

State of Washington
Citizen Commission for Performance Measurement of Tax Preferences

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November 2, 2020

The Honorable Representative Timm Ormsby	The Honorable Representative Ed Orcutt
The Honorable Representative Drew Stokesbary	The Honorable Senator Patty Kuderer
The Honorable Representative Cindy Ryu	The Honorable Senator Hans Zeiger
The Honorable Representative Bill Jenkin	The Honorable Senator Emily Randall
The Honorable Representative Drew Hansen	The Honorable Senator Jeff Holy
The Honorable Representative Luanne Van Werven	The Honorable Senator Christine Rolfes
The Honorable Representative Gael Tarleton	The Honorable Senator John Braun

Re: 2020 Tax Preference Reviews

Dear Senators and Representatives,

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. The Citizen Commission consists of five voting members, with a member appointed by each of the four caucuses and the Governor's office. Notably, reviews this year included four preferences that the Legislative Auditor identified for further legislative review:

Two are not meeting their stated objectives:

- The Legislative Auditor found that a tax credit for customized employee training is not attracting new businesses and is unlikely to contribute to business retention. The Commission recommends changing the purpose to focus on assisting small existing businesses.
- The Legislative Auditor found that tax credits for hiring unemployed veterans have not met the Legislature's goal of reducing the number of unemployed veterans by 30%, and recommends modifying them to more effectively serve veterans.

Two are for industries that have changed since the preferences were enacted:

- The Legislative Auditor found that a sales tax exemption for farmworker housing may have incentivized the construction of some types of housing. However, the exemption requirements may not align with other current housing practices. The Legislative Auditor recommends clarifying the preference with a performance statement and determining if the preference should align with other housing practices.
- The Legislative Auditor found that a beer tax exemption for microbreweries has created an estimated 2 to 6 jobs in the beverage manufacturing industry and distributors receive 84% of the direct preference savings. The Washington beer industry has changed, and now has more breweries with smaller production. The Legislative Auditor recommends clarifying the

preference to include a performance statement and ensure the preference supports the intended beneficiaries.

We adopted positions similar to the Legislative Auditor for seven of the eight recommendations issued this year. Based on testimony, we adopted a different recommendation than the Legislative Auditor on the customized employee training preference. Summaries of the JLARC staff's analysis and recommendations and brief video summaries of each preference are available on the 2020 Tax Preference Reviews overview page linked [here](#). The full text of our Commissioner recommendations are included below and will be added to our proposed final report in December.

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 14 years of tax preference evaluations available to the Legislature, comprising over 300 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. An interactive summary of legislative action on prior reviews is available [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 (grant.forsyth@leg.wa.gov) or the Legislative Auditor, Keenan Konopaski (keenan.konopaski@leg.wa.gov or 360-786-5187).

Sincerely,



Grant D. Forsyth, Chair

Citizen Commission for Performance Measurement of Tax Preferences

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Commission Comments Adopted on 10/21/2020

1. Anaerobic Digesters (Sales and Use Tax)

Legislative Auditor recommendation: Continue and monitor future use

The Legislature should continue the preference and monitor its future use.

The preference has been used by dairies, wastewater treatment plants, and others to build and operate ADs. It is too soon to determine if legislative action in 2018 and 2019 will encourage additional investment in anaerobic digesters or renewable natural gas production.

The Legislature should continue the preference at this time and review use of the preference closer to its January 1, 2029, expiration date to determine if use has increased.

Commission Comment	Endorse Legislative Auditor recommendation without comment.	
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2. Customized Training (Business and Occupation Tax)

Legislative Auditor recommendation: Allow to expire

The Legislature should allow the B&O tax credit for customized training to expire as scheduled on July 1, 2021. The credit is not meeting the stated objective of attracting and retaining new businesses in Washington.

The Legislature may also want to consider repealing the associated Customized Training Program under Title 28B.67 RCW. If the Legislature wants to maintain funding for customized training for other policy purposes, it could redirect funds from the Customized Training revolving loan account to existing training programs, such as the Job Skills Program.

Commission Comment	Do not endorse Legislative Auditor recommendation with additional comment.	Testimony suggests that the CTP has several important advantages over existing grant programs. The CTP is most likely to be used by existing small businesses that would like to expand, but (1) cannot easily send workers offsite for training; (2) cannot afford the employer costs of grant funded programs; and (3) cannot afford complicated reporting requirements. Agencies involved in managing the CTP also reported that their administrative burden under the CTP is considerably smaller than other grant funded programs. Agency testimony also suggested the CTP program has been impacted by sharp changes in funding since the CTP was introduced. The CTP preference should be continued but with a stated objective more focused on recruiting, retaining, and expanding existing small businesses. This would be consistent with the business size accessing the CTP. In addition, the impacts of COVID-19 suggest that employer-affordable programs supporting worker training will have new urgency going forward.
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Citizen Commission for Performance Measurement of Tax Preferences

Commission Comments Adopted on 10/21/2020

3. Farmworker Housing (Sales and Use Tax)

Legislative Auditor recommendation: Clarify

The Legislature should clarify the preference by including a performance statement and determining if the preference should align with other housing practices or be maintained in its current form.

While there is an ongoing need for farmworker housing, the preference was enacted before the Legislature required a performance statement for new preferences. The Legislature should clarify its expectations for this preference by adding a performance statement that clearly states the public policy objectives and metrics to determine whether the objectives have been met. Requirements for the preference do not align with other current farmworker housing practices, which may limit how often it is used.

