internally developed economic models are used for internal analytical purposes. Not a formal part of the budgetary process. |
| Ohio | REMI was used in 2005 to analyze a broad tax reform proposal. Not an on-going part of the state budgetary process. |
| Oregon | Legislative Revenue Office uses a macroeconomic model to analyze dynamic impacts of proposals with greater than \$10 million annual impact. |
| Texas | A REMI model is used to estimate the macroeconomic revenue feedback effects of proposals with greater than \$100 million annual impacts. However, the results are not considered as part of the budget process. |
| Wyoming | A REMI model is used occasionally to estimate the impact of tax proposals. |

Source: based largely on “Dynamic Scoring: Should Florida Do More?” Staff Research Paper by Florida House of Representatives, October, 2008.

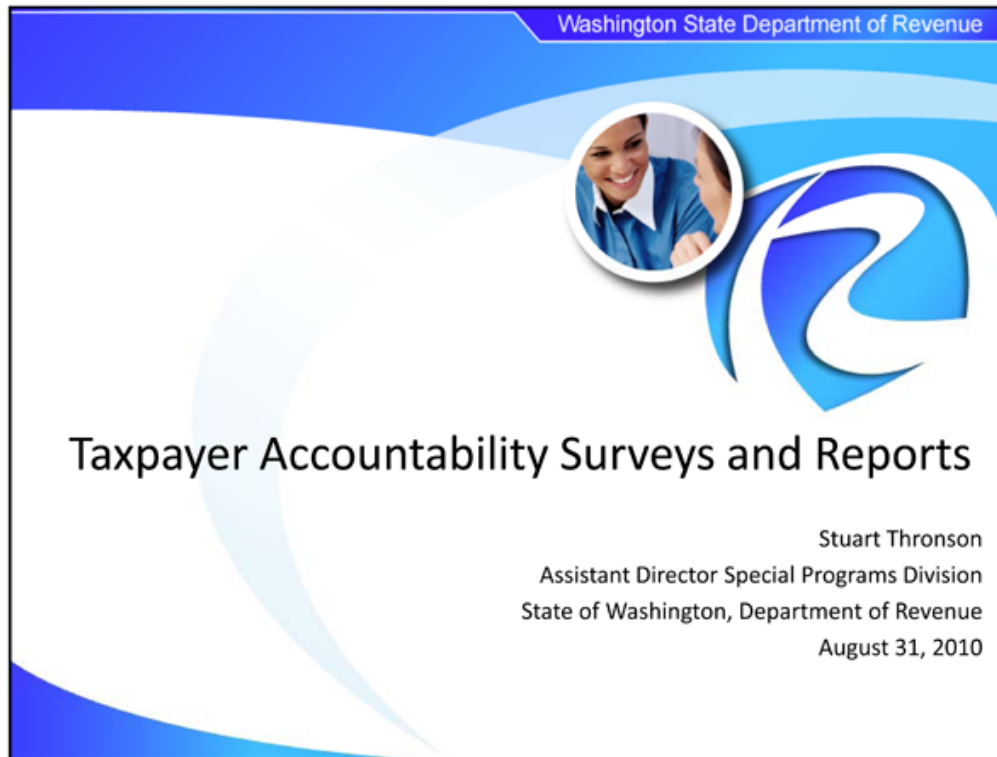
Taxpayer Accountability Surveys and Reports

1. How are Taxpayer Accountability Surveys/Reports Constructed in the Law

How are Taxpayer Accountability Surveys/Reports Constructed in the Law?

