



Citizen Commission for Performance Measurement of Tax Preferences

William A. Longbrake, Chair
Governor's Council of Economic Advisors

Lily Kahng, Vice Chair
Seattle University Law School

James Bobst
Pacific Fibre Products, Inc.

Stephen B. Miller
Washington Education Association

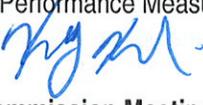
Paul Guppy
Washington Policy Center

Non-voting Members:

Senator **Craig Pridemore**
Chair, Joint Legislative Audit
and Review Committee

Brian Sonntag
State Auditor

October 6, 2011

TO: Members of the Citizen Commission for Performance Measurement of Tax Preferences
FROM: Keenan Konopaski, Legislative Auditor 
SUBJECT: **Materials for the October 11, 2011, Commission Meeting**

The agenda for our October meeting covers four areas: 1) Approval of Minutes; 2) Staff Reports; 3) 2012 Commission Meeting Schedule; and 4) Discussion/Adoption of Commission Comments on 2011 Tax Preference Reviews. Items in this packet are arranged in these four areas.

Please remember that the meeting will start at **2:00 p.m.**, in Senate Hearing Room 3 of the John A. Cherberg Building, in Olympia.

1. *APPROVAL OF MINUTES

Draft minutes from September 23, 2011, meeting are included in this packet for approval at the meeting.

2. STAFF REPORTS

- A. **2012 Scope and Objectives (S&O):** For commissioner information, the Scope and Objectives (S&O) document for the 2012 tax preference reviews is included in your meeting materials. S&Os are documents JLARC develops at the start of our audits to provide agencies and the public with a statement of why we are conducting an audit and what we hope to learn from the audit. As with previous years, this document provides the reader with background on the Commission, lists the preferences that will be reviewed in 2012, and outlines the questions (study objectives) that may be addressed in each preference.
- B. **Nonresident Sales Tax Exemption:** At the September meeting, Andy Nicholas from the Washington State Budget & Policy Center provided comments on JLARC's analysis of the nonresident sales tax exemption. Mr. Nicholas stated his belief that JLARC was incorrect when we concluded that the implied public policy purpose was to eliminate a possible disincentive to nonresidents making purchases in Washington. Mr. Nicholas spoke to his belief that the policy purpose of the preference is instead to specifically stimulate sales in border counties to non-residents of contiguous states.

JLARC staff recommended continuing this preference. This does not require legislative action, and in the interest of time we did not present the full details of this review at the August Commission meeting. In light of the issue raised by Mr. Nicholas, I wanted to provide some explanation about how we reached the conclusion about the implied public policy purpose.

Citizen Commission for Performance Measurement of Tax Preferences

October 6, 2011

Page 2

The State Supreme Court has struck down previous attempts by the Legislature to apply different tax rates in border counties. Also, a 1993 attempt by the Legislature to limit the exemption to non-residents from contiguous states was vetoed by the Governor, based on constitutional concerns.

With these limiting provisions rejected, the Legislature was then deliberate in defining the preference more broadly so that it does not apply just to border counties and contiguous states. Since there is no explicit public policy purpose stated for the preference, and since it cannot be directed only at specific areas of the state, JLARC concluded that the implied public policy objective was to remove a possible disincentive for qualifying non-residents to purchase goods anywhere in the state.

3. ***2012 COMMISSION MEETING SCHEDULE**

Below are suggested meeting dates and the key issues covered at each meeting. Please review your availability so we can finalize these dates at the October meeting.

May 21: Commission to select 22 reviews on the 2013 schedule for JLARC review; JLARC staff will provide an update on any legislation passed during the 2012 session; and, the 2012 expedited report will be presented.

August 24: JLARC presentation of 2012 reviews.

September 14: Public hearing on 2012 reviews.

October 9: Commission comments on 2012 reviews.

Please note that we have moved the finalization of the 2013 schedule forward to May 21. This will be a significant aid to JLARC staff, as they will then be able to begin analysis months earlier than in the past. Beginning in February, staff will distribute information (such as Department of Revenue reports) to help members finalize the schedule by May 21.

4. ***DISCUSSION/ADOPTION OF COMMISSION COMMENTS ON 2011 TAX PREFERENCE REVIEWS**

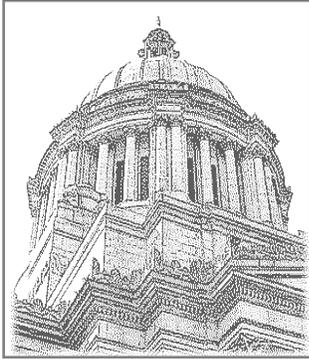
At the September meeting, we asked commissioners to supply us with any comments on preferences: attached is a document that includes those comments as well as suggestions on how to provide additional comments at the meeting, and, finalize the comment process. As with past years, these comments will provide a starting point for discussion; JLARC staff will edit in "real time" as commissioners discuss and finalize comments during the meeting. This will allow the Commissioners to vote on any comments, completing the Commission's business for the year.

