



Citizen Commission for Performance Measurement of Tax Preferences

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Governor's Council of Economic Advisors
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Chair, Joint Legislative Audit
and Review Committee

Brian Sonntag
State Auditor

November 17, 2010

Members of the Washington State Legislature:

The Citizens Commission has unanimously adopted comments on 20 tax preference reviews conducted this year by the Joint Legislative Audit and Review Committee (JLARC). With the culmination of this year's reports, JLARC and the Citizens Commission have now reviewed a total of 95 tax preferences. We are transmitting a summary of these reviews to you, and urge you to take action on the issues identified in them.

The review process has matured since the undertaking to review tax preferences began over four years ago. In addition, the Legislature recently convened the Task Force on Tax Preference Reform, which completed its work this interim. The Citizens Commission was pleased to provide observations about what we have learned from our work, for the Task Force's consideration.

The Citizens Commission endorses the recommendations of the Task Force. In particular, we support their recommendation to modify our underlying statute. This recommended change would provide the Citizens Commission with greater latitude in scheduling the timing and level of reviews. It would also allow JLARC to conserve staff resources by focusing their efforts on the most pertinent evaluation questions.

Finally, we endorse a list of best practices for drafting statements of the legislative intent of individual tax preferences. A copy of these best practices is attached to this letter. We believe these best practices would assist the Commission in determining whether the policy purposes of tax preferences have been achieved.

I believe the work of JLARC and the Citizens Commission has provided a thoughtful and deliberative forum for highlighting many important performance and policy issues associated with evaluating tax preferences. As Chair of the Citizen Commission for Performance Measurement of Tax Preferences, I would be glad to discuss our work with any of you.

If you have specific questions about any of the reviews themselves, feel free to contact Keenan Konopaski, JLARC staff (360-786-5187 or keenan.konopaski@leg.wa.gov).

Sincerely,

A handwritten signature in cursive script that reads "William A. Longbrake".

William A. Longbrake, Chair

Additional General Commission Comment to Include in 2010 Tax Preference Reports

The Task Force on Tax Preference Reform recently encouraged the Commission to make general observations about the clarity and assumptions included in the state's tax preference statutes. The Task Force also recently discussed best practices for establishing legislative intent when legislation is drafted. The Commission therefore adopted the following general comment about legislative intent for the Legislature's consideration.

"To improve the ability to evaluate the effectiveness of tax preferences, the Commission encourages the Legislature to employ the following practices when establishing legislative intent in tax preference bills.

Best Practices for Drafting Intent Sections

- Preambles to legislation (intent sections) are not part of the operative law, but they may be used by courts and others to interpret the law. Good intent sections may be useful during both the judicial and legislative processes.
- A good intent section is a reliable form of legislative history: it is contemporaneous, collective, official, and bicameral (and presented). For this reason, a well-drafted intent section may be useful in interpreting and evaluating a statute.
- Notwithstanding their uses, intent sections may also have unintended consequences, such as inadvertent creation of a cause of action.
- As with all other drafting decisions, the sponsor decides whether to include an intent section and what that section should say. And, as with all legislation, the intent section may be revised during the amendment process.
- Most ordinary legislation does not require an intent section. An intent section is not a substitute for precision (or breadth) in the operative text of the bill.
- Good intent sections explain the purpose of the legislation rather than state legal conclusions about the legislation's effect. They are expository rather than persuasive or polemical.
- Good intent sections reflect general good drafting practices. They are consistent with the rest of the bill and updated by amendment as needed. They are drafted in light of relevant statutes, common law, and constitutional law.
- An intent section may be more appropriate where there is prior judicial construction of a statute (e.g., the legislature is rejecting a judicial construction) or where a statute is likely to be subject to judicial construction or review in the future (e.g., a retroactive statute).
- Good factual findings are brief, declarative, and supported by the record. Good factual findings do not purport to be legal conclusions."