

PRELIMINARY REPORT:
2021 TAX PREFERENCE PERFORMANCE
REVIEWS

Health Benefit Exchange

LEGISLATIVE AUDITOR'S CONCLUSION:

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 the July 2023 expiration date or make the preference permanent.

July 2021

Executive Summary

Washington's Health Benefit Exchange is exempt from paying B&O tax on the state funding it receives

The Legislature established the Washington Health Benefit Exchange (the Exchange) in 2011. Two years later, the Legislature determined the governing and funding structure for the Exchange and created this preference. The Exchange provides a health insurance marketplace for individuals and families to shop for and purchase health insurance plans.

The preference is scheduled to expire July 1, 2023.

Estimated Biennial
Beneficiary Savings

\$2.2 Million

Tax Type

Business and Occupation
(B&O) Tax

RCW 82.04.323

Applicable Statutes

Preference allows the Exchange to maximize its state funding for operating a health insurance marketplace

The Exchange is structured as a public-private partnership, or quasi-governmental agency. It is funded through legislative appropriations. Without this preference, the Exchange would be subject to B&O tax on the funding it receives.

Objective (inferred)	Results
Maximize the funding appropriated by the Legislature to operate the Exchange.	Met. The preference exempts the Exchange from paying B&O tax on the state funding it receives. This allows the Exchange to use all of its appropriated funds to assist Washingtonians in comparing and purchasing health insurance plans.

Recommendation

Legislative Auditor's Recommendation: Extend the expiration date or make the preference permanent (structural purpose)

The Legislature should:

- Extend the July 2023 expiration date or make the preference permanent. The preference appears to address a structural tax issue. The Exchange is a public-private partnership and the state funding it receives would be subject to B&O tax without this preference.
- Add a performance statement that specifies the public policy objective for the preference.

The Citizen Commission for the Performance Measurement of Tax Preferences should consider whether the preference is critical to the tax structure. If so, it will be excluded from future tax preference reviews.

You can find more information in Recommendations.

Commissioners' Recommendation

Available on [Citizen Commission website](#) October 2021.

REVIEW DETAILS

1. Exchange exempt from B&O tax

The Washington State Health Benefit Exchange is exempt from paying B&O tax on the funding it receives

In 2013, the Legislature determined the governing and funding structure for Washington's Health Benefit Exchange and established this preference.

The preference is scheduled to expire July 1, 2023.

The Exchange was established to provide a health insurance marketplace for Washingtonians

The federal Affordable Care Act (ACA) created a federal health insurance marketplace and permitted states and the District of Columbia to establish their own state-based marketplaces, also known as exchanges. Exchanges are intended to simplify consumers' experiences in comparing and obtaining health insurance plans that meet federal standards. They also connect qualifying residents to federal subsidies that lower their healthcare costs. Exchanges may be accessible through websites, call centers, and in-person assistance.

The Legislature established Washington's Health Benefit Exchange (the Exchange) in 2011 and determined its governing structure and funding sources in 2013. The Exchange became fully operational in 2014 as a public-private partnership. It is governed by an 11-member board

comprised of a chair and members appointed by each of the legislative caucuses and the governor. Statute requires that board members have expertise in a variety of health care areas.

The Exchange is tasked with several roles, including:

- Increase access to quality, affordable health care coverage.
- Reduce the number of uninsured in Washington.
- Increase the availability of health care coverage through the private health insurance market to qualified persons and small employers.
- Provide consumer choice and health insurance portability regardless of employment.
- Empower consumers to compare plans and make informed decisions about health care coverage.

Funds to operate the Exchange are appropriated

The Exchange pays for its operations through state appropriations from three funding sources:

1. **Health Benefit Exchange Account:** Funded by insurance premium tax receipts and a monthly assessment paid by insurance companies on health and dental plans sold through the Exchange.
2. **General Fund-Federal:** Federal Medicaid payments for enrollment and eligibility of Washington Apple Health clients. Apple Health is Washington's version of Medicaid, the joint state and federal insurance program for low-income individuals and children or people with disabilities.
3. **General Fund-State:** Amounts that may be transferred by the state omnibus appropriations act under RCW 48.41.090.

