

20-07 FINAL REPORT 2020 TAX PREFERENCE PERFORMANCE REVIEWS Overview

December 2020

2020 Reviews: Four of eight preferences identified for further legislative review

In 2020, JLARC staff conducted eight tax preference reviews as part of its annual reporting cycle. These include preferences for agriculture, economic development, and hiring unemployed veterans. Of the eight preferences JLARC staff reviewed:

Two are not meeting their stated objectives

Customized Training

Biennial beneficiary savings: \$125,500;
Expiration date: 7/1/2021

A tax credit for customized employee training is not attracting new businesses and is unlikely to contribute to business retention. Funding could be redirected to other programs if there is interest in maintaining support for customized training.

Legislative Auditor's Recommendation
Allow to expire

Commissioners' Recommendation
Not endorsed with comment

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Unemployed Veterans

Biennial beneficiary savings: \$152,800;
Expiration date: 7/1/2023

Two tax credits for hiring unemployed veterans have had limited use and have not met the Legislature's goal of reducing the number of unemployed veterans by 30%. The Legislature should modify the preferences to more effectively serve veterans who are seeking jobs.

Legislative Auditor's Recommendation
Modify the preferences

Commissioners' Recommendation
Endorsed with comment

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

Farmworker Housing

Biennial beneficiary savings: \$3.4M;
Expiration date: none

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.

Legislative Auditor's Recommendation
Clarify

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[Video Summary](#)

Commissioners' Recommendation
Endorsed with comment

[Summary](#)

Microbrewers

Biennial beneficiary savings: \$7.2M;
Expiration date: none

A beer tax exemption for microbreweries has created an estimated 2 to 6 jobs in the beverage manufacturing industry. Distributors receive 84% of the direct preference savings. The Washington beer industry has changed, and now has more breweries with smaller production after large breweries left in the early 2000s. The Legislature should review the preference's requirements to ensure that it supports the intended beneficiaries.

Legislative Auditor's Recommendation
Review and clarify

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Commissioners' Recommendation
Endorsed with comment

[Summary](#)

One likely had limited impact in its initial form, but it was changed to a different purpose last legislative session and made permanent

Tribal Lands

2019 beneficiary savings: \$748,000;
Modified preference took effect
6/11/2020 with no expiration date

Tribal businesses on exempted properties provided economic benefits, but the preference itself likely had limited impact. 92% of the exemption was shifted to other taxpayers and the remaining 8% was a loss of local revenues. The preference was amended in 2020 with a new objective to provide equal treatment to tribal and nontribal governments.

Legislative Auditor's Recommendation
Continue the preference as amended in 2020

Commissioners' Recommendation
Endorsed with comment

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Two are meeting the Legislature's stated intent

Shipping Farm Products to Interim Storage

Biennial beneficiary savings: \$25,000;
Expiration date: none

The preference provides tax relief to shipping companies by continuing the historical tax treatment of shipping agricultural products to interim storage facilities.

Legislative Auditor's Recommendation
Continue

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Commissioners' Recommendation
Endorsed

[Summary](#)

Livestock Nutrient Management

Biennial beneficiary savings: \$266K -
\$1M; Expiration date: none

The preference helps dairies comply with the Dairy Nutrient Management Act by exempting purchases or repairs of livestock nutrient management equipment from sales and use tax.

Legislative Auditor's Recommendation
Continue

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[Video Summary](#)

Commissioners' Recommendation
Endorsed

[Summary](#)

One was amended with a new goal. It is too soon to know its impact.

Anaerobic Digesters

Biennial beneficiary savings: \$778,000;
Expiration date: 1/1/2029

A preference used by dairies, wastewater treatment plants, and others to build and operate anaerobic digesters was amended in 2018 with a new goal of encouraging production of renewable natural gas. It is too soon to determine its effectiveness.

Legislative Auditor's Recommendation
Continue and monitor future use

[Full Report \(PDF\)](#)

[Video Summary](#)

Commissioners' Recommendation
Endorsed

[Summary](#)

The Citizen Commission for Performance Measurement of Tax Preferences also considers preferences based on information provided by the Department of Revenue. View the 2020 expedited preference report [here](#) (PDF).

Committee Action to Distribute Report

On December 7, 2020 this report was approved for distribution by the Joint Legislative Audit and Review Committee. Action to distribute this report does not imply to Committee agrees or disagrees with the Legislative Auditor recommendations.

JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE More about 2020 reviews

Audit authority

The Joint Legislative Audit and Review Committee (JLARC) works to make state government operations more efficient and effective. The Committee is comprised of an equal number of Representatives and Senators, Democrats and Republicans.

JLARC's non-partisan staff auditors, under the direction of the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other analyses assigned by the Legislature and the Committee.

The statutory authority for JLARC, established in [Chapter 44.28 RCW](#), requires the Legislative Auditor to ensure that JLARC studies are conducted in accordance with Generally Accepted Government Auditing Standards, as applicable to the scope of the audit. This study was conducted in accordance with those applicable standards. Those standards require auditors to plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. The evidence obtained for this JLARC report provides a reasonable basis for the findings and conclusions, and any exceptions to the application of audit standards have been explicitly disclosed in the body of this report.

Timeframe for the study

A preliminary audit report will be presented at the July 2020 JLARC meeting and at the August 2020 meeting of the Commission. A final report will be presented to JLARC in December 2020.

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Study questions

The Citizen Commission selected the following tax preferences for a performance review by JLARC staff in 2020:

- [Anaerobic Digesters](#) | 82.08.900, 82.12.900 | 2001
- [Customized Training](#) | 82.08.02566, 82.12.02566 | 2006

- [Farmworker Housing](#) | 84.36.133 | 1996
- [Hiring Unemployed Veterans](#) | 82.04.527 | 2015
- [Livestock Nutrient Management Equipment](#) | 82.08.0262(1)(a)(iii), 82.12.0254(1)(a)(ii) | 2001
- [Microbrewers](#) | 82.08.956, 82.12.956 | 1993
- [Shipping Farm Products to Interim Storage](#) | 82.08.215, 82.12.215 | 2007
- [Tribal Lands Used for Economic Development](#) | 84.14.007 | 2014

In addition, the Commission will consider the following tax preferences, using an expedited process. The expedited process is primarily based on information published by the Department of Revenue in its most recent statutorily required tax exemption study. [View the 2020 Expedited Preference Review.](#)

1. Active Duty Military Penalty Waiver (Multiple Taxes) | 82.32.055 | 2008
2. Airports Owned by Cities in Other States (Property Tax) | 84.36.130 | 1941
3. Assignment of Property through Divorce (Real Estate Excise Tax) | 82.45.010(3)(f) | 1955
4. Cigarettes Covered by Indian Tribal Contracts (Tobacco Tax) | 82.24.295(1) | 2001
5. Cigarettes Sold via Tribal Contracts (Sales and Use Tax) | 82.08.0316; 82.12.0316 | 2001
6. Delinquency Penalty and Interest Waivers (Property Tax) | 84.56.025 | 1984
7. Destroyed Property (Property Tax) | 84.70.010 | 1974
8. Family-Owned Business Interest (Estate Tax) | 83.100.048 | 2013
9. Fuel for Transporting Persons with Special Needs (Sales and Use Tax) | 82.08.0255(1)(b); 82.12.0256(2)(b) | 1983
10. Gun Safes (Sales and Use Tax) | 82.08.832; 82.12.832 | 1998
11. Home Improvements (Property Tax) | 84.36.400 | 1972
12. Income of Employees (B&O Tax) | 82.04.360 | 1935
13. Interstate Bridges (Property Tax) | 84.36.230 | 1949
14. Labor and Services Used to Construct and Repair Public Roads (Sales and Use Tax) | 82.04.050(10) | 1943
15. Life Insurance Sales Employees (B&O Tax) | 82.04.360(1) | 1991
16. Marital Deduction (Estate Tax) | 83.100.047 | 2005
17. METRO Transit Planning (Public Utility Tax) | 35.58.560 | 1967

