

## **Summary of 2010 Tax Preference Review Recommendations and Commission Comments**

### **2010 Expedited Reviews**

- ▶ Poultry to Produce Poultry Products
- ▶ Farm Machinery Sold to Nonresidents
- ▶ Bailed Tangible Personal Property Consumed in R & D
- ▶ Vehicles Acquired Out-of-State While in the Armed Services
- ▶ Labor and Services for Processing Sand/Gravel/Rock for Public Roads
- ▶ Conservation and Open Space Lands
- ▶ Fruit and Vegetable Manufacturers
- ▶ Seafood Products Manufacturers
- ▶ Dairy Products Manufacturers
- ▶ Fresh Food Processors

### **2010 Full Reviews**

- ▶ Instate Portion of Interstate Transportation
- ▶ Nonresidents' Personal Property
- ▶ Vehicles Sold to Nonresidents
- ▶ Through Freight in Interstate Transportation
- ▶ Shipments to Ports
- ▶ Interstate Transportation Equipment
- ▶ Fertilizer, Spray Materials, and Chemical Sprays and Washes
- ▶ Labor and Services in Public Road Construction
- ▶ Breeding Livestock, Cattle, Milk Cows
- ▶ Title Insurance Premiums

## 2010 Expedited Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
<b>JLARC recommendation: Legislature should continue the tax preference</b>				
Poultry Used to Produce Poultry and Poultry Products / RCW 82.08.0267; RCW 82.12.0262				
1961	733 \$222,000	Continue	Endorses without comment	Unknown until after 2011 session
Farm Machinery Sold to Nonresidents / RCW 82.08.0268				
1961	Unknown \$4.6 million	Continue	Endorses without comment	Unknown until after 2011 session
Vehicles Acquired Out-of-State While in the Armed Services / RCW 82.12.0266				
1963	Unknown \$2.4 million	Continue	Endorses without comment	Unknown until after 2011 session
Labor and Services for Mining/Sorting/Crushing Sand/Gravel/Rock for Public Road Purposes / RCW 82.08.0275; RCW 82.12.0269				
1965	Unknown \$2 million	Continue	Endorses without comment	Unknown until after 2011 session
Conservation and Open Space Lands / RCW 84.36.260; RCW 84.34.220				
1967	58 \$1.7 million	Continue	Endorses without comment	Unknown until after 2011 session

## 2010 Expedited Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
<b>JLARC recommendation: Legislature should re-examine or clarify the intent of the tax preference</b>				
Bailed Tangible Personal Property Consumed in R & D, Experimental, and Testing / RCW 82.12.0265.				
1961	Unknown \$4.7 million	Because of the ambiguity of current law, the Legislature should review and clarify the purpose of the preference providing a use tax exemption for bailed tangible personal property consumed in research, development, experimental, and testing activities.	<p>Endorses with comment: The Commission endorses the recommendation that the Legislature should review and clarify the purpose of the preference and further recommends that the Legislature consider whether the interpretation of the existing statute by the Department of Revenue results in fairness or competitive impacts.</p> <p>Rationale: The Commission noted that the Department of Revenue issued an advisory in 2005 explaining that labels provided (“bailed”) to salmon labeling companies qualify for this preference. The rationale of this advisory ruling appears to be a technical interpretation of the statute and may not be what the Legislature intended when it established a preference for a use tax exemption for tangible property that is bailed to a person and used in research, development, experimental, and testing activities when the bailed property is entirely consumed during the research, development, experimental, and testing activities, and the party that bails the property was not subject to sales tax or use tax when the party initially purchased or acquired the property.</p>	Unknown until after 2011 session