If you have any questions about these materials or the agenda, please contact me at 360-786-5187.

cc: Cindy Evans, Assistant Attorney General
Suzan DelBene, Director, Department of Revenue
Brad Flaherty, Deputy Director, Department of Revenue
Kathy Oline, Assistant Director, Research, Department of Revenue
Jim Schmidt, Office of Financial Management

STATE OF WASHINGTON

**CITIZEN COMMISSION FOR
PERFORMANCE MEASUREMENT OF
TAX PREFERENCES**



COMMISSION MEMBERS

William A. Longbrake, *Chair*
Governor's Council of Economic Advisors

Lily Kahng, *Vice Chair*
Seattle University Law School

James Bobst
Pacific Fibre Products, Inc.

Paul Guppy
Washington Policy Center

Stephen B. Miller
Washington Education Association

NON-VOTING MEMBERS

Craig Pridemore, State Senator
Chair, Joint Legislative Audit and Review
Committee

Brian Sonntag
State Auditor

*Citizen Commission for
Performance Measurement of Tax Preferences*
1300 Quince St. SE
Olympia, WA 98504-0910
(360) 786-5171
(360) 786-5180 Fax
www.citizentaxpref.wa.gov

AGENDA

Tuesday, October 11, 2011
2:00 p.m.
John A. Cherberg Bldg.
Senate Hearing Rm. 3
Olympia, WA

- *1. Approval of September 23, 2011, Commission Meeting Minutes
2. Staff Reports
- *3. 2012 Commission Meeting Schedule
- *4. Discussion/Adoption of Commission Comments on 2011 Tax Preference Reviews

General public comment period immediately following regular Commission business

* *Action Item*

Please Note:
The Commission reserves the right to move agenda items as needed.



Citizen Commission for Performance Measurement of Tax Preferences

William A. Longbrake, *Chair*
Governor's Council of Economic Advisors

Lily Kahng, *Vice Chair*
Seattle University Law School

James Bobst
Pacific Fibre Products, Inc.

Stephen B. Miller
Washington Education Association

Paul Guppy
Washington Policy Center

Non-voting Members:

Senator Craig Pridemore
Chair, Joint Legislative Audit
and Review Committee

Brian Sonntag
State Auditor

Citizen Commission for Performance Measurement of Tax Preferences Meeting Minutes

September 23, 2011

John A. Cherberg Bldg.,
Senate Hearing Rm. 3
Olympia, WA

Members Present:

William A. Longbrake
Paul Guppy
James Bobst

Lily Kahng
Sen. Craig Pridemore

Members Absent:

Stephen Miller

Brian Sonntag

Staff:

Keenan Konopaski
Mary Welsh
Peter Heineccius
Cindy Evans
Lisa Hennessy

John Woolley
Dana Lynn
John Bowden
Suzanne Kelly
Curt Rogers

WELCOME / INTRODUCTIONS

Commission Chair Bill Longbrake welcomed those in attendance and called the meeting to order at 2:00 p.m.

APPROVAL OF MEETING MINUTES

MOTION: A motion was made to approve the August 15, 2011, meeting minutes.

The motion was seconded and carried with one abstention, that of James Bobst, who was absent from the August meeting.

APPROVAL OF 10-YEAR TAX PREFERENCE REVIEW SCHEDULE

John Woolley introduced tax preferences proposed for review in 2012. The list included three parts: 19 preferences the Commission previously agreed would be reviewed in 2012; seven preferences under consideration for review; and 30 preferences to be addressed in a separate report with Department of Revenue (DOR) information.

The Commission discussed the seven tax preferences under consideration for review in 2012. DOR representatives Kathy Oline and Kim Davis were present to answer Commissioner's questions regarding tax preferences.

MOTION: A motion was made to add fuel use exemptions (RCW 82.38.080), health insurance by state pool (RCW 48.14.022), and solar energy and silicon

Citizen Commission for Performance Measurement of Tax Preferences

September 23, 2011

Page 2

manufacturing (RCW 82.04.294) preferences to complete the list of 22 JLARC reviews for 2012.

The motion was seconded and carried.

John Woolley presented the remainder of the proposed 10-Year Review Schedule. With the new authority granted to the Commission to group preferences according to type of industry, economic sector, or policy area, JLARC staff proposed several groupings of preferences over the next ten years. The Commission discussed the proposed groupings.

MOTION: A motion was made to adopt the 10-Year Tax Preference Review Schedule as proposed, incorporating the changes made to the list of preferences for review in 2012.

The motion was seconded and carried.

The Commission revisited their questions from the August 15 meeting regarding the renewable energy machinery and equipment (M&E) exemption reduction, and the issue of expiration dates. JLARC staff reviewed answers they provided to the Commission on these questions.

PUBLIC COMMENT ON 2011 JLARC REVIEWS OF TAX PREFERENCES

The Commission discussed written testimony that had been provided in advance of the meeting from Dick Nelson and the Washington Realtors.

Commission Member James Bobst disclosed a potential conflict of interest regarding the hog fuel sales and use tax exemption, as his company works with businesses that benefit from the preference.

Commission Chair Bill Longbrake disclosed a potential conflict of interest regarding the deduction for interest from real estate loans, as he was formerly an executive with a company that benefited from the preference. Chair Longbrake added that he currently serves on the board of an out-of-state bank that does not benefit from this preference.

