

21-06 FINAL REPORT 2021 TAX PREFERENCE PERFORMANCE REVIEWS Overview

December 2021

2021 Reviews: Four of seven preferences require action

In 2021, JLARC staff reviewed seven tax preferences as part of its annual reporting cycle. These include preferences for manufacturing, health insurance, and medical cannabis.

The Legislative Auditor recommends action on four preferences

Health Benefit Exchange

Biennial beneficiary savings: \$2.2 million;
Expiration date: 7/1/2023

The preference reduces the Exchange's administrative costs by \$1 million per year, allowing it to maximize its funding for operating a health insurance marketplace. The Legislature should extend or eliminate the July 1, 2023 expiration date.

Legislative Auditor's Recommendation
Extend or eliminate the expiration date
(structural purpose)

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

[Video Summary](#)

Commissioners' Recommendation
Endorsed with [comment](#)

[Summary](#)

Manufacturers' Deferral

Biennial beneficiary savings: \$240,000 -
\$380,000; Expiration date: 1/1/2026

Four businesses used the tax deferral and met job goals through temporary construction work rather than permanent manufacturing jobs. Businesses likely would have built the facilities without the deferral. To increase manufacturing jobs or training, the Legislature should consider modifying the deferral program.

Legislative Auditor's Recommendation
Extend and modify

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

[Video Summary](#)

Commissioners' Recommendation
Endorsed

[Summary](#)

Reduced B&O Rate for Printing and Publishing Newspapers

Biennial beneficiary savings: \$823,000;
Expiration date: 7/1/2024

The preference provides tax relief to newspaper printers and publishers and saves these businesses money. However, the newspaper industry continues to lose revenue and jobs as it seeks to stabilize financially. The Legislature should review this preference to determine if it provides sufficient relief to newspaper printers and publishers, and whether additional assistance is needed to help the news industry more broadly.

Legislative Auditor's Recommendation
Review

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

Commissioners' Recommendation
Endorsed with [comment](#)

[Video Summary](#)

[Summary](#)

Medical Cannabis Tax Preferences

Biennial beneficiary savings: \$4.9 million;
Expiration date: none

Seven medical cannabis tax preferences provide tax relief to patients and cooperatives. After 2019 statutory changes, it is unclear how pending taxpayer guidance may affect beneficiary savings. The Legislature should continue the preferences and the Department of Revenue and the Department of Health should update guidance to reflect statutory changes.

Legislative Auditor's Recommendation
Continue

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

Commissioners' Recommendation
Endorsed with [comment](#)

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The Legislature already implemented one recommendation during the 2021 session

Targeted Urban Area Exemption

Biennial beneficiary savings: \$0;
Expiration date: 12/31/2030

Prior to the 2021 session, JLARC staff reported that cities may have been ineligible to offer the preference. JLARC delivered its report in advance of the 2021 session, and the Legislature implemented the recommendation by amending the preference population criteria and extending the expiration date.

Legislative Auditor's Recommendation
Review and consider whether to extend

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

Commissioners' Recommendation
Endorsed

[Video Summary](#)

[Summary](#)

The Legislative Auditor recommends allowing one preference to expire and clarifying the intent of another

Credit for Renewable Energy Program Payments

Biennial beneficiary savings: \$27.4 million;
Expiration date: 6/30/2030

The tax credit program increased Washington's solar capacity and met its solar-related employment target. It did not broaden low-income participation. Solar installations have continued after the program reached its funding limit. The Legislature should allow this preference to expire.

Legislative Auditor's Recommendation
Allow to expire

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

Commissioners' Recommendation
Endorsed with [comment](#)

[Video Summary](#)

[Summary](#)

Nonprofit Outpatient Dialysis Facilities

Biennial beneficiary savings: \$4.2 million;
Expiration date: none

The preference provides tax relief to nonprofit outpatient dialysis facilities, which outperform for-profit counterparts on two standard measures. The Legislature should clarify its intent.

Legislative Auditor's Recommendation
Clarify intent

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

[Video Summary](#)

The Citizen Commission for Performance Measurement of Tax Preferences also considers preferences based on information provided by the Department of Revenue. View the 2021 expedited preference report [here](#) (PDF).

Committee Action to Distribute Report

On December 1, 2021 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 Legislative Auditor recommendations.

JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE More about 2021 reviews

Audit authority

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

JLARC's nonpartisan staff analysts, under the direction of the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other analyses assigned by the Legislature and JLARC.

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 analysts 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 2021 JLARC meeting and at the August 2020 meeting of the Commission. A final report will be presented to JLARC in December 2021.

Study questions

The Citizen Commission selected the following tax preferences for a performance review by JLARC staff in 2021:

- [Targeted Urban Area Exemption](#) | 84.25.040 | 2015
- [Tax Preference for Newspaper Industry](#) | 82.04.260(14)(a) | 2009
- [Credit for Renewable Energy Program Payments](#) | 82.16.130 | 2005
- [Manufacturers Deferral](#) | 82.85.050 | 2015
- [Medical Cannabis Tax Preferences](#) | 82.04.756, 82.08.9998, 82.12.9998 | 2015
- [Health Benefits Exchange](#) | 82.04.323 | 2013
- [Nonprofit Outpatient Dialysis Centers](#) | 84.36.040(1)(f) | 1987

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 2021 Expedited Preference Review.](#)

