

Proposed Final Report:
2018 Tax Preference Performance Reviews

Nonprofit or Library Fundraising

Legislative Auditor’s Conclusion:

The preference is achieving its objective of providing tax relief to individuals who purchase or win items at nonprofit or library fundraising events.

December 2018

Use tax exemption for items acquired at nonprofit or library fundraising events

The preference provides a use tax exemption for individuals who purchase or win items at qualifying nonprofit or library fundraising events or activities.

Items are exempt from use tax if they are:

- Valued at less than \$12,000.
- Obtained at an event that is exempt from collecting sales tax.

Qualifying fundraising events must be exempt from B&O tax, time-limited, and intended to raise money to further the goals of the nonprofit or library.

Estimated Biennial Beneficiary Savings Unknown - Beneficiaries not required to report savings.

Tax Type

Use Tax

RCW 82.12.225

Applicable Statutes

Stated public policy objective met

The Legislature stated a policy objective when it passed this preference in 2013.

Objective	Results
Provide use tax relief to individuals who purchase or win items at qualifying fundraising events.	Met.

Absent legislative action, the preference will expire on July 1, 2020.

Recommendation

Legislative Auditor's Recommendation: Continue and clarify (structural purpose)

The Legislature should continue and clarify the preference because it is achieving its objective of providing use tax relief to individuals who purchase or win items at qualifying nonprofit or library fundraising events.

If the Legislature does continue this preference, it should **consider making the preference permanent, adding a mechanism to allow the exempt value of items to increase with time, and recategorizing the preference as one intended to provide tax relief.**

More information is available on the Recommendations Tab.

Commissioners' Recommendation

The Commission endorses the Legislative Auditor's recommendation with comment. This is an important preference, not only from a policy perspective, but also from an administrative efficiency perspective. The Legislative Auditor restates the objective of the preference as providing tax relief to individuals who purchase or win items at qualifying fundraising events. However, while this is the direct effect of the preference, it is unlikely the true objective or purpose of the preference despite the tax performance statement. This exemption coupled with RCW 82.08.02573 avoids the requirement that would otherwise be placed on libraries and nonprofit organizations (hereinafter referred to collectively as "nonprofits") to collect retail sales or use tax from donors that purchased or won such items in connection with the fundraising conducted by nonprofits. While donors do receive a tax benefit, this preference primarily benefits nonprofits in two separate ways. First, it

allows nonprofits to avoid the administrative burdens associated with collecting and reporting use tax at fundraising events. Second, it avoids decreased donations from donors who would otherwise likely reduce the amount of their auction bids in order to pay the 8-10% use tax due on the donation/bid. The Citizen Commission would have the Legislature recognize the true beneficiaries of the preference and categorize the preference as one intended primarily to provide administrative relief and benefit to nonprofit organizations.

REVIEW DETAILS

1. What is the preference?

Use tax exemption for individuals who purchase or win items at nonprofit or library fundraising events

Legislature stated its objective to provide use tax relief

The Legislature passed this preference with the stated purpose to provide use tax relief to individuals who support charitable activities by purchasing or winning items at fundraising events or through fundraising activities held by nonprofits or libraries. Those organizations are already exempt from collecting sales tax at qualifying fundraising events under existing law.

The Legislature categorized this preference as one intended to accomplish a "general purpose." Since 2013, the Legislature is required to include a performance statement for all new or expanded tax preferences and indicate which one of several categories of preferences best describes the legislative purpose.

What is use tax?

Use tax is a tax on the use of goods in Washington when sales tax was not collected at the time of sale. The use tax rate is the same as the sales tax rate. Goods used in Washington are subject to either sales or use tax, but not both.

Use tax exemption for items valued at less than \$12,000

Individuals who purchase or win items valued at less than \$12,000 at qualifying nonprofit or library fundraising events do not owe use tax on the items.

Qualifying fundraising events must meet specific criteria

To qualify for a use tax exemption, a nonprofit or library fundraising event must be:

- Exempt from paying business and occupation (B&O) tax on the gross income received from the event under RCW 82.04.3651.
- Limited in time rather than an ongoing business endeavor. For example, raffles and auctions qualify. Regular business operations, such as thrift stores, gift shops, or coffee shops, do not qualify. There is no limit to the number of qualifying events a nonprofit can hold in any given year.
- Raising money to further the goals of the nonprofit organization or library.

Preference scheduled to expire July 1, 2020

The preference took effect October 1, 2013, and is set to expire July 1, 2020.

