

PROPOSED FINAL REPORT: 2022 TAX PREFERENCE PERFORMANCE REVIEWS Overview

November 2022

2022 Reviews: Five of seven Legislative Auditor recommendations require action

In 2022, the Legislative Auditor issued seven recommendations in four separate tax preference reports as part of JLARC's annual reporting cycle. The recommendations cover preferences for commute trip reduction, food processing, nonprofit hospitals and cancer clinics, and historic auto museums.

Five recommendations require legislative action. All but two of the preferences meet their objectives.

Commute Trip Reduction Tax Credit (B&O tax and PUT)

Conclusion: More Washingtonians are using commute alternatives. However, fewer employers are requesting the tax credit, and the credit likely has limited influence on the amount of financial incentives employers provide.

Biennial beneficiary savings: \$4.1 million

Expiration date: 7/1/2024

[Summary](#) | [Video Summary](#)

Legislative Auditor's Recommendation: Continue and modify because the credit likely has limited influence on the amount of incentives employers provide and on employee use of commute alternatives.

Commissioners' Recommendation: endorsed with [comment](#)

Food Processors: Dairy, Fruit and Vegetable, and Seafood Processors (B&O tax)

Conclusion: Dairy and fruit and vegetable beneficiaries had job and wage increases that exceeded industry and state averages. Seafood beneficiaries saw a decline in both. The preferences reduced the effective tax rates, but rates remain higher than neighboring states.

Biennial beneficiary savings: Dairy: \$10.5 million, Fruit & Vegetable: \$22.7 million, Seafood: \$4.9 million

Expiration date: Exemptions expire 6/30/2025 and will be replaced with preferential rates.

Legislative Auditor's Recommendation: Continue and modify because the credit likely has limited influence on the amount of incentives employers provide and on employee use of commute alternatives.

[Summary](#) | [Video Summary](#)

Legislative Auditor's Recommendation:

- B&O preferences for dairy processors: Continue and clarify expectations for job and wage growth and determine the level of tax relief needed to meet those expectations.
- B&O preferences for fruit and vegetable processors: Continue and clarify expectations for job and wage growth and determine the level of tax relief needed to meet those expectations.
- B&O tax preferences for seafood processors: Review and clarify because jobs and wages have declined and it is unclear why more businesses are not using the preferences or what the Legislature's expectations are for the industry's jobs and wages.

Commissioners' Recommendation:

- B&O preferences for dairy processors: endorsed
- B&O preferences for fruit and vegetable processors: endorsed with [comment](#)
- B&O tax preferences for seafood processors: endorsed

Nonprofit Hospitals and Cancer Clinics (Property tax)

Conclusion: Property tax exemptions for nonprofit hospitals and cancer clinics meet the inferred intent of encouraging charity care and community benefits. Beneficiaries provide 99% of charity care statewide, and the value of charity care exceeds tax savings.

Biennial beneficiary savings: \$259.4 million

Expiration date: None

[Summary](#) | [Video Summary](#)

Legislative Auditor's Recommendation: Clarify the objectives by including performance statements.

Commissioners' Recommendation: endorsed with [comment](#)

Two recommendations do not require legislative action

Food Processors: Dairy products used as an ingredient or component to create other dairy products (B&O tax)

Conclusion: The preference was enacted in 2013 to encourage development of an infant formula production facility in Sunnyside. Industry representatives note the activity for which it was intended did not occur.

Average annual savings: \$62,000

Expiration date: 6/30/2023

[Summary](#) | [Video Summary](#)

Legislative Auditor's Recommendation: Allow to expire because the activity it was intended to incentivize did not occur.

Commissioners' Recommendation: endorsed

Historic Automobile Museums (Sales & Use tax)

Conclusion: The tax deferral meets the public policy objective of improving the fiscal stability of its one beneficiary. This may have improved economic vitality, but other local financial incentives likely had a larger influence.

Biennial beneficiary savings: \$46,600

Expiration date: None

[Summary](#) | [Video Summary](#)

Legislative Auditor's Recommendation: Continue until the deferral is repaid in 2032.