Alan Powell, representing the Northwest Yacht Brokers Association (NYBA), provided public testimony regarding the boat sales to nonresidents tax preference.

John Ehrenreich, representing the Washington Forest Protection Association (WFPA), and Kathryn VanNatta, representing Northwest Pulp & Paper Association, provided public testimony pertaining to the hog fuel tax preference.

Cindi Holmstrom, representing the Washington Financial League, provided public testimony pertaining to the interest on real estate loans tax preference.

Chris Nims, representing Agri Beef, provided public testimony regarding the tax preference for meat processors.

Robert Whitlock, from the Olympia Fellowship of Reconciliation, provided public testimony pertaining to real estate excise tax exemptions.

Andy Nicholas, representing the Washington State Budget and Policy Center, provided public testimony regarding the sales of goods to nonresidents preference.

Chair Longbrake reminded Commissioners that any of their written comments should be submitted to JLARC by October 5 for copying and distribution prior to the October 11 meeting.

With no further public comment Chair Longbrake adjourned the meeting at 4:10 p.m.

2012 TAX PREFERENCE PERFORMANCE REVIEWS

SCOPE AND OBJECTIVES

OCTOBER 2011



STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

STUDY TEAM

Mary Welsh
Dana Lynn
Peter Heineccius

PROJECT SUPERVISOR

John Woolley

LEGISLATIVE AUDITOR

Keenan Konopaski

Joint Legislative Audit &
Review Committee
1300 Quince St. SE
Olympia, WA 98504-0910
(360) 786-5171
(360) 786-5180 Fax

Website:

www.jlarc.leg.wa.gov

e-mail: barbara.neff@leg.wa.gov

Why a JLARC Study of Tax Preferences?

Engrossed House Bill 1069 (2006) established the Citizen Commission for Performance Measurement of Tax Preferences and directed it to develop a schedule for periodic review of the state's tax preferences. The bill also directed the Joint Legislative Audit and Review Committee (JLARC) to conduct the periodic reviews.

Background

Tax preferences are 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. JLARC estimates the state currently has 603 tax preferences.

Recognizing the need to assess the effectiveness of these tax preferences through an orderly process, the Legislature established the Citizen Commission for Performance Measurement of Tax Preferences. One of the Commission's roles is to develop a schedule for the orderly review of all tax preferences at least once every ten years. The ten-year schedule is to be revised annually.

Omitted from review are several categories of tax preferences identified by statute (e.g., tax preferences required by constitutional law). Any tax preference the Commission determines is critical to the structure of the tax system may also be omitted. Additionally, the Commission may recommend an expedited process for any tax preference.

JLARC is to review tax preferences according to the schedule developed by the Commission, consistent with guidelines set forth in statute. For each tax preference the Commission selects for a performance review, JLARC is to provide a recommendation to either: (1) continue, (2) modify, (3) add an expiration date and conduct another review prior to the expiration date, or (4) terminate the preference.

Study Scope

The Citizen Commission selected the following tax preferences for a performance review by JLARC in 2012:

	Brief Description and Tax Type	RCW Citation	Year Enacted
1.	Annuities (Insurance Premium)	48.14.020(1)	1979
2.	Biotechnology Deferral (Sales & Use)	82.75.010; 82.75.030	2006
3.	Business Inventories (Property)	84.36.477; 84.36.510	1974
4.	Charter and Freight Brokers (B&O)	82.04.260(6)	1979
5.	Commuting Programs (B&O, PUT)	82.70.020	2003
6.	Condominium Maintenance Fees (B&O)	82.04.4298	1979
7.	Ferry Boats (Sales & Use)	82.08.0285; 82.12.0279	1977
8.	Fish Tax Rates (Fish)	82.27.020(4)	1980
9.	Fuel Use Exemptions (Fuel)	82.38.080	1971
10.	Health Insurance by State Pool (Insurance Premium)	48.14.022	1987
11.	High Technology Deferral (Sales & Use)	82.63.010; 82.63.030	1994
12.	High Technology Research and Development (B&O)	82.04.4452	1994
13.	Insurance Agents (B&O)	82.04.260(9)	1983

	Brief Description and Tax Type	RCW Citation	Year Enacted
14.	Insurance Guarantee Funds (Insurance Premium)	48.32.145; 48.32A.125	1976
15.	Leases Under \$250 Per Year or Short Term (Leasehold Excise)	82.29A.130 (8)-(9)	1976
16.	Manufacturing Completed In-State (B&O)	82.04.4295	1977
17.	Natural and Manufactured Gas (Sales & Use)	48.14.020(1)	1979
18.	Precious Metals and Bullion (Sales & Use)	82.04.062	1985
19.	Solar Energy and Silicon Manufacturing (B&O)	82.04.294	2005
20.	Stevedoring (B&O)	82.04.260(7)	1979
21.	Travel Agents (B&O)	82.04.260(5)	1975
22.	Urban Transit Fuel (Sales & Use)	82.08.0255(1)(a),(c); 82.12.0256(2)(a)	1980

In addition, using the expedited process, the Commission will consider the following tax preferences. The expedited process is based on information published by the Department of Revenue in its most recent statutorily required tax exemption study.

