



November 2, 2023

The Honorable Senator June Robinson
The Honorable Senator Lynda Wilson
The Honorable Senator Marko Liias
The Honorable Senator Curtis King
The Honorable Senator Jake Fey
The Honorable Representative Andrew Barkis

The Honorable Representative Timm Ormsby
The Honorable Representative Chris Corry
The Honorable Representative April Berg
The Honorable Representative Cyndy Jacobsen
The Honorable Representative Cindy Ryu
The Honorable Representative Mike Volz

Re: 2023 Tax Preference Reviews

Dear Senators and Representatives:

I am pleased to be forwarding to you the comments that the Citizen Commission for Performance Measurement of Tax Preferences **unanimously adopted for this year's review of tax preferences**. Our comments are informed by JLARC staff work, public testimony, and our professional knowledge of Washington's tax structure.

The Citizen Commission consists of five voting members appointed by each of the four caucuses and the Governor's office and represent a broad range of ideologies and professional backgrounds. Members include a retired tax attorney and CPA, the president of the Edmonds Education Association, a University of Washington public policy professor, a retired K-12 teacher, and myself, the Chief Economist at Avista. Notably, reviews this year included:

Five Legislative Auditor recommendations that require legislative action:

- A review of [Interstate Transportation Tax Preferences](#), in which the Legislative Auditor recommends **clarifying** the objectives. The four preferences are no longer necessary to comply with the Constitution, but the Legislature may have other objectives. The preferences make Washington's commercial transportation industry more competitive. They support more freight traffic at ports and higher employment in transportation and freight-dependent industries.
- A review of a preference for [Rural County and CEZ New Jobs](#), in which the Legislative Auditor recommends **continuing and clarifying the preference**. Beneficiaries created over 1,000 jobs in rural counties, but use continues to decline. The preference's wage threshold has not been updated since 1997.
- A review of a preference for [International Services](#), in which the Legislative Auditor recommends **terminating the preference**. Use of the preference is 99% lower than originally expected and it has not met the goal of attracting and retaining jobs.

COMMISSION MEMBERS

Dr. Grant Forsyth, *Chair*
Avista Corp.

Andi Nofziger-Meadows, *Vice Chair*
Edmonds Education Association

Ronald Bueing

Dr. Sharon Kioko
Evans School of Public Policy and Governance
University of Washington

James Orr

NON-VOTING MEMBERS

Senator Mark Mullet
Chair, Joint Legislative Audit & Review Committee

Pat McCarthy
State Auditor

- A review of a [Hazardous Substance Tax Exemption for Pesticides Sold Out of State](#), in which the Legislative Auditor recommends **continuing and modifying the preference**. It improves industry competitiveness, but the increase in total hazardous substance tax revenue is likely not due to the preference.
- A review of a preference for [Historic Ships and Vessels](#), in which the Legislative Auditor recommends **clarifying the objective**. It is unclear if the preference met the inferred goal of keeping historic vessels in Washington. Owners of eleven historic vessels saved an estimated \$21,000 in 2023.

One Legislative Auditor recommendation that does not require legislative action:

- A review of a preference for [Rehabilitated Historic Properties](#), in which the Legislative Auditor recommends **continuing the preference** because it is meeting its objective to promote historic property revitalization. Property owners saved \$56.8 million over the past 10 years, primarily in King County and for commercial properties. While preference use has declined, use increased 6% between 2020 and 2022.

The Commission endorses all of the Legislative Auditor's recommendations. **The full text of the Commission's comments is attached and will be added to JLARC's proposed final reports in November.** Summaries of the JLARC staff's analysis and recommendations and brief videos of each review are 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. These reviews provide valuable information as the Legislature considers whether individual preferences are meeting policy objectives. Please feel free to contact me (grant.forsyth@leg.wa.gov) or the Legislative Auditor, Eric Thomas (eric.thomas@leg.wa.gov or 360-786-5182).