## 2010 Expedited Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
<b>JLARC recommendation: Legislature should allow the tax preference to expire</b>				
Fruit and Vegetable Manufacturers / 82.04.4266; 82.04.260(1)(d)				
2005	109 \$5 million	Recommendation 1		
		Because the public policy objective of creating and retaining quality jobs is not being fully achieved, and the B&O tax exemption was intended to be temporary, the Legislature should allow the B&O tax exemption for fresh fruit and vegetable processors to expire on July 1, 2012.	Endorses with comment: The Commission endorses the recommendation, but acknowledges that the Department of Agriculture provided correspondence to the Commission indicating they disagreed with the JLARC recommendation.	Unknown until after 2011 session
		Recommendation 2		
		To achieve the public policy objective of providing consistent tax treatment to fresh food processors, the Legislature should continue the preferential tax rate of 0.138 percent that becomes effective on July 1, 2012.	Same as Recommendation 1	Unknown until after 2011 session
Seafood Products Manufacturers / 82.04.4269; 82.04.260(1)(b)				
2006	22 \$3.3 million	Recommendation 1		
		Because the implied public policy objective of creating and retaining quality jobs is not being fully achieved, and the B&O tax exemption was intended to be temporary, the Legislature should allow the B&O tax exemption for seafood processors to expire on July 1, 2012.	Endorses with comment: The Commission endorses the recommendation, but acknowledges that the Department of Agriculture provided correspondence to the Commission indicating they disagreed with the JLARC recommendation.	Unknown until after 2011 session
		Recommendation 2		
		To achieve the public policy objective of providing consistent tax treatment to fresh food processors, the Legislature should continue the preferential tax rate of 0.138 percent that becomes effective on July 1, 2012.	Same as Recommendation 1	Unknown until after 2011 session

## 2010 Expedited Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
Dairy Products Manufacturers / 82.04.4268; 82.04.260(1)(c)				
2006	11 \$1.5 million	Recommendation 1		
		<p>Although the implied policy objective of creating and retaining quality jobs is being partially achieved, the Legislature should allow the B&amp;O tax exemption for dairy processors to expire on July 1, 2012, because the B&amp;O tax exemption was intended to be temporary.</p>	Endorses with comment: The Commission endorses the recommendation, but acknowledges that the Department of Agriculture provided correspondence to the Commission indicating they disagreed with the JLARC recommendation.	Unknown until after 2011 session
		Recommendation 2		
		<p>To achieve the public policy objective of providing consistent tax treatment to fresh food processors, the Legislature should continue the preferential tax rate of 0.138 percent that becomes effective on July 1, 2012.</p>	Same as Recommendation 1	Unknown until after 2011 session
Fresh Food Processors / 82.74 RCW				
2005	6 \$1.1 million	<p>Because the amount of investment in plant and equipment and the number of new jobs are less than expected by the public policy objective, the Legislature should allow the fresh food processors deferral to expire on July 1, 2012.</p>	Endorses with comment: The Commission endorses, but acknowledges that the Department of Agriculture provided correspondence to the Commission indicating they disagreed with the JLARC recommendation and recommended that the deferral be continued.	Unknown until after 2011 session

## 2010 Full Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
<b>JLARC recommendation: Legislature should continue the tax preference</b>				
Nonresidents' Personal Property / RCW 82.12.0251				
1935	Unknown \$4.2 billion	Continue	Endorses without comment	Unknown until after 2011 session
Vehicles Sold to Nonresidents / RCW 82.08.0264				
1935	Unknown \$26.7 million	Continue	Endorses without comment	Unknown until after 2011 session
Interstate Transportation Equipment / RCW 82.08.0262; RCW 82.08.0263; RCW 82.12.0254				
1935	Unknown \$2.5 billion	Continue	<p>Endorses with comment: The Commission recommends that the Legislature consider whether to increase the qualifying threshold for motor vehicles by reviewing whether "in substantial part" should be replaced by the language "primarily used."</p> <p>Rationale: The Legislature considered such a change in 2010. Adoption of "primarily used" language would provide the same 50 percent interstate use threshold for both motor vehicles and other transportation equipment.</p>	Unknown until after 2011 session
Fertilizer, Spray Materials, and Chemical Sprays and Washes / RCW 82.04.050(11)				
1943	17,500 \$65.7 million	Continue	Endorses without comment	Unknown until after 2011 session