| Annual Survey (SHB 3066, 2010) | Annual Report (SHB 3066, 2010) |
|--|---|
| Due date | |
| <ul style="list-style-type: none"> • Apr 30 of year following when preference claimed • Extension available • For deferral, Apr 30 after completion & for the next 7 years | <ul style="list-style-type: none"> • Apr 30 of year following when preference claimed • Extension available |
| Information requested | |
| <ul style="list-style-type: none"> • # total employment positions • % full, part, temporary positions • # positions within wage bands of >30K, 30-60K, <60K • # positions with medical, dental & retirement benefits by wage band • Additional information DOR may request to measure results of or eligibility for preference | <ul style="list-style-type: none"> • # of full, part & temporary employee positions • Employee wages • Employer provided health & employment benefits in WA • Additional information DOR may request to measure results of or eligibility for preference |
| Penalty for not filing report/ survey | |
| <ul style="list-style-type: none"> • If survey not filed, tax immediately due with interest (no penalty) • Amounts owed publicly disclosable | <ul style="list-style-type: none"> • If report not filed, tax immediately due with interest (no penalty) • Amounts owed publicly disclosable |
| Summary statistics | |
| <ul style="list-style-type: none"> • DOR must prepare summary stats by category in report to Legislature by Oct 1 each year, at least 3 taxpayers per category | <ul style="list-style-type: none"> • DOR must prepare summary stats by category in report to Legislature by Oct 1 each year, at least 3 taxpayers per category |
| Disclosable | |
| <ul style="list-style-type: none"> • Only dollar amount taken and taxpayer name disclosed • If less than \$10K saved during period, taxpayer may request confidentiality for dollar amount | <ul style="list-style-type: none"> • Everything disclosable except additional information requested by DOR • Dollar amount taken not disclosed or detailed in report |
| Preferences subject to reporting (13 surveys, 18 reports, 8 additional) | |
| <p>Deferral/waiver</p> <ul style="list-style-type: none"> • Rural deferral • High tech • Food processors • Biotech/ medical device • Corporate headquarters <p>Credit</p> <ul style="list-style-type: none"> • High tech B&O credit • Customized training B&O credit • Rural county software programming/ manufacturing B&O credit (expires 12/31/10) • Rural county 3rd party help desk B&O credit (expires 12/31/10) <p>Preferential rate</p> <ul style="list-style-type: none"> • Timber product manufacturers <p>Exemptions</p> <ul style="list-style-type: none"> • Fresh fruit/vegetable processors – B&O • Raw seafood manufacturers – B&O • Dairy product manufacturers – B&O | <p>Credit</p> <ul style="list-style-type: none"> • Commercial aircraft manufacturer property & leasehold excise tax B&O credit • Aerospace preproduction development expenditures for manufacturer/ nonmanufacturer B&O credit • Aluminum smelter property tax B&O credit • Candy manufacturer employee B&O credit <p>Preferential rate</p> <ul style="list-style-type: none"> • Commercial airplane manufacturers • FAR Part 145 commercial airplane repair stations • Aluminum smelters • Solar energy systems manufacturers & wholesalers • Semiconductor material manufacturers • Newspaper printers/publishers <p>Exemptions</p> <ul style="list-style-type: none"> • Tangible personal property used at & in construction of aluminum smelters – RST/UT • Aluminum smelter brokered natural gas used – UT • Gases used to manufacture semiconductor materials – RST/UT • Power sold to electrolytic processors – PUT • Construction of superefficient airplane manufacturing facility RCW 82.08/12.980 – RST/UT • Property exempt under RCW 82.08/12.980 – property tax • Property exempt under RCW 82.08/12.980 – leasehold excise tax • Data center equipment/infrastructure – RST/UT <p>• Eight additional tax preferences are contingent on a \$1 billion investment in WA by a semiconductor microchip manufacturer. If contingency is met, subject to annual report.</p> |

2. Department of Revenue: Taxpayer Accountability Surveys and Reports
Accountability Surveys and Reports




For Today

Purpose:
Describe how the Department of Revenue defines, collects, verifies and reports tax preference information contained in the tax preference survey and report.


Topics to be Covered:

- How we identify businesses needing to file
- How the data is gathered
- Data verification
- Distribution and use of information, and
- Compliance efforts




How We Identify Businesses Needing to File

- An application is required for all deferrals and selected exemptions and credits.
- We identify businesses needing to file using:
 - Information contained on the Combined Excise Tax Return
 - Most B&O credits
 - Preferential tax rates
 - System data
 - NAICS code
 - Filing history




How the Data is Gathered

- Annual surveys and reports are statutorily required and are made available each January.
- All 2010 surveys/reports will be due April 30, 2011
- In 2011, all businesses will be required to e-file
 - An exception process for using paper is available
 - Electronic filing has many benefits
 - Certain fields are “pre-populated” (convenience to businesses)
 - Appropriate questions are pre-selected depending upon the tax preference
 - System won’t allow incomplete surveys/reports
 - Reduces time spent correcting and verifying answer



