

20-07 FINAL REPORT:  
2020 TAX PREFERENCE PERFORMANCE  
REVIEWS

# Shipping Farm Products to Interim Storage

LEGISLATIVE AUDITOR'S CONCLUSION:

The tax preference achieves the Legislature's goal of continuing the historical tax treatment of shipping agricultural products to interim storage facilities.

December 2020

## Public utility tax exemption for shipping agricultural products to interim storage facilities

When a shipping company transports agricultural products to an interim storage facility, such as a grain warehouse, and those agricultural products are ultimately shipped out of state by vessel, the company can claim an exemption for the associated transportation revenues from public utility taxes.

Public service businesses, such as shipping companies, are subject to a public utility tax on their gross income<sup>1</sup>. The public utility tax is in lieu of the business and occupation (B&O) tax.

The Legislature enacted the preference in 2007. The preference does not have an expiration date.

### Preference applies to a specific part of the supply chain

Other tax preferences exist for agricultural products shipped directly out of state or to port. The Legislature has established these preferences with the objective of avoiding taxing activities related to interstate commerce.

To claim the preference reviewed in this report, shipping companies must deliver agricultural products to an interim storage facility. The shipping company must obtain a certificate from the interim storage facility indicating that at least 96% of stored products were delivered to out of state destinations, by vessel, in the preceding year.

## Recommendations

### Legislative Auditor's Recommendation: Continue

The Legislature should continue this tax preference.

You can find more information in Recommendations.

<b>Estimated Biennial Beneficiary Savings</b> \$25,000
<b>Tax Types</b> Public Utility Tax RCW 82.16.050(10) Applicable Statutes

<sup>1</sup>The total revenue received in the course of business.

## Commissioners' Recommendation

The Commission endorses the Legislative Auditor's recommendation without comment.

## 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 the Committee agrees or disagrees with the Legislative Auditor recommendations.

## REVIEW DETAILS

### 1. Preference achieves inferred objective

#### The preference is one of many related to agriculture and interstate commerce

Generally, public utility taxes apply to revenues generated from shipping goods for intrastate trips (from one point in Washington to another). The public utility tax applies to the gross income of businesses when providing services such as shipping.

#### The preference achieves the inferred objective of continuing prior tax treatment for shipping agricultural products to interim storage facilities

There are a variety of other tax preferences available to shipping agricultural products in addition to the one reviewed in this report. These tax preferences are established in [RCW 82.16.050\(8\)](#) (Interstate Transportation - Through Freight) and [82.16.050\(9\)](#) (Interstate Transportation - Shipments to Port).

Prior to 2007, the Department of Revenue interpreted that [RCW 82.16.050\(8\)](#) was applicable to the transportation of agricultural products to interim storage facilities. An internal review by the Department in 2007 concluded that this extension was not supported by state law. Following this conclusion, the Department proposed legislation to create this tax preference, which was enacted in May 2007.

While the Legislature did not state an objective, JLARC staff infer that the objective is to continue the tax treatment extended to this activity under prior interpretations of other statutes. The tax preference achieves this objective by extending similar tax treatment to the shipment of agricultural products to interim storage facilities.

The preference provides a deduction from the public utility tax for transportation of agricultural products, such as wheat and barley, from a location in Washington to an interim storage facility, provided that:

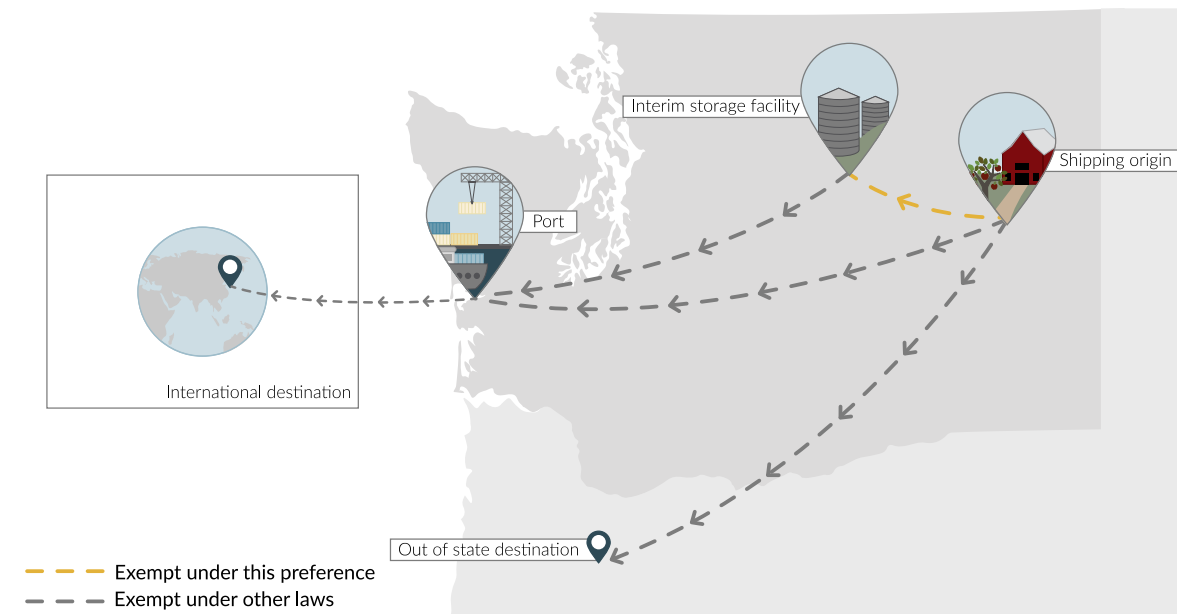
- Products remain in their original form.
- 96% of the product shipped from the facility in the prior year were exported out of state by vessel.

The preference applies to transportation by truck, rail, and water vessel.

## Interim storage facilities provide temporary storage for agricultural products

Interim storage facilities, such as grain elevators or warehouses, temporarily hold agricultural products until the product is exported. The interim storage facility must certify to the shipping company that at least 96% of the same product at the storage facility in the previous year was exported out of state<sup>2</sup>. The Department of Revenue produces a certificate for interim storage facilities to use.

### Exhibit 1.1: Tax preference exempts initial trip to interim storage, to be similar to other shipments going out of state



Source: JLARC staff analysis.

## 2. Estimated beneficiary savings

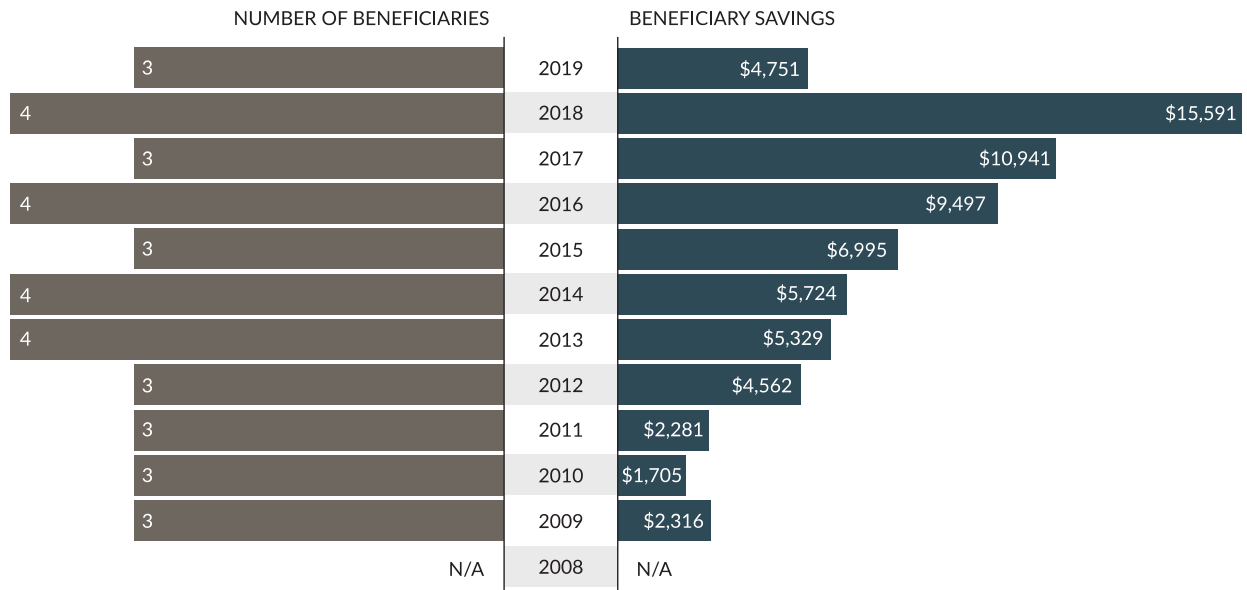
### The preference has a limited number of known beneficiaries relative to the size of the agricultural transportation industry in Washington