Sincerely,



Grant D. Forsyth, Chair

Citizen Commission for Performance Measurement of Tax Preferences

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Draft Consolidated Commissioner Comments on 2023 Preferences

Chair's Note:

Green means I perceive little or no deviation in commissioner recommendations. Yellow means I perceive one to two commissioners have expressed a moderate deviation from the majority, but the differences are not insurmountable to reaching a one voice opinion. Red means I perceive that one to two commissioners have expressed a significant deviation from the majority, and reaching a one voice opinion will be impossible without significant compromises. The table below is a summary of the Green, Yellow, and Red preferences:

Color	Preferences
Green	Hazardous Substance Tax Exemption for Pesticides Sold Out of State; International Services; Rural County and New CEZ Jobs; Historic Ships and Vessels
Yellow	Rehabilitated Historic Properties; Interstate Transportation Tax Preferences
Red	

Citizen Commission for Performance Measurement of Tax Preferences

Draft Consolidated Commissioner Comments on 2023 Preferences

1. Hazardous Substance Tax Exemption for Pesticides Sold Out of State (Hazardous Substance Tax)

Legislative Auditor Recommendations: Continue and modify the preference

The Legislature should continue and modify the preference. The preference improves industry competitiveness by providing tax relief to Washington businesses that store or transport pesticides sold out of state. In light of 2019 changes to the hazardous substance tax, the Legislature should consider new metrics to evaluate the preference or recategorize it as one intended to provide tax relief.

Name	Possible Comment	Rationale for comment
Chair's Reconciliation	Endorse Legislative Auditor recommendation with comment.	The preference meets the goal as intended. Without this exemption, Washington-based distributors would be at a significant competitive disadvantage in the primary out-of-state markets in which these products are to be distributed since no similar tax is imposed or no credit is allowed for the Washington hazardous substance tax (HST) against similar taxes. (SK,RB)
Ron Bueing	Continue the preference without modification	The acknowledged purpose of the preference is to allow distributors to store pesticides within Washington for quick sale and deployment when needed in Washington without the necessity of paying hazardous substance tax on substances that are ultimately sold for use outside of Washington. Without this exemption, Washington based distributors would be at a significant competitive disadvantage in the primary out of state markets in which these products are to be distributed as no similar tax is imposed or no credit is allowed for the Washington HST against similar taxes. There are many other factors that can affect the amount of HST on these products. For example, otherwise qualifying product that is manufactured in Washington is not eligible for the exemption.
Grant Forsyth	Endorse Legislative Auditor recommendation with comment.	Testimony from the industry made clear the storage location in Washington serves both large and small farms in neighboring states that purchase other goods in services in Washington. In addition, the storage locations in Washington offer rapid response to disease outbreaks just across state lines that could rapidly impact farms in Washington.
Sharon Kioko	Endorse Legislative Auditor Recommendation without comment.	The preference meets the goal as intended.
James Orr	Concur with the Legislative Auditor's recommendation.	
Andi Nofziger-Meadows	Endorse Legislative Auditor recommendation without comment.	

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2. Rehabilitated Historic Properties (Property Tax)

Legislative Auditor Recommendations: Continue

The Legislature should continue the preference because it is meeting its objective to promote historic property revitalization. JLARC staff will review the preference again prior to the January 1, 2031, expiration date for new applicants and determine whether preference use has increased over time. It will be important that all counties where the preference has been used provide data in order to accurately determine if the objective has been met.

Name	Possible Comment	Rationale for comment
Chair's Reconciliation	Endorse Legislative Auditor recommendation with comment.	Housing availability remains an issue in many communities and continuing this preference could retain or add housing stock by utilizing existing buildings. As construction costs continue to rise, the tax preference makes rehabilitating historic buildings more financially viable, encouraging owners to restore these properties. The Legislature may want to extend this preference to include attached dwelling units and detached dwelling units that are associated with existing historic buildings. (ANM)
Ron Bueing	Confirm auditor's recommendation.	
Grant Forsyth	Endorse Legislative Auditor recommendation without comment.	
Sharon Kioko	Endorse Legislative Auditor Recommendation without comment.	I also agree with JLARC's assessment that counties should provide data to accurately determine if the objective has been met. For counties that have adopted the exemption but the exemption is currently not to be used, improvements in processes by local government may encourage the use of the exemption.
James Orr	Concur with the Legislative Auditor's recommendation.	
Andi Nofziger-Meadows	Endorse Legislative Auditor recommendation with additional comment. This preference could be improved by extending its eligibility to ADUs and DDUs that are associated with existing historic buildings.	Housing availability is becoming increasingly challenging in many of our communities, and expanding this preference could add crucial housing stock by utilizing existing buildings. As construction and labor costs continue to rise, the tax preference makes rehabilitating historic buildings more affordable and viable, encouraging owners to be good stewards of these properties.