18. Military Housing (Leasehold Excise Tax) | 82.29A.130(19) | 2008
19. Military Housing (Property Tax) | 84.36.665 | 2008
20. Personal or Domestic Uses of Hazardous Substance (Hazardous Substance Tax) | 82.21.040(2) | 1989
21. Personal Property Up to \$15,000 (Property Tax) | 84.36.110(2) | 1890
22. Public Transit Charges (Public Utility Tax) | 82.16.050(14) | 2006
23. Quinault Tribal Tax (Timber Tax) | 84.33.0776 | 2007
24. Refund of Motor Vehicle Fuel Taxes for METRO (Fuel Tax) | 35.58.560 | 1967
25. Regional Transit Authority Sale-Leasebacks (B&O Tax) | 82.04.4201 | 2000
26. Regional Transit Authority Sale-Leasebacks (Leasehold Excise Tax) | 82.29A.134 | 2000
27. Regional Transit Authority Sale-Leasebacks (Property Tax) | 84.36.605 | 2000
28. Regional Transit Authority Sale-Leasebacks (Real Estate Excise Tax) | 82.45.010(3)(o) | 1951
29. Regional Transit Authority Sale-Leasebacks (Sales and Use Tax) | 82.08.834; 82.12.834 | 2000
30. Ride Sharing and Special Needs Transportation (B&O Tax) | 82.04.355 | 1979
31. Ride Sharing and Special Needs Transportation (Public Utility Tax) | 82.16.047 | 1979
32. Ride Sharing Vehicles (Motor Vehicle Excise Tax) | 82.44.015 | 1980
33. Ride Sharing Vehicles (Sales and Use Tax) | 82.08.0287; 82.12.0282 | 1980
34. Route 520 Replacement Bridge (Sales and Use Tax) | 47.01.412 | 2008
35. RTA Maintenance Contracts (Sales and Use Tax) | 82.04.050(13) | 2005
36. Sand and Gravel for Local Road Construction (B&O Tax) | 82.04.415 | 1965
37. Sand and Gravel for Local Road Construction (Sales and Use Tax) | 82.08.0275; 82.12.0269 | 1980
38. Second Narrows Bridge (B&O Tax) | 82.04.416 | 1998
39. Second Narrows Bridge (Leasehold Excise Tax) | 82.29A.132 | 1998
40. Second Narrows Bridge (Property Tax) | 84.36.010(1) | 1998
41. Second Narrows Bridge (Public Utility Tax) | 82.16.046 | 1998
42. Second Narrows Bridge (Real Estate Excise Tax) | 82.45.190 | 1998
43. Second Narrows Bridge (Sales and Use Tax) | 47.46.060 | 1998

- 44. Tobacco Sales to U.S. or Indian Tribes (Tobacco Tax) | 82.26.110 | 2007
- 45. Transportation of Persons with Special Needs (Fuel Tax) | 82.38.080(1)(d); 82.38.180(3)(a) | 1983
- 46. Tribal Compact Marijuana (Sales and Use Tax) | 43.06.490; 82.08.9997; 82.12.9997 | 2015
- 47. Tribal Lands Used for Government Purposes (Property Tax) | 84.36.010(1) | 2004
- 48. Urban Passenger Transit Fuel (Sales and Use Tax) | 82.08.0255(1)(a),(c); 82.12.0256(2)(a),(c) | 1980
- 49. Urban Transportation (Fuel Tax) | 82.38.080(1)(f)-(g); 82.38.180(3)(b) | 1957
- 50. Vehicles Acquired While in Military Service (Use Tax) | 82.12.0266 | 1963
- 51. Veteran Widows and Widowers (Property Tax) | 84.39.010 | 2005
- 52. Veterans Organizations (Property Tax) | 84.36.030(4) | 1929

Study process

What is a tax preference?

Tax preferences are defined in statute (RCW [43.136.021](#)) as exemptions, exclusions, or deductions from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate. Washington has approximately 600 tax preferences.

Why a review of tax preferences?

Legislature creates a process to review tax preferences

In 2006, the Legislature stated that periodic reviews of tax preferences are needed to determine if their continued existence or modification serves the public interest. The Legislature enacted Engrossed House Bill 1069 to provide for an orderly process for the review of tax preferences (RCW [43.136](#)).

Statute assigns specific roles to two different entities:

- The Citizen Commission for Performance Measurement of Tax Preferences ("The Commission") creates a schedule for reviews, holds public hearings, and comments on the reviews.
- Staff to the Joint Legislative Audit and Review Committee (JLARC) conduct the reviews.

Citizen Commission sets the schedule

The Legislature directed the Commission to develop a schedule to accomplish an orderly review of most tax preferences over ten years. The Commission is directed to omit certain tax preferences from the schedule, such as those required by constitutional law.

The Commission may also exclude preferences from review that the Commission determines are a critical part of the tax structure.