Data Verification

- Report/survey information is reconciled with system data available to the Department
 - Tax data reported to the Department
 - Employment Security information
- Logic models are run against the data
- Follow-up questions are asked




Distribution and Use of Information

- Information is summarized in a report to the legislature:
 - Descriptive Statistics for Tax Incentive Programs
 - Due September 1st of each year
- The Department also conducts evaluation studies on the High Tech and Rural County deferral programs
- Survey information is confidential (except for business name and type of tax incentive)
- Report information is not confidential
- Information is made available on the Department's website


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Compliance Efforts



- The Department attempts to:
 - Determine if a report/survey was due
 - Sort out and correct errors
 - Determine if tax is due because of failure to file
- Failing to file a timely survey/report
 - **Deferrals** - results in a billing for a portion of the deferred taxes
 - **Credits** - results in the denial of credit for the current year
 - **Exemptions/reduced rates** - results in assessment of tax for the period
- In 2009 we billed 68 taxpayers and collected \$1.2 million for failure to file the 2008 report/survey

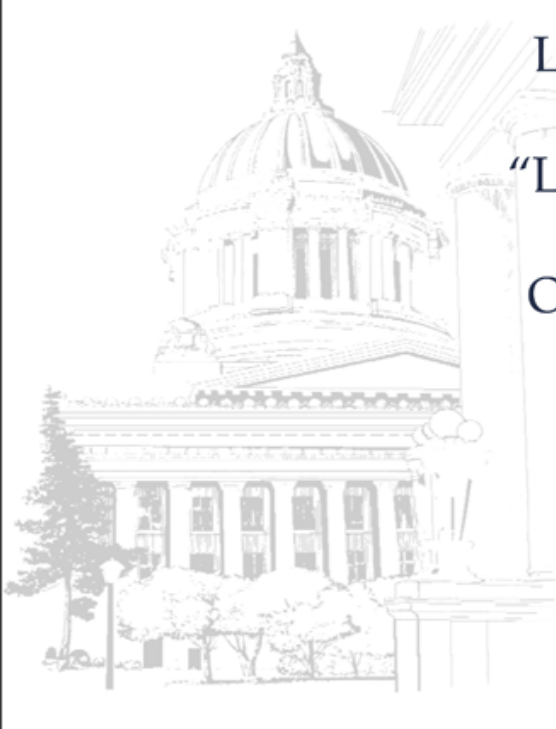
Washington State Department of Revenue



Questions?

Legislative Intent and Intended Legislative Outcomes


1. Legal Issues with Establishing “Legislative Intent” or Intended Outcomes for Tax Preference Legislation



Legal Issues with
Establishing
“Legislative Intent”
or Intended
Outcomes for Tax
Preference
Legislation

Kristen Fraser
Counsel, Office of Program
Research

August 31, 2010



What will be covered in today’s discussion?

Task Force
on Tax
Preference
Reform

- Background on judicial use of legislation and legislative history in identifying “legislative intent.”
 - ▶ This may affect how policymakers choose to identify intended outcomes for tax preference statutes.
- How “legislative intent” and related legal issues may affect:
 - ▶ The choice of procedural method for identifying these intended outcomes.
 - ▶ What the declaration itself does.

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Why are we talking about “legislative intent”?

Task Force on Tax Preference Reform

Important to distinguish between two concepts:

- Legislative intent:
 - Courts try to ascertain legislative intent for purposes of statutory construction and some constitutional analysis.
- Intended outcomes of legislation:
 - Goals, objectives, or similar statements to be used in future evaluation of legislation.

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What is “legislative intent” and how do courts determine it?

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- 1 member? 147 members? 75 members? Governor?
- Statutory Construction 101:
 - Is primary purpose to give effect to intent of the legislature? Or, to apply law as written?
- First source of legislative intent: Text of legislation.
- Ambiguity? It lurks everywhere.
- Canons (tools) of construction:
 - Judicial presumptions about legislation and legislature.
- Legislative history.

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What are intent sections?