REVIEW DETAILS

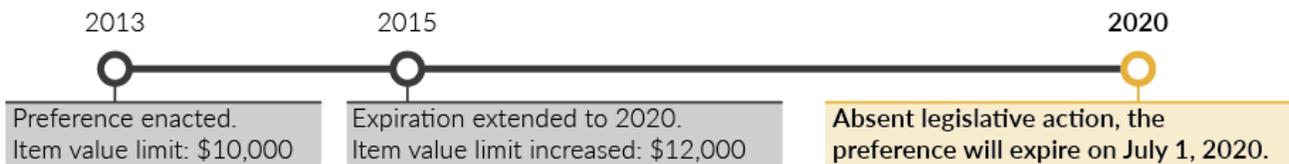
2. Items exempt from sales & use tax

Preference results in no sales or use tax for certain items acquired at qualifying fundraising events

Value of exempted items has increased over time

The Legislature initially passed this preference in 2013 to exempt items valued at less than \$10,000. The original preference was scheduled to expire on July 1, 2017.

The 2015 Legislature expanded the exemption to cover items valued at less than \$12,000, and extended the expiration date to July 1, 2020.



Source: JLARC staff analysis of RCW 82.12.225.

Preference removes use tax obligation for items already exempt from sales tax

Before this preference passed, existing law exempted nonprofit organizations and libraries from collecting **sales tax** on items purchased or won at qualifying fundraising events. However, there was no corresponding **use tax exemption** on those same items. Individuals who purchased or won items at qualifying fundraising events were required to pay use tax directly to the Department of Revenue on the value of the items.

With this preference, individuals are now exempt from paying either sales or use tax on items valued under \$12,000 when acquired at qualifying fundraising events.

Other tax exemptions apply to nonprofit and library fundraising activities

In addition to this preference, nonprofit organizations and libraries are also exempt from the following:

- Paying business and occupation (B&O) tax on amounts earned at qualifying fundraising activities.
- Collecting sales tax from individuals who purchase goods at qualifying fundraising activities. The exemption applies regardless of the value of the goods.

REVIEW DETAILS

3. Objective met, impact unknown

Stated public policy objective achieved, unknown revenue impact

Preference is achieving the stated public policy objective

When this preference passed in 2013, the Legislature stated the public policy objective was to provide use tax relief to individuals who support charitable activities by purchasing or winning goods at fundraising events.

The preference is achieving the stated objective by exempting individuals from paying use tax on their purchases or winnings valued at under \$12,000.

Preference has direct and indirect beneficiaries but size of revenue impact unknown

Direct beneficiaries of the preference are individuals who purchase or win items valued at less than \$12,000 at qualifying fundraising events held by nonprofit organizations and libraries.

Indirect beneficiaries of the preference are Washington nonprofit organizations and libraries holding fundraising events.

Beneficiaries not required to report to DOR

In 2015, the Legislature directed JLARC to evaluate this preference to measure its effectiveness. While the public policy objective of providing use tax relief is being achieved, no data exists to identify how much tax relief is being provided.

Direct beneficiaries of the use tax exemption are not required to report, file, deduct, or otherwise document their use of the preference. Therefore, the number of individuals benefiting from this preference and its value cannot be determined. It is commonly known that many nonprofit organizations and libraries hold fundraising events throughout the year, such as auctions, raffles, or book sales. These events are not tracked by, or reported to, the Department of Revenue (DOR).

The nonprofit organizations and libraries holding qualifying fundraising events are also not required to report sales from these events to DOR.

When the Legislature extended and expanded the preference in 2015, the fiscal note at the time estimated a loss in state tax revenue of \$15,000 per year for fiscal years 2018, 2019, and 2020. JLARC staff cannot validate the accuracy of this estimate.

REVIEW DETAILS

4. Applicable statutes

RCW 82.12.225

Exemptions—Nonprofit fund-raising activities. (Expires July 1, 2020.)

(1) The provisions of this chapter do not apply in respect to the use of any article of personal property, valued at less than twelve thousand dollars, purchased or received as a prize in a contest of chance, as defined in RCW 82.04.285, from a nonprofit organization or a library, if the gross

income the nonprofit organization or library receives from the sale is exempt under RCW 82.04.3651.

(2) This section expires July 1, 2020. [2015 3rd sp.s. c 32 § 2; 2013 2nd sp.s. c 13 § 1402.]

Notes:

Tax preference performance statement—2015 3rd sp.s. c 32 § 2: "(1) This section is the tax preference performance statement for the tax preference in section 2 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to accomplish a general purpose as indicated in RCW 82.32.808(2)(f).

(3) It is the legislature's specific public policy objective to provide use tax relief for individuals who support charitable activities by purchasing or winning articles of personal property from a nonprofit organization or library when the personal property is sales tax exempt.

(4) To measure the effectiveness of the exemption provided in this act in achieving the specific public policy objective described in [subsection] (3) of this section, the joint legislative audit and review committee must evaluate this tax preference." [2015 3rd sp.s. c 32 § 1.]