Without this preference, the Exchange would be subject to B&O tax on the funding it receives.

Exhibit 1.1: The Exchange's 2019-2021 biennial funding was appropriated from three accounts

Fund	FY 2020	FY 2021
Health Benefit Exchange Account	\$30,936,000 (50%)	\$29,181,000 (49%)
General Fund-Federal	\$24,590,000 (40%)	\$25,465,000 (42%)
General Fund-State	\$6,407,000 (10%)	\$5,334,000 (9%)
Total	\$61,933,000	\$59,980,000

Source: JLARC staff analysis of Health Benefit Exchange biennial funding detail.

2. Preference saves the Exchange 2% of its total funding

The Exchange will save an estimated \$2.2 million in the 2021-23 biennium

Preference is achieving its inferred objective to maximize funding for the Exchange

Based on statements made by the prime sponsor, JLARC staff infer the preference's public policy objective is to maximize the funding appropriated by the Legislature to operate the Exchange.

Without the tax preference, Washington's Health Benefit Exchange (the Exchange) would be subject to business and occupation (B&O) tax on the funding it receives. The preference reduces the Exchange's costs and enables it to use all of its funding to cover its operations.

Estimated beneficiary savings: \$1 million in fiscal year 2021

JLARC staff estimate the direct beneficiary savings for the Health Benefit Exchange is \$1 million for fiscal year 2021 and \$2.2 million for the 2021-23 biennium.

The Exchange is the only beneficiary for this preference. The Department of Revenue's taxpayer confidentiality policy prohibits disclosing individual account data when there are fewer than three taxpayers unless the law or the taxpayer specifically authorizes disclosure. For this review, the Exchange authorized JLARC staff to calculate and disclose the estimated beneficiary savings from the preference.

The estimated savings are based on legislative appropriations to the Exchange. The estimates do not include the value of insurance premiums paid by enrollees who purchase plans through the Exchange.

The tax preference is currently scheduled to expire July 1, 2023.

Exhibit 2.1: The Exchange will save an estimated \$2.2 million in the 2021-23 biennium

Fiscal Year	Estimated Amount Subject to Tax	Estimated Tax Savings
2018	\$59,043,000	\$886,000
2019	\$65,069,000	\$976,000
2020	\$61,933,000	\$960,000
2021	\$59,980,000	\$1,050,000
2022	\$61,506,000	\$1,076,000
2023	\$61,506,000	\$1,076,000
2021-23 biennium	\$123,012,000	\$2,152,000

Note: Effective tax rate changed April 1, 2020, from 1.5% to 1.75%.

Source: JLARC staff analysis of Health Benefit Exchange documentation on appropriated funding, fiscal years 2018-

2021. JLARC staff estimated funding for fiscal years 2021-23 based on average funding per fiscal year for years 2018- 2021.

Unclear how the Exchange would address its increased costs if the preference were allowed to expire

JLARC staff estimate that the preference has reduced the Exchange's costs by approximately 2%, based on appropriations to the Exchange from fiscal years 2018 through 2021.

If the preference were allowed to expire on July 1, 2023, the Exchange indicated that it would have to determine a next course of action. The Exchange does not believe it has the statutory authority to charge qualified health plan customers for using its services and it is prohibited from charging Apple Health (Medicaid) enrollees. Other options the Exchange, its board, and ultimately the Legislature might consider include:

- Seeking increased appropriation authority from the Legislature to cover the new cost of the B&O tax.
- Reducing expenditures for various Exchange activities.
- Seeking additional resources, such as grants or federal funds, to cover estimated costs of the tax.