	Brief Description and Tax Type	RCW Citation	Year Enacted
1.	Adult Family Homes (B&O)	82.04.327	1987
2.	Cargo Containers (Property)	84.36.105	1975
3.	Computers Donated to Schools (Use)	82.12.0284	1988
4.	Conservation Futures (Property)	84.36.500	1984
5.	Credit for Excess Tax (Leasehold Excise)	82.29A.120(1)	1991
6.	Crude Oil (Petroleum Products)	82.23A.010(1)	1989
7.	Delinquent Penalty Waivers (Property)	84.56.025	1984
8.	Domestic Use (Petroleum Products)	82.23A.030(2)	1989
9.	Exported Petroleum Products (Petroleum Products)	82.23A.030(6)	1989
10.	Federal Government Structure Labor (Sales & Use)	82.04.050(12)	1975
11.	Ferrosilicon (Sales & Use)	82.04.050(1)(a)(iv); 82.04.190(1)(d)	1986
12.	Fuel Exported in Fuel Tanks (Petroleum Products)	82.23A.040(1)	1989
13.	Fuel Used Before Tax Imposed (Petroleum Products)	82.23A.030(4)	1989
14.	Fuel Used to Process Petroleum Products (Petroleum Products)	82.23A.030(5)	1989
15.	Hazardous Substance Exemptions (Hazardous Substance)	82.21.040(1)-(4),(6)	1989
16.	Health Insurance Claims (B&O)	82.04.4331	1988
17.	Historic Vessels (Property)	84.36.080(2)	1986
18.	Life Insurance Sales Employees (B&O)	82.04.360(1)	1991
19.	Lodging for the Homeless (Sales & Use)	82.08.0299	1988
20.	Manufacturing for Government (Leasehold Excise)	82.29A.020(1)	1976
21.	Packaged Petroleum Products (Petroleum Products)	82.23A.030(7)	1989
22.	Precious Metals & Bullion (B&O)	82.04.062	1985

Tax Preference Review Process

Commission develops and delivers to JLARC schedule of tax preferences for review

JLARC staff conducts reviews of tax preferences

Staff presents preliminary report to JLARC

Staff requests comments from OFM and agencies

JLARC presents preliminary report to Commission

Commission conducts public comment session and may provide comments

Proposed Final Report (with OFM, agency, and Commission comments) to JLARC for approval to distribute

Final Report transmitted to Legislative Fiscal Committees

Legislative Fiscal Committees hold joint hearing on Final Report

Brief Description and Tax Type		RCW Citation	Year Enacted
23.	Public Timber Credit (Timber)	84.33.077	1983
24.	Returned Motor Vehicles (Sales & Use)	82.32.065	1987
25.	Student Loan Organizations (B&O)	82.04.367	1987
26.	Student Loan Organizations (Property)	84.36.030(6)	1987
27.	Subsidized Housing (Leasehold Excise)	82.29A.130(3)	1976
28.	Successive Use (Petroleum Products)	82.23A.030(1)	1989
29.	Syrup Exported (Syrup)	82.64.030(2)	1989
30.	Syrup Previously Taxed (Syrup)	82.64.030(1)	1989
31.	Syrup Purchased before Tax Imposed (Syrup)	82.64.030(4)	1989
32.	Timber Tax Minimum (Timber)	84.33.086	1984
33.	Trademarked Syrup (Syrup)	84.64.030(3)	1991
34.	Used Floating Homes (Sales & Use)	82.08.034; 82.12.034	1984

Study Objectives

In response to the legislative directive, each performance review may answer questions relevant to the tax preference from the following list of questions.

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 impact of government activities funded by the tax? (This analysis involves conducting an economic impact study using OFM's input-output model.) (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))

Timeframe for the Study

A preliminary audit report will be presented at the July 2012 JLARC meeting and at the August 2012 meeting of the Commission. A final report will be presented to JLARC in January 2013.

JLARC Staff Contact for the Study

Mary Welsh	(360) 786-5193	mary.welsh@leg.wa.gov
Dana Lynn	(360) 786-5177	dana.lynn@leg.wa.gov
Peter Heineccius	(360) 786-5123	peter.heineccius@leg.wa.gov

Citizen Commission for Performance Measurement of Tax Preferences

2012 Meeting Schedule

Date/Time/Location	Agenda
May 21, 2012 2:00 p.m. TBA, Olympia	Election of officers <u>2012 Reviews</u> 2012 Legislative Session Update Notification of Any Adjustments to 2012 Schedule Presentation of 2012 Expedited Report <u>2013 Reviews</u> Commission selects 22 preferences for 2013 JLARC review (DOR available for questions) Approve 2013 10-Year Schedule
August 24, 2012 2:00 p.m. TBA, Olympia	JLARC Presentation of 2012 Reviews
September 14, 2012 2:00 p.m. TBA, Olympia	Public Hearing on 2012 Reviews
October 9, 2012 2:00 p.m. TBA, Olympia	Commission Comments on 2012 Reviews 2013 Commission Meeting Schedule

Overview

Process for Commission Action on 2011 Tax Preference Reviews

October 11, 2011

Reviews are placed into one of seven groups based on the JLARC recommendation. Each group will be addressed using the steps noted below.