Commissioners' Recommendation: endorsed

The Citizen Commission for Performance Measurement of Tax Preferences also considers preferences based on information provided by the Department of Revenue. [View the 2022 Expedited Preference Review.](#)

JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE

More about 2022 reviews

Study questions

The Citizen Commission selected the following tax preferences for a performance review by JLARC staff in 2022:

- [Commuter Trip Reduction Tax Credit \(Multiple Taxes\)](#) | 82.70.020 | 2003
- [B&O Tax Preferences for Food Processors](#) | 82.04.4268(1)(a), 82.04.4268(1)(b), 82.04.260(1)(c)(i), 82.04.260(1)(c)(iii), 82.04.4269 82.04.260(1)(b), 82.04.4266, 82.04.260(1)(d) | 2005, 2006, and 2013
- [Property Tax Exemptions for Nonprofit Hospitals and Cancer Clinics](#) | 84.36.040(1)(e), 84.36.046 | 1886, 1997
- [Sales and Use Tax Deferral for Historic Automobile Museums](#) | 82.32.580 | 2005

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 2022 Expedited Preference Review.](#)

2022: Not Subject to Full Review (33 Preferences)		RCW	Enacted
1	Fish Cleaning (B&O Tax)	82.04.2403	1994
2	Dried Pea Processors (B&O Tax)	82.04.260(2)	1967
3	Syrup Taxes Paid (B&O Tax)	82.04.4486	2006
4	Restaurant Employee Meals (Sales and Use Tax)	82.08.9995; 82.12.9995	2011
5	Restaurant Employee Meals (B&O Tax)	82.04.750	2011
6	Catering (Litter Tax)	82.19.050(5)	2005
7	Football Stadium and Exhibition Center Parking (Sales Tax)	82.08.02875	1997
8	Differential Parimutuel Tax Rates (Parimutuel Tax)	67.16.105(2)	1979
9	Football Stadiums (Leasehold Excise Tax)	82.29A.130(15)	1997
10	Football Stadiums (Sales and Use Tax)	36.102.070	1997
11	Film and Video Production Equipment (Sales and Use Tax)	82.08.0315; 82.12.0315	1995
12	Tuna, Mackerel, and Jack Fish (Enhanced Food Fish Tax)	82.27.010	1995
13	Baseball Stadiums (Leasehold Excise Tax)	82.29A.130(14)	1995
14	Horse Race Tracks (Sales and Use Tax)	82.66.040	1995
15	Amphitheater (Leasehold Excise Tax)	82.29A.130(18)	2005
16	Grocery Distribution Co-Ops (B&O Tax)	82.04.298(2)	2001
17	Grocery Co-Ops (Litter Tax)	82.19.050(3)	2001
18	Trail Grooming (Sales Tax)	82.08.0203	2008
19	Audio or Video Programming (Sales and Use Tax)	82.08.02081; 82.12.02081	2009
20	Amateur Radio Repeaters (Leasehold Excise Tax)	82.29A.138	2007
21	Timber and Wood Products (B&O Tax)	82.04.260(12)	2006
22	Canned Salmon Services (B&O Tax)	82.04.260(13)	2006

2022: Not Subject to Full Review (33 Preferences)		RCW	Enacted
23	Performing Arts (Property Tax)	84.36.060(1)(b)	1981
24	Seafood Processing (B&O Tax)	82.04.120	1975
25	Baseball Stadiums (Sales and Use Tax)	36.100.090	1995
26	Nonprofit Races (Parimutuel Tax)	67.16.105(1)	1979
27	Nonprofit Radio and TV Broadcast Facilities (Property Tax)	84.36.047	1977
28	Fish Tax Differential Rates (Enhanced Food Fish Tax)	82.27.020(4)	1980
29	Meat Processors (B&O Tax)	82.04.260(4)	1967
30	Commercially Grown Fish or Shellfish (Enhanced Food Fish Tax)	82.27.030(2)	1980
31	Flour and Oil Manufacturing (B&O Tax)	82.04.260(1)(a)	1949
32	Horse Racing (B&O Tax)	82.04.350	1935
33	Radio and TV Broadcasting (B&O Tax)	82.04.280(1)(f)	1935

2022: Critical Part of the Tax Structure (9 Preferences)		RCW	Enacted
1	Boxing and Wrestling Matches (B&O Tax)	82.04.340	1935
2	Tax Paid in Other States (Enhanced Food Fish Tax)	82.27.040	1980
3	Trademarked Syrup (Syrup Tax)	82.64.030(3)	1991
4	Imported Frozen or Packaged Fish (Enhanced Food Fish Tax)	82.27.030(1),(3)	1980
5	Syrup Previously Taxed (Syrup Tax)	82.64.030(1)	1989
6	Syrup Exported (Syrup Tax)	82.64.030(2)	1989
7	Syrup Purchased Before Tax Imposed (Syrup Tax)	82.64.030(4)	1989
8	Racing Fuel (Fuel Tax)	82.38.080(2)(c)	1998
9	Food and Beverages Consumed On-Site (Litter Tax)	82.19.050(4)	2003

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 November 2022 JLARC meeting and at the August 2022 meeting of the Commission. A final report will be presented to JLARC in December 2022.

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.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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