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- Part of legislation; voted upon by legislature and signed by governor.
- Not part of operative law but courts may use:
 - To interpret operative law.
 - In a constitutional analysis.
 - To reach conclusions about common law.
- Intent sections have benefits and risks.

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What is legislative history?

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- Sequential drafts
- Bill analyses and bill reports
- Oral and written testimony in committee
- Fiscal notes and other executive material
- Floor debate
- “Official” legislative history
 - Budget notes
- Veto message (governor acts in legislative capacity)
- Other

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What does all this mean for today's discussion?

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- In construing a statute, courts strive to implement legislative intent and will use available tools.
- If policymakers create declarations of intended outcomes, the courts and others may consider these declarations to be legislative history.
- In crafting a declaration requirement, policymakers need to consider the possibility of judicial and other uses.

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Should tax preference legislation include a declaration of intended outcomes?

Task Force on Tax Preference Reform

- Evidence of intended outcomes may be useful in policy analysis of tax preference legislation.
- If policymakers want new tax preference legislation (or its legislative history) to include a declaration of intended outcomes or similar kind of statement:
 - Procedurally, what form should this requirement take?
 - Substantively, what should the requirement require?

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What method should be used to establish the requirement?

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- Some non-exhaustive possibilities:
- Constitution (addressing legislative and/or executive procedures).
- Statute (addressing legislative and/or executive procedures).
- Executive order or policy (addressing executive procedures).
- Legislative procedural rule (addressing legislative process).
- Legislative policy (chair, leadership, etc.).

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What should the requirement actually require?

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- Some non-exhaustive possibilities:
- Declaration section in bill.
- Executive review process.
- Statement in legislative history.
- Colloquies.
- Sponsor statement in bill file.
- Other?

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| | |
|---|---|
|  | <h2>Resources</h2> |
| <p>Task Force on Tax Preference Reform</p> | <p><u>Publications and Presentation Materials</u></p> <p>Marlin J. Appelwick, <i>Law School for Legislators: Statutory Construction: Be Careful What You Write</i> (2007) (unpublished presentation on file with JLARC) (judicial statutory interpretation).</p> <p>William Bridges & Aldo Melchiori, <i>Fumbling in the Ashcans</i> (2008)(unpublished presentation on file with JLARC) (judicial use of legislative history).</p> <p>Kristen L. Fraser, <i>Washington Legislative History: How to Find It, How Courts Use It</i> (1999) (unpublished presentation on file with JLARC) (sources of legislative history) .</p> <p>Lisa M. Jackson, <i>Explore Legislative History with the King</i>, XXV <i>The Legislative Lawyer</i> (2010) (available at http://www.ncsl.org/default.aspx?TabId=20374)</p> <p>National Conference of State Legislatures, <i>Inside the Legislative Process</i> (2010) (available at http://www.ncsl.org/default.aspx?tabid=13506)</p> <p>Philip A. Talmadge, <i>A New Approach to Statutory Interpretation in Washington</i>, 25. <i>Seattle U. L. Rev.</i> 179 (2001) (proposing hierarchy of legislative history).</p> <p>Joe Panesko, <i>Selected Maxims of Statutory Construction</i> (2008) (unpublished presentation on file with JLARC).</p> <p>Arthur C. Wang, <i>Legislative History in Washington</i>, 7 <i>U. Puget Sound L. Rev.</i> 571 (1984) (sources of legislative history).</p> <p><u>Selected Authorities:</u></p> <p><u>Legislative Intent and Statutory construction:</u> <i>Segaline v. L&I</i>, __ Wn.2d __ (2010) (using intent section to construe “person”); <i>Tobin v. L&I</i>, __ Wn.2d __ (2010) (structural interaction; apparent intent to codify and limit court decision); <i>State v. Cooper</i>, 156 Wn.2d 475 (2006) (intent statement about caregivers did not limit plain meaning of “person” in operative text); <i>State v. Glas</i>, 147 Wn.2d 410 (2002) (despite evident intent, text of statute did not accomplish apparent legislative objective).</p> <p><u>Process of law-making:</u> <i>Brown v. Owen</i>, 165 Wn.2d 706 (2009) (legislative discretion over rules and parliamentary procedure); <i>Farm Bureau v. Gregoire</i>, 168 Wn.2d 284 (2007) (some justices questioned use of statute to restrict law-making power); <i>ATU v. State</i>, 142 Wn.2d 183 (rejecting statutory “extra-constitutional” requirements for validity of legislation); AGO 2001 No. 9 (validity of legislative rules).</p> |
| <p>August 31, 2010</p> | <p>11 Prepared by the Office of Program Research</p> |