JLARC staff analyzed Department of Revenue public utility tax data from 2007 through 2019. Beneficiary savings have increased over time, reaching a peak of nearly \$16,000 in 2018. DOR does not provide a separate deduction line for claiming this preference, and businesses are not required to list it separately from other deductions. As a result, the beneficiary savings estimate is based only on claims that are clearly identifiable as deductions under this preference. The

<sup>2</sup>The facility must also certify that if the product is headed to storage at port, the port storage facility is owned by the same entity and the agricultural product will be shipped out of state by vessel.

estimate is likely lower than the actual savings because it does not include claims that are nondescript or could not be distinguished from similar deductions.

**Exhibit 2.1: Thirteen shipping companies claimed the preference since 2007 (up to four each year)**



Source: JLARC staff analysis.

**Few known beneficiaries**

Since 2007, a total of 13 shipping companies have claimed the preference.

Interviews with industry stakeholders indicate that transportation from farms to interim storage facilities is conducted primarily by smaller, owner-operator trucking companies. Data from the Federal Motor Carrier Safety Administration indicate that there are 5,768 active, registered businesses in Washington that transport grain, feed, or hay.

While this does not reflect all transportation companies that may be eligible to claim the preference, it suggests that a limited number of potential beneficiaries have claimed the preference.

**3. Applicable Statutes**

**RCW 82.16.050(10)**

**Deductions in computing tax**

**RCW 82.16.050(10)**

(10) Amounts derived from the transportation of agricultural commodities, not including manufactured substances or articles, from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening

transportation, by vessel, in their original form, to interstate or foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port.

(a) The deduction under this subsection is available only when the person claiming the deduction obtains a certificate from the agricultural commodity dealer operating the interim storage facilities, in a form and manner prescribed by the department, certifying that:

(i) More than ninety-six percent of all of the type of agricultural commodity delivered by the person claiming the deduction under this subsection and delivered by all other persons to the dealer's interim storage facilities during the preceding calendar year was shipped by vessel in original form to interstate or foreign destinations; and

(ii) Any of the agricultural commodity that is transshipped to ports on tidewater or its navigable tributaries will be received at storage facilities operated by the same agricultural commodity dealer and will be shipped from such facilities, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations.

(b) As used in this subsection, "agricultural commodity" has the same meaning as agricultural product in RCW 82.04.213.

## RECOMMENDATIONS & RESPONSES

### Legislative Auditor's Recommendation

#### The Legislative Auditor recommends continuing the preference

The Legislature should continue the preference because the preference is achieving the inferred goal of continuing previous tax treatment.

**Legislation Required:** No

**Fiscal Impact:** \$25,000 in the 2021-2023 biennium

# Letter from Commission Chair

State of Washington  
**Citizen Commission for Performance Measurement of Tax Preferences**

COMMISSION MEMBERS

**Dr. Grant Forsyth** *Chair*  
Avista Corp.

**Ronald Bueing** *Vice Chair*

**Diane Lourdes Dick**  
Seattle University School of Law

**Dr. Sharon Kloko**  
Evans School of Public Policy and Governance  
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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.