Commission Comment	Endorse Legislative Auditor recommendation with additional comment.	Testimony from non-profit housing agencies noted that the tax preference has helped to increase the supply of housing by offering an additional incentive that improves the financial viability of housing developments. As noted by Legislative Auditor, the preference can be improved by better aligning it with other funding source requirements. In addition, combined written testimony by the Office of Rural and Farmworker Housing, Catholic Charities, the Yakima Housing Authority, and Beacon Development Group offers specific changes to the preference that should be thoroughly reviewed by the Legislature.
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Citizen Commission for Performance Measurement of Tax Preferences

Commission Comments Adopted on 10/21/2020

4. Hiring Unemployed Veterans (Business and Occupation Tax, Public Utility Tax)

Legislative Auditor recommendation:

The preferences are not currently working as intended. The Legislature should modify the preferences to more effectively serve veterans who are seeking jobs.

Modifications might include:

- Designating a state agency to be in charge of publicizing and promoting the preferences to businesses and veterans. Currently, there is limited information available on the tax credits for potential employers and veterans.
- Focusing the preferences on a subset of veterans or businesses. For example, the preferences could be focused on specific populations such as disabled veterans or targeting specific businesses.
- Eliminating the preferences and redirecting resources to other state-funded programs that have demonstrated success with encouraging businesses to hire unemployed veterans.

If the Legislature does not take action, the preferences are scheduled to expire on July 1, 2023.

Commission Comment	Endorse Legislative Auditor recommendation with additional comment.	Although the preference should be modified, there are additional considerations to the Legislative Auditor's modification options. If this broader base for the credit is not working, it does not seem plausible that narrowing the focus on specific veterans or businesses is likely to increase use of the credit to hire veterans. Further, eliminating the preference and redirecting funds would only make sense if there are existing programs that have more success assisting veterans. There may be other problems with the credit as currently structured that could be modified. For example, the rules suspending the credit when a veteran is terminated seem counterproductive to veteran hiring. If there is not a fit between the veteran and the job, the statute forbids use of a new credit for a year, essentially eliminating any incentive to replace the employee with another veteran. Repayment or an offset against any new credits applied for may better support veteran hiring. Another option may be increasing the amount of the credit, given that the full amount of the budgeted amounts are not currently being used. In the process of modifying this preference, the Legislature should consult with the Departments of Veterans Affairs and the Employment Security for their suggestions to improve outcomes, as these Departments have experience assisting veterans seeking employment.
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5. Livestock Nutrient Management Equipment (Sales and Use Tax)

Legislative Auditor recommendation: Continue

The Legislature should continue the preference because it is helping dairies and animal feeding operations implement their nutrient management plans. The preference is one of many efforts to help maintain and improve water quality in Washington.

If the Legislature wants more accurate information on the size of the beneficiary savings, it should require the Department of Revenue to collect data on qualifying sales.

Commission Comment	Endorse Legislative Auditor recommendation without comment.	
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6. Microbrewers (Beer Tax)

Legislative Auditor recommendation: Review and clarify

The Legislature should clarify the beer tax preference by including a performance statement, identify the intended beneficiaries, and ensure the preference directly targets those businesses.

The preference was enacted before the Legislature required a performance statement for new tax preferences. The Legislature should clarify its expectations for the preference by adding a performance statement that clearly states the public policy objectives and metrics to determine if the objectives have been met.

The Legislature should review the preference's requirements to ensure that it supports the intended beneficiaries.

Commission Comment	Endorse Legislative Auditor recommendation with additional comment.	Testimony from Washington's Brewers Guild indicates that although most benefits of the tax are captured directly by distributors, the lower cost to distributors provides an incentive to distribute the production of Washington's microbrewers. This amounts to an in-direct tax benefit to brewers. The Guild notes this is important given the more favorable tax treatment received by Oregon's small brewers. In the process of reviewing and clarifying this preference, the Legislature should speak with both distributors and brewers to better understand the business relationship between the two entities and how the tax differential between Washington and Oregon impacts the distribution and sale of beer produced in Washington. This would clarify potential changes to the preference that keep it within certain federal constitutional tax requirements.
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Citizen Commission for Performance Measurement of Tax Preferences

Commission Comments Adopted on 10/21/2020

7. Shipping Farm Products to Interim Storage (Public Utility Tax)

Legislative Auditor recommendation: Continue

The Legislature should continue this tax preference.

Commission Comment

Endorse Legislative Auditor recommendation without comment.

8. Tribal Lands Used for Economic Development (Property Tax)

Legislative Auditor recommendation: Continue the preference as amended in 2020

The Legislature should continue the preference as amended in 2020 because the preference is now considered to be part of a broader tax exemption for essential government services. The initial public policy objective from the 2014 legislation is now superseded by the new 2020 objective to treat tribal and nontribal governments the same for property tax purposes.

The Citizen Commission for the Performance Measurement of Tax Preferences should consider whether the preference is critical to the tax structure. If so, it will be excluded from future tax preference reviews.

Commission Comment

Endorse Legislative Auditor recommendation with additional comment.

Based on recent legislative changes to this tax preference, the preference should be designated as a critical part of the tax structure and be removed from future reviews.