Group A: Continue – endorse without comment

First, the Commission will consider 12 reviews that have no proposed comments.

- Commissioners will be asked if they would like to adopt individual comments for any preferences from Group A.
- If there are any, those preferences will be moved to Group B (see below).
- The Commission will then entertain a motion to act on those remaining in the Group A list.
- Any Commissioner can ask to add a minority report reflecting their individual comments. (See Citizen Commission Citizen Commission for Performance Measurement of Tax Preferences Bylaws, Article VII: Minority Reports on back of this page)

Groups B Through E

The Commission will then consider adopting additional comments for preferences in Groups B through E, in order.

- Action on the remaining specific preference reviews will be considered in order of the following groups. For each of these the Commission will determine whether to endorse or not endorse, and adopt any additional comments. These groups are organized based on the JLARC recommendation:
 - **GROUP B:** Continue – endorse or not endorse; consider whether to provide a comment
 - **GROUP C:** Re-examine or Clarify Intent – endorse without comment
 - **GROUP D:** Re-examine or Clarify Intent – endorse and consider whether to provide a comment
 - **GROUP E:** Allow to Expire – endorse without comment
 - **GROUP F:** Allow to Expire – do not endorse and consider whether to provide a comment
 - **GROUP G:** Terminate – endorse without comment
- Each preference and any associated Commission comments will be discussed individually.
- The Commission will then entertain a motion to act on each individual preference.
- Any Commissioner can ask to add a minority report reflecting their individual comments.

Citizen Commission for Performance Measurement of Tax Preferences

Bylaws

Article VII: Minority Reports

Section 1: Minority Report(s): Any Commission member may request a minority report for any motion that has been approved by a vote of the Commission. Requests must be made to the Chair at the meeting, following the approval of the motion. The Chair shall ensure that minority reports requested by members are registered in the record of business for the Commission meeting.

Group A
Continue – endorse without comment

1. *There are 12 tax preference reviews with no proposed Commission comments.*

Tax Preference	Comment
1. Boat sales to nonresidents & foreign residents (p. 29)	No Proposed Commission Comment
2. Church camps (p. 43)	
3. Display items for trade shows (p. 51)	
4. Interest from state/municipal obligations (p. 77)	
5. Interstate bridges (p. 95)	
6. Investment of businesses in related entities (p. 103)	
7. Laundry for nonprofit health care facilities (p. 111)	
8. Nonprofit blood and tissue banks (p. 149)	
9. Nonprofit day care centers (p. 157)	
10. Open space compensating tax (p. 173)	
11. Sales to nonresidents for use out-of-state (p. 231)	
12. Sales or use tax paid in another state (p. 249)	

2. *If a Commissioner would like to have individual comments adopted on any of these preferences, we will defer discussion of those preferences to Group B. Do any Commissioners have comments on individual preferences they would like to discuss later with Group B?*

3. *Is there a motion for the Commission to take action on the remaining reviews in Group A?*

4. *Potential motion language:*

“The Commission acknowledges receipt of the 2011 JLARC Tax Preference Reviews of [preferences being discussed]. The Commission has provided a forum for discussion and public comment on these recommendations. The Commission endorses the JLARC recommendations for these preferences. The Commission does not have additional comments to append to the 2011 JLARC reports related to these preferences.

Group B

Continue – endorse or not endorse; consider whether to provide a comment

1. There are two tax preference reviews in Group B with proposed Commission comments:

Tax Preference		Comment
1.	Real estate excise tax exemptions (p. 181)	<p><u>Audit staff recommendation:</u> Because the preferences are meeting the implied public policy objective of defining the tax base for application of the real estate excise tax, the Legislature should continue the preferences.</p> <p><u>Possible comment:</u> “The Commission endorses the recommendation but .”</p> <p><u>Rationale for comment:</u></p>
2.	Sales of goods to certain nonresidents for use out-of-state (p. 217)	<p><u>Audit staff recommendation:</u> Because the preference is meeting its public policy objective of removing a disincentive for nonresidents from no or lower tax locations to purchase goods in Washington, the sales tax exemption for certain nonresidents should be continued.</p> <p><i>William Longbrake:</i></p> <p><u>Possible comment:</u> “The Commission does not endorse the recommendation because it is not clear that the Legislature’s public policy objective is to remove a disincentive for nonresidents from no or lower tax locations to purchase goods in Washington; the Legislature should review and clarify the public policy objective and evaluate the economic impacts of this preference.</p> <p><u>Rationale for comment:</u> The Legislature has not stated an explicit public policy objective for this preference. However, based on various commentaries and patterns of practice, JLARC staff determined that the “implied” public policy objective is to remove a disincentive for nonresidents to purchase goods in Washington. The beneficiaries are businesses that have greater sales than otherwise might be the case, thus benefiting the state’s economy. However, it is possible that many of the purchases of goods benefiting from this preference would have occurred in the absence of this preference. To the extent that this has occurred, the state is sacrificing revenue without realizing any offsetting economic benefits. It is suggested that purchase of high value items would decline in the absence of this preference while the impact on purchase of low value items might be limited. While it would be difficult and expensive to conduct a thorough analysis of costs and benefits of this preference, it would be useful for the Legislature consider the benefits and consequences that might stem from limiting the items and geographies covered by this preference.</p>