## 2010 Full Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
Labor and Services Used in Construction and Repair of Public Roads/ RCW 82.04.050(10); RCW 82.04.190(3)				
1943	Unknown \$60.8 million	Recommendation 1	Endorses with comment: The Commission endorses the recommendations and notes that the circumstances have changed regarding the exclusion of state-owned roads from this tax preference and that the exclusion may no longer serve its original purpose. The Commission recommends that the Legislature consider revising the relevant statute to extend the tax preference to apply to labor and services for construction and repair of state-owned roads.	Unknown until after 2011 session
		Recommendation 2	Same as Recommendation 1	Unknown until after 2011 session
		Because circumstances have changed and state road construction and maintenance work is no longer predominantly paid by the federal government, the Legislature should review and clarify whether it wants to continue subjecting labor and services performed as part of state road construction and maintenance work to retail sales tax.		

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Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
Sales of Breeding Livestock, Cattle, and Milk Cows / RCW 82.08.0259; RCW 82.12.0261				
1945	4,300 \$9.3 million	Continue	Endorses without comment	Unknown until after 2011 session
Title Insurance Premiums / RCW48.14.020(1); RCW48.14.020(4)				
1947	Unknown \$3.5 million	Continue	Endorses without comment	Unknown until after 2011 session
<b>JLARC recommendation: Legislature should re-examine or clarify the intent of the tax preference</b>				
Shipments to Ports For Interstate or Foreign Transportation / RCW 82.16.050(9)				
1937	Unknown \$7.6 million	Since this tax preference providing a public utility tax deduction for shipments to ports is no longer required by the Constitution, the original public policy objective is no longer applicable. Statutory changes in 1949 and 1967, however, imply that the Legislature may have had additional policy objectives. Because the Legislature did not identify its objectives at those times, the Legislature should reexamine and clarify this preference to identify what, if any, public policy objectives still exist.	Endorses with comment: The Commission endorses the recommendation but suggests the Legislature conduct its reexamination of the intent of this preference in conjunction with the economic impact study that the Commission recommends for the 'Through Freight in Interstate Transportation Public Utility Tax Deduction' and 'Instate Portion of Interstate Transportation' tax preferences.  The Legislature should specify that the study should be completed by December 31, 2011, to inform a decision during the 2012 Legislative Session. After the 2012 session, if the Legislature has taken no action, the Commission intends to determine whether it should schedule this preference for another review.	Unknown until after 2011 session

## 2010 Full Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
<b>JLARC recommendation: Legislature should impose the public utility tax</b>				
Instate Portion of Interstate Transportation / RCW 82.16.050(6)				
1935	Unknown \$24.6 million	Because the U.S. Constitution no longer prohibits the instate portion of interstate transportation from being taxed, the public utility tax should be imposed on these activities. In order to implement this, the Legislature should provide specific authorization to the Department of Revenue to develop a method of apportioning transportation income generated from activities within the state.	<p>Does not endorse and comments as follows: The Commission does not endorse the recommendation because it believes it is premature to authorize the Department of Revenue to develop an apportionment methodology. Although the existing preference is no longer constitutionally necessary, affected taxpayers have structured competitive activities in reliance on continuation of the preference. Because termination of the preference may have unintended deleterious consequences for taxpayers and more generally for the state, the Commission recommends that the Legislature direct either the Office of Financial Management, the Department of Revenue, or the Economic and Revenue Forecast Council conduct an economic impact study of the effects of termination on the competitiveness of affected taxpayers and the primary and secondary tax revenue impacts of termination. The Commission also recommends that the Legislature consider whether the economic impact study should identify policy options such as defining the tax base, and the revenue impacts of such options, for restructuring the public utility tax for affected taxpayers. The study should also include recommendations for how to structure an apportionment methodology that complies with the guidelines established by the U.S. Supreme Court.</p> <p>The Legislature should specify that the study should be completed by December 31, 2011, to inform a decision during the 2012 Legislative Session. After the 2012 session, if the Legislature has taken no action, the Commission intends to determine whether it should schedule this preference for another review.</p>	Unknown until after 2011 session