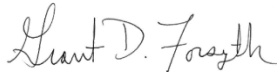
We adopted positions similar to the Legislative Auditor for seven of the eight recommendations issued this year. Based on testimony, we adopted a different recommendation than the Legislative Auditor on the customized employee training preference. Summaries of the JLARC staff's analysis and recommendations 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](mailto:grant.forsyth@leg.wa.gov)) or the Legislative Auditor, Keenan Konopaski ([keenan.konopaski@leg.wa.gov](mailto:keenan.konopaski@leg.wa.gov) or 360-786-5187).

Sincerely,



Grant D. Forsyth, Chair

Citizen Commission for Performance Measurement of Tax Preferences

## Commissioners' Recommendation

The Commission endorses the Legislative Auditor's recommendation without comment.



# Agency Response



## STATE OF WASHINGTON

September 16, 2020

**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 blue ink.

Vikki Smith, Director  
Department of Revenue

Handwritten signature of Vikki Smith in blue ink.

**SUBJECT: JLARC PRELIMINARY REPORT ON 2020 TAX PREFERENCE  
PERFORMANCE REVIEWS**

The Office of Financial Management and Department of Revenue have reviewed the Joint Legislative Audit and Review Committee's (JLARC) preliminary report on the 2020 tax preference performance reviews.

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

While we have no specific comments on the 2020 preliminary report, we continue to support the recommendations of JLARC for the inclusion of performance statements and specific public policy objectives for all tax preferences where they don't exist in statute today.

Thank you for the opportunity to review and provide comments on this JLARC report.

# MORE ABOUT THIS REVIEW

## Study Questions



### PROPOSED STUDY QUESTIONS Shipping Farm Products to Port

State of Washington Joint Legislative Audit and Review Committee

December 2019

#### JLARC to review public utility tax deduction for shipments to interim storage

The 2006 Legislature directed JLARC staff to conduct performance audits of tax preferences. This preference is included in the 10-year review schedule set by the Citizen Commission for Performance Measurement of Tax Preferences.

The Legislature created this tax preference in 2007. The preference is a deduction for shipment of agricultural products to interim storage facilities between farms and ports when the products' final destination is out of state.

Interim storage facilities include grain warehouses and other facilities that temporarily store agricultural products. Businesses that transport commodities to interim storage facilities may deduct revenues for those shipments before calculating their public utility taxes.



#### Tax preference intended to maintain historical tax treatment of shipments to interim storage facilities

JLARC staff infer that the tax preference is intended to maintain treatment the Department of Revenue previously extended to eligible shipping activity. The Department of Revenue historically allowed a tax deduction to shipments of agricultural products to interim storage in order to treat this activity like other, explicitly exempted interstate commerce activities. In 2006, the Department determined it lacked legal authority to allow the deduction and proposed legislation to authorize it. The Legislature formalized the tax deduction in statute in 2007.

#### This study will address the following questions

1. Which industries benefit from this tax preference, and what are the beneficiary savings?
2. What types of agricultural products may be shipped using this preference?
3. What portion of Washington's grain shipments are subject this preference?

Does the deduction ensure the pre-2007 tax treatment is sustained for the same types of beneficiaries and activities?

#### Study Timeframe

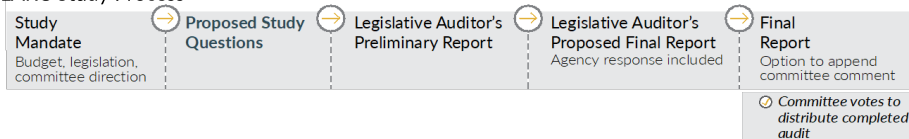
Preliminary Report: July 2020

Proposed Final Report: December 2020

#### Study Team

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Legislative Auditor	Keenan Konopaski	(360) 786-5187	<a href="mailto:keenan.konopaski@leg.wa.gov">keenan.konopaski@leg.wa.gov</a>

#### JLARC Study Process



#### JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE

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