3. WA residents use the Exchange to find health care plans

Since 2014, Washingtonians have used the Health Benefit Exchange to find and purchase health insurance

Washington's Health Benefit Exchange (the Exchange) aims to increase access to affordable health care coverage and reduce the number of uninsured in Washington. Its online marketplace allows individuals and families to:

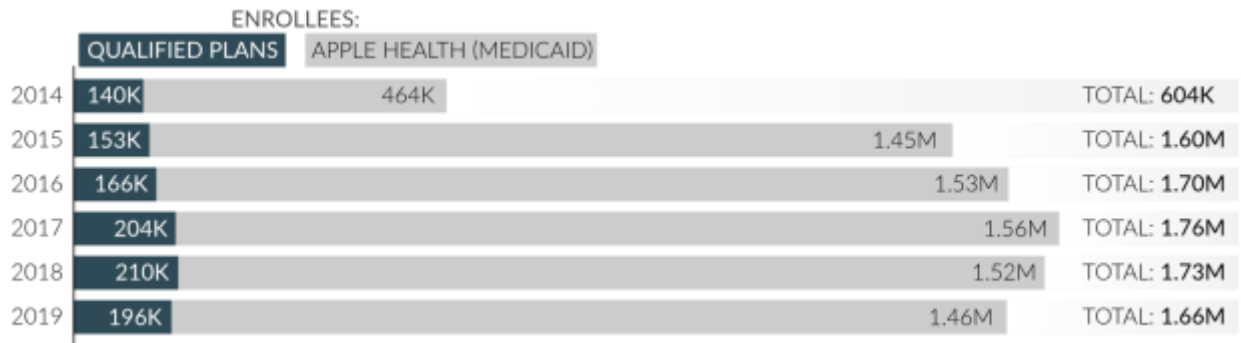
- Compare and enroll in private qualified health plans.
- Enroll in free or low-cost health care through Apple Health. Apple Health is Washington's version of Medicaid, a joint state and federally funded program for low-income individuals and children or people with disabilities.
- Access federal subsidies that lower customer premiums and cost-sharing.

The Exchange offers tools and resources

The Exchange is responsible for operating *Washington Healthplanfinder*, an online marketplace that offers Washington residents insurance information, including:

- Side-by-side comparisons of qualified health and dental plans.
- Details on tax credits or financial help to pay for co-pays and premiums.
- Customer support online, by phone, or in-person through local organizations or insurance brokers.

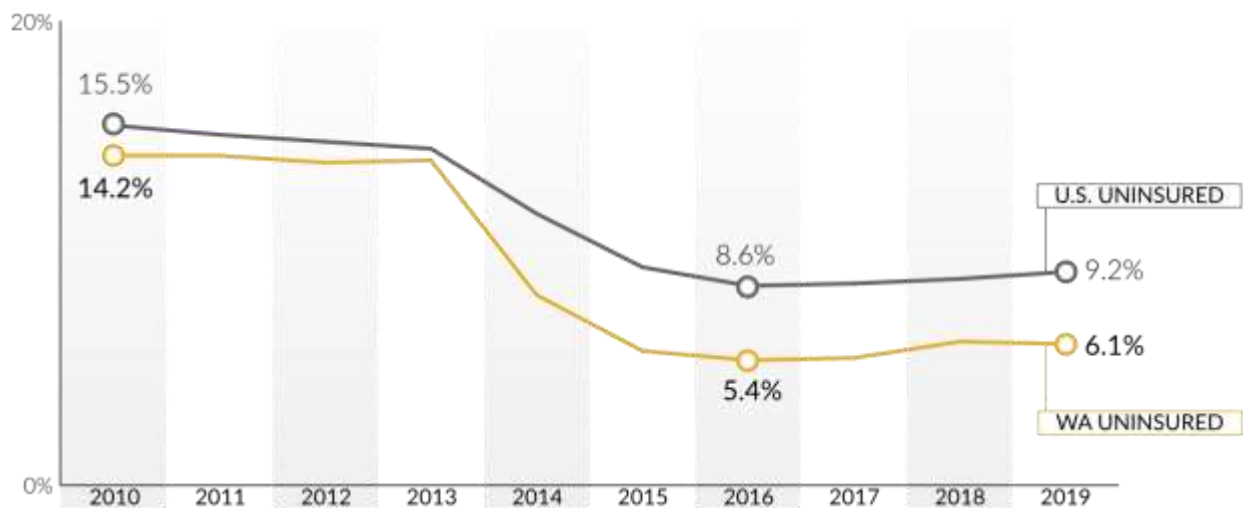
Exhibit 3.1: Since 2015, 1.6 million or more WA residents have enrolled annually through the Exchange for qualified private health plans or for Apple Health (Medicaid)



Source: JLARC staff analysis of 2014-2019 Health Benefit Exchange enrollment data.