## 2010 Full Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
Instate Portion of Interstate Transportation / RCW 82.16.050(6) (continued from previous page)				
			<p>Rationale for non-endorsement and recommendation for economic impact study. Public testimony identified the potential for significant unintended adverse economic consequences for taxpayers and possibly for the state if the preference is terminated. Although very limited factual evidence was presented, there is a possibility that termination could result in loss of employment and other sources of state tax revenue that could exceed the amount of revenue raised by the public utility tax as a result of termination. While this possibility is uncertain, public testimony indicated a high likelihood that termination could lead to potentially serious disruptive consequences. Because of the uncertainty and absence of substantial factual information about potential impacts, the Commission believes that it would be prudent to conduct an economic impact study. The Commission believes the current tax preference is outdated, but rather than terminating the preference, consideration should be given to structuring the public utility tax for the affected taxpayers in ways that are tax efficient and enable tax payers to be competitive on an interstate basis. If the Legislature prefers to have an economic impact study conducted by a neutral party, it should direct the Economic and Revenue Forecast Council to conduct the study; otherwise the study could be conducted by the Office of Financial Management or the Department of Revenue.</p>	

## 2010 Full Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
<b>JLARC recommendation: Legislature should terminate the tax preference</b>				
Through Freight in Interstate Transportation / RCW 82.16.050(8)				
1937	Unknown Indeterminate	Because this preference is no longer constitutionally necessary, the Legislature should terminate the preference providing a public utility tax deduction tax for intrastate portions of interstate shipments of goods under a through freight rate where the shipment is stopped in Washington to store, manufacture, or process the goods, then continues to the final destination.	<p>Does not endorse and comments as follows: The Commission does not endorse the recommendation. Although the existing preference is no longer constitutionally necessary, affected taxpayers have structured competitive activities in reliance on continuation of the preference. Because termination of the preference may have unintended deleterious consequences for taxpayers and more generally for the State, the Commission recommends that the Legislature direct either the Office of Financial Management, the Department of Revenue, or the Economic and Revenue Forecast Council to conduct an economic impact study of the effects of termination on the competitiveness of affected taxpayers and the primary and secondary tax revenue impacts of termination. The Commission also recommends that the Legislature consider whether the economic impact study should identify policy options such as defining the tax base, and the revenue impacts of such options, for restructuring the public utility tax for affected taxpayers.</p> <p>The Legislature should specify that the study should be completed by December 31, 2011, to inform a decision during the 2012 Legislative Session. After the 2012 session, if the Legislature has taken no action, the Commission intends to determine whether it should schedule this preference for another review.</p>	Unknown until after 2011 session

## 2010 Full Reviews

Year Enacted	# of Claimants (\$ amount)	JLARC Recommendation	Comments by Citizen Commission for Performance Measurement of Tax Preferences	Related Legislation as of 2010
Through Freight in Interstate Transportation / RCW 82.16.050(8) (continued from previous page)				
			<p>Rationale for non-endorsement and recommendation for economic impact study. Public testimony identified the potential for significant unintended adverse economic consequences for taxpayers and possibly for the state if the preference is terminated. Although very limited factual evidence was presented, there is a possibility that termination could result in loss of employment and other sources of state tax revenue that could exceed the amount of revenue raised by the public utility tax as a result of termination. While this possibility is uncertain, public testimony indicated a high likelihood that termination could lead to potentially serious disruptive consequences. Because of the uncertainty and absence of substantial factual information about potential impacts, the Commission believes that it would be prudent to conduct an economic impact study. The Commission believes the current tax preference is outdated, but rather than terminating the preference, consideration should be given to structuring the public utility tax for the affected taxpayers in ways that are tax efficient and enable tax payers to be competitive on an interstate basis. If the Legislature prefers to have an economic impact study conducted by a neutral party, it should direct the Economic and Revenue Forecast Council to conduct the study; otherwise the study could be conducted by the Office of Financial Management or the Department of Revenue.</p>	