The Commission conducts its reviews based on analysis prepared by JLARC staff. In addition, the Commission may elect to rely on information supplied by the Department of Revenue.

In 2020, JLARC staff reviewed eight preferences. . The Commission's website includes analysis of preferences completed in previous years: See <http://www.citizen taxpref.wa.gov/>.

JLARC staff's approach to the tax preference reviews

Statute guides the main topics typically covered in the reviews.

Public policy objectives:

1. What are the public policy objectives that provide a justification for the tax preference? Is there any documentation on the purpose or intent of the tax preference? (RCW 43.136.055(b))
2. What evidence exists to show that the tax preference has contributed to the achievement of any of these public policy objectives? (RCW 43.136.055(c))
3. To what extent will continuation of the tax preference contribute to these public policy objectives? (RCW 43.136.055(d))
4. If the public policy objectives are not being fulfilled, what is the feasibility of modifying the tax preference for adjustment of the tax benefits? (RCW 43.136.055(g))

Beneficiaries:

5. Who are the entities whose state tax liabilities are directly affected by the tax preference? (RCW 43.136.055(a))
6. To what extent is the tax preference providing unintended benefits to entities other than those the Legislature intended? (RCW 43.136.055(e))

Revenue and economic impacts:

7. What are the past and future tax revenue and economic impacts of the tax preference to the taxpayer and to the government if it is continued? (This includes an analysis of the general effects of the tax preference on the overall state economy, including the effects on consumption and expenditures of persons and businesses within the state.) (RCW 43.136.055(h))
8. If the tax preference were to be terminated, what would be the negative effects on the taxpayers who currently benefit from the tax preference and the extent to which the

resulting higher taxes would have an effect on employment and the economy? (RCW 43.136.055(f))

9. If the tax preference were to be terminated, what would be the effect on the distribution of liability for payment of state taxes? (RCW 43.136.055(i))
10. For those preferences enacted for economic development purposes, what are the economic impacts of the tax preference compared to the economic impacts of government activities funded by the tax? (RCW 43.136.055(j))

Other states:

11. Do other states have a similar tax preference and what potential public policy benefits might be gained by incorporating a corresponding provision in Washington? (RCW 43.136.055(k))

JLARC staff's analysis of tax preferences

JLARC staff carefully analyzes a variety of evidence when conducting these reviews:

- Legal and public policy history of the tax preferences.
- Beneficiaries of the tax preferences.
- Government and other relevant data pertaining to the utilization of these tax preferences.
- Economic and revenue impact of the tax preferences.
- Other states' laws to identify similar tax preferences.

Key: understanding the purpose of the preference

The Legislature now requires that any legislation creating a new preference, or expanding or extending an existing preference, must include a tax preference performance statement. The performance statement must contain a statement of legislative purpose as well as metrics to evaluate the effectiveness of the preference (RCW [82.32.808](#)).

Some of the preferences included in this report were passed before the 2013 legislation that requires performance statements. When a preference's purpose or objective is identified in statute, staff are able to affirmatively state the public policy objective. Sometimes the objective may be found in intent statements or in other parts of statute if there is no tax preference performance statement.

When the Legislature did not state the public policy objective of a preference, JLARC staff may be able to infer what the implied public policy objective might be. To arrive at this inferred policy objective, staff review the following:

- Legislative history, including

- Final bill reports for any statements on the intent or public policy objectives.
- Bills prior to the final version and legislative action on bills related to the same topic.
- Bill reports and testimony from various versions of the bill.
- Records of floor debate.
- Relevant court cases that provide information on the objective.
- Department of Revenue information on the history of tax preferences, including rules, determinations, appeals, audits, and taxpayer communication.
- Press reports during the time of the passage of the bill which may indicate the intention of the preference.
- Other historic documents, such as stakeholder statements, that may address the issue addressed by the tax preference.

JLARC staff also interview the agencies that administer the tax preferences or are knowledgeable of the industries affected by the tax. Agencies may provide data on the value and usage of the tax preference and the beneficiaries. If the beneficiaries of the tax preference are required to report to other state or federal agencies, JLARC staff will also obtain data from those agencies.

If there is sufficient information in this evidence to infer a policy objective, JLARC staff state that in the reviews. In these instances, the purpose may be a more generalized statement than when there is explicit statutory language.

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