Washington's uninsured rate has been consistently lower than the national uninsured rate. Since 2014, when the Exchange began offering its online marketplace, Washington's uninsured rate has been at least three percentage points lower than the national rate.

Exhibit 3.2: Washington's uninsured rate reached a low in 2016 and has been consistently lower than the national average



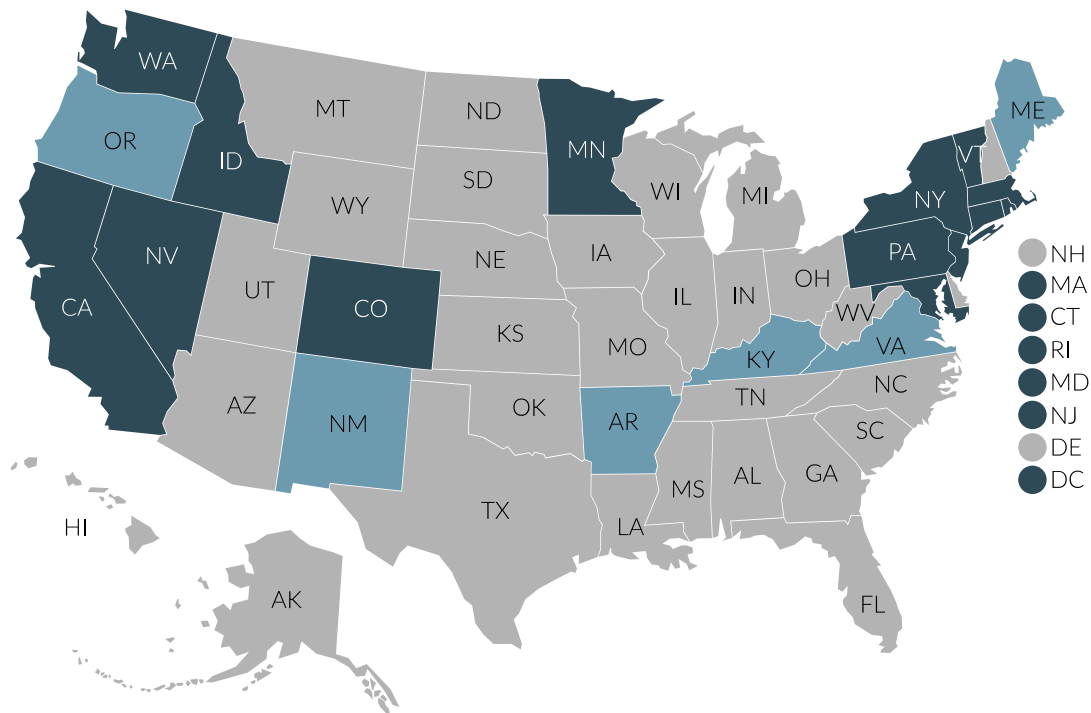
Source: JLARC staff analysis of Office of Financial Management Research Brief 98, December 22, 2020.

4. Fourteen states and DC offer state-based exchanges

States provide online health insurance marketplaces in several ways

Residents of every state and the District of Columbia can shop for, compare, and purchase health care plans from an online marketplace, also known as an exchange. There are three main types of marketplaces offered throughout the country.