2021: Not Subject to Full Review (36 Preferences)		RCW	Enacted
1	Comprehensive Cancer Centers (Sales and Use Tax)	82.08.808; 82.12.808	2005
2	Organ Procurement (Sales and Use Tax)	82.08.02807; 82.12.02749	2002
3	Organ Procurement (B&O Tax)	82.04.326	2002
4	Ferrosilicon (Sales and Use Tax)	82.04.050(1)(a)(iv); 82.04.190(1)(d)	1986
5	Electricity Purchased by DSI Industry (Public Utility Tax)	82.16.0495	2001
6	Natural Gas Purchased by DSI Customers (Use Tax)	82.12.024	2001
7	Natural Gas Purchases by DSI Industry (B&O Tax)	82.04.447	2001
8	Wax and Ceramic Materials to Create Molds (Sales and Use Tax)	82.08.983; 82.12.983	2010
9	Free Public Hospitals (Sales and Use Tax)	82.08.02795; 82.12.02745	1993
10	Human Body Parts (Sales and Use Tax)	82.08.02806; 82.12.02748	1996
11	Prescription Drug Resellers (B&O Tax)	82.04.272	1998
12	Nebulizers (Sales and Use Tax)	82.08.803; 82.12.803	2004
13	Ostomic Items (Sales and Use Tax)	82.08.804; 82.12.804	2004
14	Comprehensive Cancer Centers (B&O Tax)	82.04.4265	2005
15	Semiconductor Materials Manufacturing After \$1 Billion Investment New Jobs Credit (B&O Tax)	82.04.448	2003

2021: Not Subject to Full Review (36 Preferences)		RCW	Enacted
16	Semiconductor Materials Manufacturing After \$1 Billion Investment Construction Costs (Sales and Use Tax)	82.08.965; 82.12.965	2003
17	Semiconductor Materials Manufacturing After \$1 Billion Investment Gases and Chemicals (Sales and Use Tax)	82.08.970; 82.12.970	2003
18	Semiconductor Materials Manufacturing After \$1 Billion Investment Machinery and Equipment (Property Tax)	84.36.645	2003
19	Semiconductor Microchip Manufacturing After \$1 Billion Investment (B&O Tax)	82.04.426	2003
20	Insurance Guarantee Association Assessments (Insurance Premiums Tax)	48.32.145; 48.32A.125	1976
21	Semiconductor Materials Manufacturing After \$1 Billion Investment Preferential Rate (B&O Tax)	82.04.240(2)	2003
22	Vaccine Association (B&O Tax)	82.04.640	2010
23	Temporary Medical Housing (Sales Tax)	82.08.997	2008
24	Nonprofit Nursing Homes (Property Tax)	84.36.040(1)(d)	1891
25	Fraternal Benefit Societies (Insurance Premiums Tax)	48.36A.010; 48.36A.240	1911
26	Kidney Dialysis, Nursing Homes, and Hospice (B&O Tax)	82.04.4289	1945
27	Ocean Marine Insurance (Insurance Premiums Tax)	48.11.050; 48.11.105; 48.14.020(4)	1947
28	Minor Final Assembly Completed in Washington (B&O Tax)	82.04.4295	1977
29	Insurance Producers, Title Insurance Agents, and Surplus Line Brokers (B&O Tax)	82.04.260(9)	1983
30	Dentistry Prepayments (Insurance Premiums Tax)	48.14.0201(6)(c)	1993
31	Prescription Drug Administration (B&O Tax)	82.04.620	2007
32	Government Payments to Public and Nonprofit Hospitals (B&O Tax)	82.04.4311	2002
33	Nonprofit Medical Research and Training Facilities (Property Tax)	84.36.045	1975

2021: Not Subject to Full Review (36 Preferences)		RCW	Enacted
34	Health Maintenance Organizations (B&O Tax)	82.04.322	1993
35	Drug Delivery Systems (Sales and Use Tax)	82.08.935; 82.12.935	2003
36	Emergency Medical Air Transport (Aircraft Fuel Tax)	82.42.030(6)	2003
2021: Critical Part of the Tax Structure (18 Preferences)		RCW	Enacted
1	Insulin (Sales and Use Tax)	82.08.985; 82.12.985	2004
2	Basic Health Plan Receipts (Insurance Premiums Tax)	48.14.0201(6)(b)	2005
3	Dietary Supplements (Sales and Use Tax)	82.08.925; 82.12.925	2003
4	Kidney Dialysis Equipment (Sales and Use Tax)	82.08.945; 82.12.945	2003
5	Nonprofit Blood and Tissue Banks (B&O Tax)	82.04.324	1995
6	Nonprofit Blood and Tissue Banks (Sales and Use Tax)	82.08.02805; 82.12.02747	1995
7	Medical Devices (Sales and Use Tax)	82.08.0283; 82.12.0277	1975
8	Medicare Receipts (Insurance Premiums Tax)	48.14.0201(6)(a)	1993
9	Health Insurance by State Pool (Insurance Premiums Tax)	48.14.022	1987
10	Health Insurance Claims (B&O Tax)	82.04.4331	1988
11	Annuities (Insurance Premiums Tax)	48.14.020(1)	1979
12	Natural Gas Surplus Sales (B&O Tax)	82.04.310(3)	2007
13	Title Insurance Premiums (Insurance Premiums Tax)	48.14.020(1)	1947
14	Nonprofit Blood and Tissue Banks (Property Tax)	84.36.035	1971
15	Laundry Services for Nonprofit Health Care Facilities (Sales and Use Tax)	82.04.050(2)(a)	1973
16	Insurance Guaranty Funds (Multiple Taxes)	48.32.130	1976
17	Insurance Premiums (B&O Tax)	82.04.320	1935
18	Fraternal Insurance (B&O Tax)	82.04.370	1935

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 2021, JLARC staff reviewed seven preferences. The Commission's website includes analysis of preferences completed in previous years: See <http://www.citizentaxpref.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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