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3. Historic Ships and Vessels (Property Tax)

Legislative Auditor Recommendations: Clarify

The Legislature should clarify the preference's public policy objective and identify metrics to measure if the objective has been achieved.

Depending on the objective, metrics might include maintaining the number of historic vessels in state as of a certain date, increasing the number of historic vessels on national or state registers, or increasing educational opportunities.

Name	Possible Comment	Rationale for comment
Chair's Reconciliation	Endorse Legislative Auditor recommendation with comment.	The recent designation of the coastline of Washington State as a Maritime Washington National Heritage Area provides new opportunities for utilization of this tax preference. (ANM)
Ron Bueing	Continue and clarify.	
Grant Forsyth	Endorse Legislative Auditor recommendation with comment.	Testimony suggests that the Legislature may want to retain this preference if it wants to encourage historic preservation beyond buildings.
Sharon Kioko	Endorse Legislative Auditor Recommendation with comment.	I agree with JLARC's assessment that the Legislature should clarify the public policy objective given the number of beneficiaries.
James Orr	The Legislative Auditor's recommendation is acceptable. Alternatively, this preference could simply be continued.	The number of vessels that fall into this category is not large. This issue does not seem like a high priority for the Legislature.
Andi Nofziger-Meadows	Endorse Legislative Auditor Recommendation with additional comment. The Legislature should continue the preference and clarify the metrics to measure if the objective has been achieved.	The recent designation of the Coastline of Washington State as a Maritime National Heritage Area provides new opportunities for utilization of this tax preference.

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Draft Consolidated Commissioner Comments on 2023 Preferences

4. International Services (Business and Occupation Tax)

Legislative Auditor Recommendations: Terminate

The Legislature should terminate this preference because it has not achieved the stated intent to attract and retain businesses to community empowerment zones or international services districts that provide professional services to international customers.

The Legislature may want to consult with the Department of Commerce and local economic development entities to consider other approaches to encourage business development in community empowerment zones.

Name	Possible Comment	Rationale for comment
Chair's Reconciliation	Endorse Legislative Auditor recommendation without comment.	
Ron Bueing	Confirm Auditor's recommendation.	
Grant Forsyth	Endorse Legislative Auditor recommendation without comment.	
Sharon Kioko	Endorse Legislative Auditor Recommendation without comment.	
James Orr	Concur with the Legislative Auditor's recommendation.	
Andi Nofziger-Meadows	Endorse Legislative Auditor recommendation without comment.	

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Draft Consolidated Commissioner Comments on 2023 Preferences

5. Interstate Transportation Tax Preferences (Public Utility Tax)

Legislative Auditor Recommendations: Clarify

The Legislature should clarify the objectives for these preferences. They are no longer necessary to comply with the Constitution because the U.S. Supreme Court has changed its interpretation of the Commerce Clause. The Legislature may have other objectives for the preferences, though it has not stated them in law.

- If the Legislature has other objectives for these preferences, it should state those objectives and, if applicable, establish measurable criteria. Objectives for similar preferences include: to create and retain jobs, attract and retain businesses, and make Washington competitive with other states.
- If the Legislature's sole objective for the preferences is to avoid taxing any activity whose taxation is constitutionally prohibited, it should repeal the preferences because a fairly apportioned PUT would be constitutionally permitted. Such a policy change would require a method of apportioning transportation income to activities within the state.