Exhibit 4.1: Washington is one of 14 states and DC that provide a state-based exchange



State-based	State-based, using federal platform	Federally facilitated
<p>A state-specific organization performs all marketplace functions for the individual market. Consumers apply for and enroll in coverage through websites established and maintained by the state. In WA, this is the Health Benefit Exchange.</p>	<p>A state-based marketplace performs all functions for the individual market, except the state relies on the federal Healthcare.gov website for eligibility and enrollment. Consumers in these states apply for and enroll in coverage through the federal website.</p>	<p>The federal Department of Health and Human Services performs all marketplace functions. Consumers in these states apply for and enroll in coverage through Healthcare.gov.</p>

Source: JLARC staff analysis of Kaiser Family Foundation web site, viewed January 24, 2021, and Congressional Research Service publication, Blueprint for Approval of State-based Health Insurance Exchanges.

State-based exchanges are managed by government, nonprofit, and quasi-governmental entities

Some state-based exchanges are part of state government and others, like Washington's, are run by a quasi-governmental entity with varying levels of state input and oversight.

"Quasi-governmental" is not specifically defined. A Congressional Research Service report defined it as a hybrid organization that has been assigned by law, or by general practice, some of the legal characteristics of both the government and private sector. These are also known as public-private partnerships.

Exhibit 4.2: Several types of entities manage state-based exchanges

Organization Type	States
<p>1. State government agency or department: The state establishes the exchange within an existing or new state government agency.</p>	CA, MN, NJ, NV, NY, RI, VT
<p>2. Public nonprofit organization: The state establishes a nonprofit entity to house the health insurance marketplace. The organization is governed by a board of directors with input or oversight from the governor, legislative branch, or certain state government agencies.</p>	CO
<p>3. Quasi-governmental agency: The state houses the marketplace outside of state government within an independent agency. The quasi-governmental agency is typically governed by a board of directors with input or oversight from the governor, legislative branch, or certain state government agencies. These are also known as public-private partnerships.</p>	CT, DC, ID, MD, MA, PA, WA

Source: JLARC staff analysis of National Academy for State Health Policy data as of January 2021.

At least three other states with health exchanges similar to Washington's are tax exempt

Like Washington, JLARC staff confirmed that at least three of the six other states using a quasi-governmental or public-private partnership structure have explicitly exempted their health insurance exchanges from state and local taxes. They are:

- Connecticut
- Idaho
- Maryland

5. Applicable statutes

RCW 82.04.323, Chapter 43.71 RCW

Exemption - Washington health benefit exchange. (Expires July 1, 2023.)

RCW 82.04.323

(1) The taxes imposed by this chapter do not apply to amounts received by the Washington health benefit exchange established under chapter 43.71 RCW.

(2) This section expires July 1, 2023.

[2013 2nd sp.s. c 6 § 8.]

Chapter 43.71 RCW - Health Benefit Exchange

Finding – Intent.

RCW 43.71.005

(1) The legislature finds that the affordable care act requires the establishment of health benefit exchanges. The legislature intends to establish an exchange, including a governance structure. There are many policy decisions associated with establishing an exchange that need to be made that will take a great deal of effort and expertise. It is therefore the intent of the legislature to establish a process through which these policy decisions can be made by the legislature and the governor by the deadline established in the affordable care act.

(2) The exchange is intended to:

(a) Increase access to quality affordable health care coverage, reduce the number of uninsured persons in Washington state, and increase the availability of health care coverage through the private health insurance market to qualified individuals and small employers;

(b) Provide consumer choice and portability of health insurance, regardless of employment status;

(c) Create an organized, transparent, and accountable health insurance marketplace for Washingtonians to purchase affordable, quality health care coverage, to claim available federal refundable premium tax credits and cost-sharing subsidies, and to meet the personal responsibility requirements for minimum essential coverage as provided under the federal affordable care act;

(d) Promote consumer literacy and empower consumers to compare plans and make informed decisions about their health care and coverage;

(e) Effectively and efficiently administer health care subsidies and determination of eligibility for participation in publicly subsidized health care programs, including the exchange;

(f) Create a health insurance market that competes on the basis of price, quality, service, and other innovative efforts;

(g) Operate in a manner compatible with efforts to improve quality, contain costs, and promote innovation;

- (h) Recognize the need for a private health insurance market to exist outside of the exchange; and
- (i) Recognize that the regulation of the health insurance market, both inside and outside the exchange, should continue to be performed by the insurance commissioner.