2. *We will now take action on each of the preferences in Group B.*
3. *Is there any discussion on each of the above preferences?*
4. *Is there a motion for the Commission to take action on these reviews?*
5. *Potential motion language:*

“The Commission acknowledges receipt of the 2011 JLARC Tax Preference Review of [preferences being discussed]. The Commission has provided a forum for discussion and public comment on these reviews. The Commission (endorses) OR (does not endorse) the JLARC recommendation(s) for this review, (subject to the following additional comments.) OR (without appending additional comments.)”

GROUP C
Re-examine or Clarify Intent – endorse without comment

1. *There are two tax preference review in Group C with no proposed Commission comments:*

Tax Preference		Comment
1.	Municipal sewer charges (p. 143)	No Proposed Commission Comment
2.	Extracted fuel (p. 57)	

2. *We will now take action on each of the preferences in Group C.*
3. *Is there any discussion on the above preference?*
4. *Is there a motion for the Commission to take action on this review?*
5. *Potential motion language:*

“The Commission acknowledges receipt of the 2011 JLARC Tax Preference Review of [preferences being discussed]. The Commission has provided a forum for discussion and public comment on these reviews. The Commission (endorses) OR (does not endorse) the JLARC recommendation(s) for this review, (subject to the following additional comments.) OR (without appending additional comments.)

GROUP D

Re-examine or Clarify Intent – endorse and consider whether to provide a comment

1. There are six tax preference reviews in Group D with proposed Commission comments:

	Tax Preference	Comment
1.	Aircraft fuel, exports & commercial use (p. 17)	<p><u>Audit Staff recommendation:</u> Because parties that are exempt from paying the aircraft fuel tax now benefit from the expenditures of fuel tax receipts, the Legislature should review and clarify the preferences to determine whether more of the parties that benefit from the expenditures should pay the tax.</p> <p>William Longbrake:</p> <p><u>Possible comment:</u> “The Commission endorses the recommendation and encourages the Legislature to state the public policy objectives of the preference and narrow the scope of the preference commensurate with the stated public policy objectives.”</p> <p><u>Rationale for comment:</u> The JLARC staff study indicates that there are two implied public policy objectives for this preference. The first is that parties benefiting from the expenditure of aircraft fuel tax receipts were the ones that paid the tax. This implied public policy objective is not being met. The second implied public policy objective was to comply with U.S. Constitutional prohibitions on taxing goods in interstate commerce. However, in many instances the tax could be levied and comply with the U.S. Constitution provided that credit was provided for taxes paid in other states.</p>
2.	Interest on real estate loans (p. 83)	<p><u>Audit Staff recommendation:</u> Because it is unclear whether the original public policy objective applies, given changes in the lending industry and the rise in the secondary mortgage market, the Legislature should clarify the public policy objective of the first mortgage interest deduction.</p> <p>William Longbrake:</p> <p><u>Possible comment:</u> “The Commission endorses the recommendation that the Legislature should review and clarify the public policy objective of the preference and should consider whether the preference is essential to maintaining competitive residential lending capability for state-domiciled residential real estate lenders.”</p> <p><u>Rationale for comment:</u> The Legislature did not specify a public purpose for this preference. JLARC staff inferred from the record that the implied public policy purpose was to encourage Washingtonians to buy homes by making loans more available and less expensive. However, if the deduction were to</p>

		<p>be removed, the holder of the residential mortgage loan would bear the full burden rather than the borrower, unless the elimination of the deduction applied only to loans originated or purchased after the effective date of the repeal of the deduction. On a prospective basis the portfolio lender could attempt to recoup the cost of the B&O tax by charging a higher interest rate to the borrower; however, the mortgage market is national in scope, which virtually makes it impossible to charge interest-rate differentials on a geographic basis.</p> <p>As is often the case when the B&O gross receipts tax is involved in a preference, another unstated public policy purpose may be to assure competitive balance with similarity situated business firms in other states subject to other types of tax regimes. The Commission received testimony that removal of the deduction would place a burden on state-domiciled residential mortgage lenders that retain the loans they originate in their portfolios.</p>
3.	<p>Limited income property tax deferral (p. 117)</p>	<p><u>Audit Staff recommendation:</u> Because the intended beneficiaries of this preference are not clear in light of recent economic recession, the Legislature should clarify the preference to define “families in economic crisis” and identify measurable evaluation criteria.</p> <p><i>William Longbrake:</i></p> <p><u>Possible comment:</u> “The Commission endorses the recommendation that the Legislature should clarify the preference to define “families in economic crisis” and, if the Legislature determines to continue the preference, identify measurable evaluation criteria; however, the Commission notes that costs to administer the program are considerable relative to the participation rate and, as such, it might be appropriate to terminate the preference unless the preference can be restructured in a way that assures cost effective achievement of the public policy objectives.”</p> <p><u>Rationale for comment:</u> To date only 181 out of an estimated 425,000 potential participants have taken advantage of the preference. Participant benefits in the 2009-11 biennium were \$270,891 while costs to administer the preference \$350,184 for fiscal years 2009, 2010, and 2011. JLARC staff recommends that the Legislature clarify the definition of “families in economic crisis”. While this might result increasing the participation rate, it is possible that the low participation rate also results from the eligibility criteria and the design of the program. Furthermore, it is not clear that the preference, as designed, is serving a critical public policy purpose of helping families in economic crisis. If the Legislature determines that is the case, the Commission believes it would be better to terminate the preference and save the state costs of administering the program.</p>
4.	<p>Meat processors (p. 131)</p>	<p><u>Audit Staff recommendation:</u> Because it is unclear what the public purpose is for providing differential tax treatment of meat processors compared to other food processors, the Legislature should clarify</p>