Name	Possible Comment	Rationale for comment
Chair's Reconciliation	Endorse Legislative Auditor recommendation to clarify but the preference should be continued.	The Legislature should retain these preferences but clarify the purpose and metrics to aid future reviews. All of the preferences benefit both large and small transportation companies that often operate with relatively low profit margins while still providing family wage jobs. The preferences for transporting Washington commodities directly to a Washington port for export by vessel and transporting Washington agricultural products to an interim storage facility before shipment to a Washington port for export by vessel support the use and viability of the state's ports. Since Washington's ports are a key part of the economy, and there is intense competition for port services on the West Coast, the elimination of these preferences could adversely impact port activity. (RB, ANM, GF)
Ron Bueing	Continue the preferences for transporting Washington commodities directly to a Washington port for export by vessel and transporting Washington agricultural products to an interim storage facility before shipment to a Washington port for export by vessel. Clarify the exemptions for in-state portion of interstate transportation and interstate shipments of goods that stop in Washington for storage, manufacturing, or processing before they are transported to a final destination (through-freight).	The preferences for transporting Washington commodities directly to a Washington port for export by vessel and transporting Washington agricultural products to an interim storage facility before shipment to a Washington port for export by vessel are encourage use of Washington port facilities. As the Washington ports are such a key part of Washington's economy and there is tremendous competition for port services, testimony indicates the importance of these exemptions. The exemption for interstate shipments of goods that stop in Washington for storage, manufacturing, or processing before they are transported to a final destination (through-freight) arguably support certain types of Washington located businesses performing such services prior to final delivery, clarification from the Legislature

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		is necessary to determine the identity and scope of such businesses and how the exemption assists in the competitiveness, growth and retention of such businesses in Washington. The final exemption for the in-state portion of interstate transportation does not on its face appear to raise competitiveness concerns for transportation services as it relates to goods destined for Washington or originating in Washington for distribution and sale elsewhere. However, it does raise administrative questions of how the tax would be implemented and the potential effect on transportation businesses located in Washington. The Legislature should work with industry to clarify the continuing efficacy of this exemption.
Grant Forsyth	Endorse Legislative Auditor recommendation with comment.	The commission received a great deal of testimony on this preference. The overwhelming amount of testimony indicates this preference is crucial in keeping the state's transportation activity competitive, especially as it relates to export related products. It appears to benefit both large and small transportation companies. The legislator should retain the preference but clarify the purpose and metrics to aid future reviews.
Sharon Kioko	Endorse Legislative Auditor Recommendation without comment.	No additional comment here.
James Orr	Concur with the Legislative Auditor's recommendation.	
Andi Nofziger-Meadows	Endorse Legislative Auditor Recommendation with additional comment.	This preference should be continued and the objectives for it clarified. Termination of this preference would likely have detrimental consequences to an industry that runs on very small profit margins, supports family wage jobs in communities, and is comprised of mostly small businesses. The economic activity supported by this preference far exceeds the lost tax revenue.

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Draft Consolidated Commissioner Comments on 2023 Preferences

6. Rural County and CEZ New Jobs (Business and Occupation Tax)

Legislative Auditor Recommendations: Continue and modify

The Legislature should continue the preference because it has been used by businesses that created jobs in rural counties and community empowerment zones. Economic modeling suggests that the state would break even if the preference caused only 2% of the jobs. It is unclear why use of the preference has declined.

The Legislature should modify the preference to promote and increase family wage jobs in rural counties. For example, the Legislature might consider increasing the wage threshold to reflect current economic conditions and linking future increases to inflation or wage benchmarks.

The Legislature should modify the preference to potentially increase the number of businesses applying for the credit. For example, the Legislature might consider increasing the credit amounts, tying future increases to inflation, or extending the preference to other industry sectors that could benefit rural counties.

Name	Possible Comment	Rationale for comment
Chair's Reconciliation	Endorse Legislative Auditor recommendation with comment.	The Legislature should modify the preference to increase the number of businesses applying for the credit. This may require a more in-depth study of why use of the preference has declined. (SK, JO)
Ron Bueing	Confirm Auditor's recommendation.	
Grant Forsyth	Endorse Legislative Auditor recommendation without comment.	
Sharon Kioko	Endorse Legislative Auditor Recommendation with comment.	I agree with JLARC's assessment that the Legislature should modify the preference to increase the number of businesses applying for the credit.
James Orr	Concur with the Legislative Auditor's recommendation to continue the preference for now.	As for any modifications, I would suggest that the decline of the use of the preference be studied first. Once the reasons for this decline are better understood, modifications to the preference could be made that directly address the issue.
Andi Nofziger-Meadows	Endorse Legislative Auditor recommendation without comment.	