Definitions.

RCW 43.71.010

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Terms and phrases used in this chapter that are not defined in this section must be defined as consistent with implementation of a state health benefit exchange pursuant to applicable federal law.

- (1) "Authority" means the Washington state health care authority, established under chapter 41.05 RCW.
- (2) "Board" means the governing board established in RCW 43.71.020.
- (3) "Commissioner" means the insurance commissioner, established in Title 48 RCW.
- (4) "Exchange" means the Washington health benefit exchange established in RCW 43.71.020.
- (5) "Self-sustaining" means capable of operating with revenue attributable to the operations of the exchange. Self-sustaining sources include, but are not limited to, federal grants, federal premium tax subsidies and credits, charges to health carriers, premiums paid by enrollees, and premium taxes under RCW 48.14.0201(5)(b) and 48.14.020(2).

Washington health benefit exchange.

RCW 43.71.020

- (1) The Washington health benefit exchange is established and constitutes a self-sustaining public-private partnership separate and distinct from the state, exercising functions delineated in chapter 317, Laws of 2011. By January 1, 2014, the exchange shall operate consistent with applicable federal law subject to statutory authorization. The exchange shall have a governing board consisting of persons with expertise in the Washington health care system and private and public health care coverage. The membership of the board shall be appointed as follows:
 - (a) Each of the two largest caucuses in both the house of representatives and the senate shall submit to the governor a list of five nominees who are not legislators or employees of the state or its political subdivisions, with no caucus submitting the same nominee.
 - (i) The nominations from the largest caucus in the house of representatives must include at least one employee benefit specialist;
 - (ii) The nominations from the second largest caucus in the house of representatives must include at least one health economist or actuary;
 - (iii) The nominations from the largest caucus in the senate must include at least one representative of health consumer advocates;

- (iv) The nominations from the second largest caucus in the senate must include at least one representative of small business;
- (v) The remaining nominees must have demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefit plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.
- (b) The governor shall appoint two members from each list submitted by the caucuses under (a) of this subsection. The appointments made under this subsection (1)(b) must include at least one employee benefits specialist, one health economist or actuary, one representative of small business, and one representative of health consumer advocates. The remaining four members must have a demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefit plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.
- (c) The governor shall appoint a ninth member to serve as chair. The chair may not be an employee of the state or its political subdivisions. The chair shall serve as a nonvoting member except in the case of a tie.
- (d) The following members shall serve as nonvoting, ex officio members of the board:
- (i) The insurance commissioner or his or her designee; and
- (ii) The administrator of the health care authority, or his or her designee.
- (2) Initial members of the board shall serve staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms.
- (3) A member of the board whose term has expired or who otherwise leaves the board shall be replaced by gubernatorial appointment. Upon the expiration of a member's term, the member shall continue to serve until a successor has been appointed and has assumed office. When the person leaving was nominated by one of the caucuses of the house of representatives or the senate, his or her replacement shall be appointed from a list of five nominees submitted by that caucus within thirty days after the person leaves. If the member to be replaced is the chair, the governor shall appoint a new chair within thirty days after the vacancy occurs. A person appointed to replace a member who leaves the board prior to the expiration of his or her term shall serve only the duration of the unexpired term. Members of the board may be reappointed to multiple terms.
- (4) No board member may be appointed if his or her participation in the decisions of the board could benefit his or her own financial interests or the financial interests of an entity he or she represents. A board member who develops such a conflict of interest shall resign or be removed from the board.
- (5) Members of the board must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. Meetings of the board are at the call of the chair.

(6) The exchange and the board are subject only to the provisions of chapter 42.30 RCW, the open public meetings act, and chapter 42.56 RCW, the public records act, and not to any other law or regulation generally applicable to state agencies. Consistent with the open public meetings act, the board may hold executive sessions to consider proprietary or confidential nonpublished information.

(7)(a) The board shall establish an advisory committee to allow for the views of the health care industry and other stakeholders to be heard in the operation of the health benefit exchange.