		<p>the public policy purpose for this preference.</p> <p><i>William Longbrake:</i></p> <p><u>Possible comment:</u> “The Commission endorses the recommendation that the Legislature should review and clarify the public policy purpose of the preference and further recommends that the Legislature determine whether the tax differential provides approximate competitive parity with state tax rates and geography-based differences in other business costs for meat processors domiciled in other states.”</p> <p><u>Rationale for comment:</u> Meat processing is a highly competitive, low margin business. This means that small differentials in state tax rates and other costs of business, such as transportation expenses, can have significant impacts on profitability and impact locational decisions. Public testimony provided to the Commission argued that the preferential tax rate for meat processors is comparable to the maximum corporate tax rate in other western states.</p>
5.	Nonprofit sheltered workshops (p. 165)	<p><u>Audit Staff recommendation:</u> Because public policy related to employment of the disabled has changed from the time the tax preference was enacted, the Legislature should clarify the public policy objective of the property tax exemption for sheltered workshops.</p> <p><i>William Longbrake:</i></p> <p><u>Possible comment:</u> “The Commission endorses the recommendation that the Legislature should review and clarify the public policy objective of the preference and further recommends that the Legislature evaluate whether the preference is necessary any longer to encourage employment of persons with disabilities.”</p> <p><u>Rationale for comment:</u> Although the statute does not state a public policy purpose, the implied purpose was to encourage employment of persons with disabilities in sheltered workshops. Since the enactment of this preference in 1970 the Federal government enacted the Americans with Disabilities Act in 1990. In response, over time employers have made efforts to employ persons with disabilities, frequently with beneficial economic results. In addition, the state has taken initiatives, beginning in 1992, to encourage employment of persons with disabilities. Thus, the need for sheltered workshops to employ persons with disabilities has diminished since enactment of the preference. While the preference clearly benefits established sheltered workshops, it is no longer clear that this preference is necessary to assure employment of persons with disabilities.</p>
6.	Shared real estate	<p><u>Audit Staff recommendation:</u> Because it is not clear why the Legislature granted a tax preference to</p>

<p>commissions (p. 239)</p>	<p>real estate brokers and agents and not to other businesses with similar broker-agent and cooperating broker relationships, the Legislature should clarify the B&O tax preference for shared real estate commissions.</p> <p><i>William Longbrake:</i></p> <p><u>Possible comment:</u> “The Commission endorses the recommendation that the Legislature should clarify the B&O tax preference for shared real estate commissions and further recommends that the Legislature align B&O tax treatment of real estate brokers and agents to brokers and agents in other industries unless there is a compelling reason for differential treatment.”</p> <p><u>Rationale for comment:</u> The standard approach to applying the B&O tax to commissions received by brokers and agents is that the broker is taxed on the full amount of the commission and the agent, if any, who receives a portion of the broker’s commission, must pay an additional B&O tax on the amount he/she receives. This approach is the standard for all but real estate brokers and agents in which case real estate agents are exempted from paying B&O tax. The Legislature did not specify a public policy objective for differential treatment between real estate agents and agents in other industries, such as insurance and investment services. The Washington Realtors, in a letter to the Commission, presented information which may be pertinent to the Legislature’s consideration of this preference; however, this information also appears to be pertinent to brokers and agents in other industries and, as such, does not address the issue of differential treatment.</p>
-----------------------------	--

2. *We will now take action on each of the preferences in Group D.*

3. *Is there any discussion on each of the above preferences: [proceed with the first item above]?*

4. *Is there a motion for the Commission to take action on these reviews?*

5. *Potential motion language:*

“The Commission acknowledges receipt of the 2011 JLARC Tax Preference Review of [preferences being discussed]. The Commission has provided a forum for discussion and public comment on these reviews. The Commission (endorses) OR (does not endorse) the JLARC recommendation(s) for this review, (subject to the following additional comments.) OR (without appending additional comments.)