2. Best Practices for Intent Sections.docx

Best Practices for Drafting Intent Sections

- Preambles to legislation (intent sections) are not part of the operative law, but they may be used by courts and others to interpret the law. Good intent sections may be useful during both the judicial and legislative processes.
- A good intent section is a reliable form of legislative history: it is contemporaneous, collective, official, and bicameral (and presented). For this reason, a well-drafted intent section may be useful in interpreting and evaluating a statute.
- Notwithstanding their uses, intent sections may also have unintended consequences, such as inadvertent creation of a cause of action.
- As with all other drafting decisions, the sponsor decides whether to include an intent section and what that section should say. And, as will all legislation, the intent section may be revised during the amendment process.
- Most ordinary legislation does not require an intent section. An intent section is not a substitute for precision (or breadth) in the operative text of the bill.
- Good intent sections explain the purpose of the legislation rather than state legal conclusions about the legislation's effect. They are expository rather than persuasive or polemical.
- Good intent sections reflect general good drafting practices. They are consistent with the rest of the bill and updated by amendment as needed. They are drafted in light of relevant statutes, common law, and constitutional law.
- An intent section may be more appropriate where there is prior judicial construction of a statute (e.g., the legislature is rejecting a judicial construction) or where a statute is likely to be subject to judicial construction or review in the future (e.g., a retroactive statute).
- Good factual findings are brief, declarative, and supported by the record. Good factual findings do not purport to be legal conclusions.”

1. Timing of Legislative Changes to the Tax Code

Timing of Legislative Changes to the Tax Code:

- Effective Dates,
- Expiration Dates, &
- Conditions to Qualify

Effective Dates

Default Effective Date

Default Rule: if there is no express effective date, the bill takes effect 90 days after the end of session.

Purposes of an Effective Date

- Set the effective date before the 90 days (emergency clause).
- Set the effective date at the beginning of a tax reporting period (month, quarter, fiscal year, calendar year).
- Delay the effective date to provide sufficient time for implementation.
- Delay the tax change until future periods.

Effective Date Examples

- *This act takes effect July 1, 2010.*
- *Sections 204 through 207 of this act take effect July 1, 2011.*

Expiration Dates

Purposes of an Expiration Date

- Policy or fiscal considerations: to limit the duration of an increased tax; to provide tax relief for a limited period; and other policy ends.
- To keep the tax code more simple (to merge double amendments, to automatically remove obsolete provisions).

Expiration Dates vs. Sunset Clauses

Sunset Clause: The sunset process is not the same as a termination or an expiration; rather, it is a process under chapter 43.131 RCW which involves a review by the Joint Legislative Audit and Review Committee and is intended to terminate an agency or program in a given year and repeal the underlying statutes in the next year.

Expiration Date Examples

- *This act expires December 31, 2020.*
- *This section expires June 30, 2013.*

Establishing Conditions

Purposes for Setting Conditions to Qualify for Tax Preferences

- To create a precondition that must be met before a tax preference takes effect.
- To remove the benefit of a tax preference if a later condition does or does not occur.

Purpose of Null and Void Clauses

- To nullify a bill if funding to support the bill is not provided.
- “Null and void” clauses have appeared in other contexts. However, the use such clauses in non-budget contexts have been to establish requirements based on external factors and are best expressed as preconditions required for legislation to take effect.

Precondition Examples

By a date certain, taxpayer must take action for a bill to take effect or to qualify, such as:

- Sign a memorandum of understanding to site new firm in Washington;
- Hire new employees;
- Begin construction; or
- Invest a set amount of money in a project.

Post-Hoc Examples

By a date certain, taxpayer may to claim the tax preference only if certain conditions continue to be met, such as:

- Maintaining a number of employees;
- Filing an annual survey or report; or
- Using a structure (built with tax preferences) for certain types of manufacturing or other activity.