(b) The board may establish technical advisory committees or seek the advice of technical experts when necessary to execute the powers and duties included in chapter 317, Laws of 2011.

(8) Members of the board are not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under chapter 317, Laws of 2011. Nothing in this section prohibits legal actions against the board to enforce the board's statutory or contractual duties or obligations.

(9) In recognition of the government-to-government relationship between the state of Washington and the federally recognized tribes in the state of Washington, the board shall consult with the American Indian health commission.

Health benefit exchange account.

RCW 43.71.060

(1) The health benefit exchange account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used to fund the operation of the exchange and identification, collection, and distribution of premium taxes collected under RCW 48.14.0201(5)(b) and 48.14.020(2).

(2) The following funds must be deposited in the account:

(a) Premium taxes collected under RCW 48.14.0201(5)(b) and 48.14.020(2).

(b) Assessments authorized under RCW 43.71.080; and

(c) Amounts transferred by the pool administrator as specified in the state omnibus appropriations act pursuant to RCW 48.41.090.

(3) All receipts from federal grants received may be deposited into the account. Expenditures from the account may be used only for purposes consistent with the grants.

RECOMMENDATIONS & RESPONSES

Legislative Auditor's Recommendation

Legislative Auditor recommends extending the expiration date or making the preference permanent (structural purpose)

The Legislature should:

- Extend the July 2023 expiration date or make the preference permanent. The preference appears to address a structural tax issue. The Exchange is a public-private partnership and the state funding it receives would be subject to B&O tax without this preference.
- Add a performance statement that specifies the public policy objective for the preference.

The Citizen Commission for the Performance Measurement of Tax Preferences should consider whether the preference is critical to the tax structure. If so, it will be excluded from future tax preference reviews.

Legislation Required: Yes

Fiscal Impact: Depends on legislation.

Letter from Commission Chair

Available on [Citizen Commission website](#) October 2021.

Commissioners' Recommendation

Available on [Citizen Commission website](#) October 2021.

Agency Response

If applicable, available on [Citizen Commission website](#) October 2021.

MORE ABOUT THIS REVIEW

Study questions

Click image to view PDF of proposed study questions.



PROPOSED STUDY QUESTIONS Health Benefit Exchange

State of Washington Joint Legislative Audit and Review Committee

December 2020

JLARC to review B&O tax exemption for income received by Washington's Health Benefit Exchange



In 2013, the Legislature passed this B&O tax exemption for income received by the Health Benefit Exchange (the Exchange) as it began implementing the Affordable Care Act in Washington. The Exchange is an online marketplace for individuals, families, and small businesses to compare and enroll in health insurance coverage.

This preference is included in the 10-year review schedule set by the Citizen Commission for Performance Measurement of Tax Preferences.

Preference is intended to reduce the operating costs of the Exchange

The Exchange serves as a resource to assist those looking for health insurance. Its operations are paid from a state account that is funded by four sources: a portion of insurance premium tax receipts; assessment fees on health and dental plans; federal Medicaid funding for enrolling Washington Apple Health clients; and state General Fund appropriations. The preference is scheduled to expire on July 1, 2023.

This study will address the following questions:

1. How much has the Exchange saved in B&O taxes since the exemption took effect?
2. How much has the preference reduced the Exchange's operating costs?
3. What would the impact be if the preference were allowed to expire on July 1, 2023?

Study Timeframe

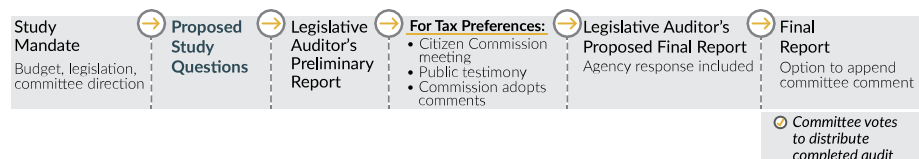
Preliminary Report: July 2021

Proposed Final Report: December 2021

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JLARC Study Process



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