GROUP E
Allow to Expire – endorse without comment

1. *There is one tax preference reviews in Group E with proposed Commission comments:*

Tax Preference	Comment
1. Renewable energy machinery (p. 195)	No Proposed Commission Comment

2. *We will now take action on the preference in Group E.*

3. *Is there any discussion on each of the above preferences: [proceed with the first item above]?*

4. *Is there a motion for the Commission to take action on these reviews?*

5. *Potential motion language:*

“The Commission acknowledges receipt of the 2011 JLARC Tax Preference Review of [preferences being discussed]. The Commission has provided a forum for discussion and public comment on these reviews. The Commission (endorses) OR (does not endorse) the JLARC recommendation(s) for this review, (subject to the following additional comments.) OR (without appending additional comments.)

GROUP F

Allow to Expire – do not endorse and consider whether to provide a comment

5. There is one tax preference reviews in Group F with proposed Commission comments:

	Tax Preference	Comment
1.	Hog fuel to produce energy (p. 69)	<p><u>Audit Staff recommendation:</u> Because the Legislature intended the exemptions to be temporary and did not provide performance goals to guide any other assessment of performance, the Legislature should allow the sales and use tax exemptions for hog fuel to expire.</p> <p>William Longbrake:</p> <p><u>Possible comment:</u> “The Commission does not endorse the recommendation that the Legislature should allow the sales and use tax exemptions for hog fuel to expire because it is unclear that the Legislature intended the exemptions in this preference to be temporary. The Commission recommends that the Legislature review available evidence before determining whether to let the preference expire. Further, if the Legislature determines to extend the preference, the Commission recommends that performance goals (public policy objectives) be specified and reporting be required to enable subsequent assessment of the benefits and costs of the preference.”</p> <p><u>Rationale for comment:</u> Although the Legislature did not specify a public policy objective for this preference, public testimony provided to the Commission argued that the public purpose was summarized in testimony on SB 5442, which was a precursor to SB 6170, which included the hog fuel tax preference: <i>“The forestry industry is facing an economic crisis, and this bill will help preserve jobs, promote healthy forest, and ensure CO2-neutral energy by encouraging the use of woody biomass. The forestry industry in eastern and western Washington is distressed, which is stressing rural local governments and social programs. This bill will help preserve the forestry industry and thereby rural economies.”</i></p> <p>As the JLARC study points out part of the rationale for the hog fuel tax preference may have been because hog fuel was less competitive during a time of declining oil prices. Because the price of oil since enactment has risen, presumably the economic disadvantage no longer exists. However, public testimony provided to the Commission asserted that the more relevant alternative fuel price is natural gas rather than oil and, further, because of significant structural changes in the market for natural gas the price of natural gas has declined significantly since the hog fuel preference was enacted. Public testimony also pointed out that since hog fuel must be transported, diesel fuel costs, which are subject to tax, have risen along with oil prices, and this has exacerbated hog fuel’s price competitiveness relative to natural gas.</p>

		Public testimony suggested that the Legislature extend the hog fuel tax preference for two years subject to collection of sufficient data to evaluate the public policy merits of this preference.
--	--	--

6. *We will now take action on the preference in Group F.*

7. *Is there any discussion on each of the above preferences: [proceed with the first item above]?*

8. *Is there a motion for the Commission to take action on these reviews?*

6. *Potential motion language:*

“The Commission acknowledges receipt of the 2011 JLARC Tax Preference Review of [preferences being discussed]. The Commission has provided a forum for discussion and public comment on these reviews. The Commission (endorses) OR (does not endorse) the JLARC recommendation(s) for this review, (subject to the following additional comments.) OR (without appending additional comments.)

GROUP G
Terminate – endorse without comment

9. *There is one tax preference reviews in Group G with no proposed Commission comments:*

Tax Preference	Comment
1. Repaired goods delivered out-of-state (p. 209)	No Proposed Commission Comment

10. *We will now take action on the preference in Group G.*

11. *Is there any discussion on each of the above preferences: [proceed with the first item above]?*

12. *Is there a motion for the Commission to take action on these reviews?*

7. *Potential motion language:*

“The Commission acknowledges receipt of the 2011 JLARC Tax Preference Review of [preferences being discussed]. The Commission has provided a forum for discussion and public comment on these reviews. The Commission (endorses) OR (does not endorse) the JLARC recommendation(s) for this review, (subject to the following additional comments.) OR (without appending additional comments.)”

William Longbrake:

Possible general comment pertaining to use of the term “expiration” in legislation:

“The Legislature frequently specifies an expiration date when it enacts a tax preference statute. JLARC staff and the Citizens Commission for Performance Measurement of Tax Preferences (Commission) have had difficulty in discerning the Legislature’s intent for some preferences. An expiration date could simply mean that the Legislature intends to review experience with the preference before determining whether to extend it. Or, the Legislature can intend the preference to be temporary in response to short-term economic or industry conditions with the expectation that the preference will not be extended. Absence of explicit legislative guidance on the intended meaning of “expiration date” lead JLARC staff to conclude that the Hog Fuel to Produce Energy preference should be allowed to expire because the Legislature intended the exemptions to be temporary. This interpretation was disputed in public testimony provided to the Commission. Accordingly, the Commission recommends that the Legislature either clarify directly in a tax preference statute the intent of an expiration date or provide commentary in the legislative record that clarifies the intent of an expiration date.”