Intent—2013 2nd sp.s. c 13: "It is the intent of part XIV of this act to provide use tax relief for individuals who support charitable activities by purchasing or winning articles of personal property from a nonprofit organization or library when the personal property is sales tax exempt. It is also the intent of the legislation to provide this tax preference in a fiscally responsible manner by capping the exemption for articles of personal property that are valued at ten thousand dollars or less." [2013 2nd sp.s. c 13 § 1401.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

RECOMMENDATIONS & AGENCY RESPONSE

Legislative Auditor's Recommendation

Legislative Auditor recommends continuing and clarifying the preference (structural purpose)

The Legislature should continue and clarify the preference because it is achieving the public policy objective of providing use tax relief to individuals who support charitable causes by purchasing or winning items at nonprofit or library fundraising events.

If the Legislature continues this preference before the July 1, 2020 expiration date, it should also consider whether to:

- **Make the preference permanent.** The related sales tax exemption for items purchased or won at fundraising events has no expiration date. This exemption was intended to provide relief from use tax for items already exempt from sales tax.
- **Add a mechanism to allow the exempt value** of items purchased or won **to increase with time**, such as automatic increases based on the rate of inflation. Currently the exempt value is set for items valued at less than \$12,000.
- **Recategorize the preference as one intended to provide tax relief to certain individuals**, as noted in RCW 82.32.808(2)(e). Currently, the preference is categorized as one intended to accomplish a general purpose. A technical change in categories will ensure that the legislative purpose is clearly identified.

Legislation Required: Yes.

Fiscal Impact: Unknown.



Citizen Commission for Performance Measurement of Tax Preferences

Dr. Grant D. Forsyth, Chair
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Representative Derek Stanford
Chair, Joint Legislative Audit
and Review Committee

Pat McCarthy
State Auditor

October 18, 2018

The Honorable Representative Kristine Lytton
The Honorable Representative Ed Orcutt
The Honorable Representative Timm Ormsby

The Honorable Representative Bruce Chandler
The Honorable Senator Christine Rolfes
The Honorable Senator John Braun

Re: 2018 Tax Preference Reviews

I am pleased to forward to you the comments that the Citizen Commission for Performance Measurement of Tax Preferences unanimously adopted for this year's review of tax preferences.

We adopted the same position as the Legislative Auditor for all seven recommendations issued this year. The full text of our comments, as well as summaries of the JLARC staff's analysis and recommendations are linked [here](#).

Tax preference reviews provide valuable information as the Legislature considers whether specific preferences are meeting the Legislature's policy objectives. With this year's report, there are now 12 years of tax preference evaluations available to the Legislature, comprising over 270 individual reviews.

I urge you to consider this year's and previous years' recommendations and comments on tax preference statutes in the upcoming legislative session.

The Commission is operating on a multi-year review schedule that goes through 2026. Next year's reviews will have an emphasis on the aerospace industry, but also include preferences for multi-family housing and wood waste (hog fuel) used to generate energy. More details on the reviews planned for 2019 are linked [here](#).

As Chair of the Citizen Commission, I would be pleased to discuss the Commission's position and comments with you and any interested legislators. Please feel free to contact me at

Citizen Commission for Performance Measurement of Tax Preferences

October 18, 2018

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grant.forsyth@leg.wa.gov or the Legislative Auditor, Keenan Konopaski at keenan.konopaski@leg.wa.gov
or 360-786-5187.

Sincerely,



Grant D. Forsyth, Chair

Citizen Commission for Performance Measurement of Tax Preferences

Cc: Members of Washington State Legislature
David Schumacher, Office of Financial Management
Marc Baldwin, Office of Financial Management
Jim Schmidt, Office of Financial Management
Randy Simmons, Washington State Department of Revenue
Gil Brewer, Washington State Department of Revenue
Kathy Oline, Washington State Department of Revenue

RECOMMENDATIONS & AGENCY RESPONSE

Commissioners' Recommendation

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STATE OF WASHINGTON

October 1, 2018

TO: Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: David Schumacher, Director
Office of Financial Management

Handwritten signature of David Schumacher in black ink.

Randy Simmons, Acting Director
Department of Revenue

Handwritten signature of Randy Simmons in black ink.

**SUBJECT: JLARC PRELIMINARY REPORT ON 2018 TAX PREFERENCE
PERFORMANCE REVIEWS**

The Office of Financial Management and the Department of Revenue have reviewed the Joint Legislative Audit and Review Committee's (JLARC) preliminary report on the 2018 tax preference performance reviews.

We appreciate JLARC's thorough analysis and the detailed assessment provided by the Citizen Commission for Performance Measurement of Tax Preferences. A system that provides for a continuous review of state tax preferences is critical to ensure that the state of Washington maintains a fair and equitable tax system.

While we have no specific comments on the 2018 preliminary report, we continue to support JLARC's recommendations for the inclusion of performance statements and specific public policy objectives for all tax preferences where they do not exist in statute today.

Thank you for the opportunity to provide comments on this material and the recommendations made by JLARC.

Washington Joint Legislative Audit and Review Committee

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