

Follow-up to May 2015 meeting

PUT Deduction for Shipping Farm Products to Port

At the Commission's May meeting, JLARC staff presented the Expedited 2015 Tax Preference Reviews. Commissioner Forsyth asked for background on the PUT deduction for shipping farm products to port, as this preference was enacted in 2007 to conform to long-standing DOR practice. JLARC staff summarize DOR's response below, followed by the response from DOR.

The preference arose from an audit in the 1960's of a trucking company shipping products to barges on the Columbia River for shipment to the port. The Department of Revenue, the Department of Agriculture and the Utilities & Transportation Commission met and decided the PUT exemption in RCW 82.16.050 should apply to these types of hauls. The Department of Revenue revisited this practice in 2006 and determined it lacked statutory authority, and the Legislature codified the practice in 2007.

FULL TEXT OF DOR RESPONSE

Question

At the Commission's meeting on Friday, Commissioner Forsyth asked for the reason why [RCW 82.16.050](#) needed to be amended in order to allow DOR's "long-standing administrative practice" of not taxing income derived from hauling grain by truck to interim storage facilities for trans-shipment by barge or rail to export facilities (that is subsequently exported).

Background

In the 1937, the statute exempted, ". . . amounts derived from the transportation of commodities to an export elevator, wharf, dock or shipside on tidewater or navigable tributaries thereto from points of origin in this state and thereafter forwarded by water carrier in their original form to interstate or foreign destinations."

In the 1950's, the Attorney General (AG) provided an informal opinion on the issue of whether the transport of agricultural commodities that were trucked from grain elevators in Eastern Washington to a grain elevator in Western Washington (where the grain awaited export) was intra-state or interstate commerce. The AG opinion stated that it appeared to be interstate commerce.

In 1968 and in response to audits by the Department of Revenue on assessing public utility tax on grain trucked to a barge in the Tri-Cities meant for an export facility down the Columbia River (in Washington), the Department of Agriculture, Department of Revenue, and the Utilities & Transportation Commission met and decided that the public utility tax exemption in RCW 82.16.050 should apply to these types of hauls.

That same year, DOR issued an Excise Tax Bulletin (ETB) 333.16.050 that addressed the exemption requirements for certain grain hauls by truck that required the trucker to obtain a certificate from the grain dealer that:

- More than 96% of all grain received at the storage facilities during the preceding calendar year was in fact shipped by vessel in original form to foreign or interstate destinations, and

- Any of the grain which is trans-shipped to tidewater ports in Washington would be received at storage facilities operated by the same dealer and would be shipped from such facilities in its original form by a vessel to an out-of-state or foreign destination.

In 1984, DOR considered the issue whether “transportation of grain by truck to an interim central storage facility and then by rail to the export port facility can qualify for the statutory deduction for the truck hauled portion.” The Department determined that “subsequent transportation by rail is similar to subsequent transportation by barge-tug carrier” and ruled that the deduction in RCW 82.16.050 applied to these types of truck hauls. (Please note: The 1968 ETB addressed only hauls by truck for subsequent transportation by barge-tug carrier, not by subsequent transportation by rail.)

The Department of Revenue then issued the attached [Excise Tax Bulletin 333.16.179](#) dated September 1, 1984. The ETB provided trucking companies and other taxpayers with information and instructions on how to claim and qualify for the deduction when transporting grain to interim facilities under certain conditions.

2007 Legislation

Around 2006, the Department revisited the issue and determined that this long-standing administrative practice lacked proper statutory authority and informed stakeholders. In response, the Legislature passed [HB 1443](#) in 2007 which codified the practice.

Taxpayer Confidentiality

At the Commission’s May meeting, Commissioner’s asked about the history of DOR’s guidelines on when a taxpayer savings estimate can be published. JLARC staff understood that DOR’s guidelines are:

- 1. There must be three or more firms using a preference.**
- 2. No one firm could represent 97% or more of the total.**

At the meeting, there was some confusion over whether these guidelines are statutory, rule, custom, etc. A summary from DOR’s response is provided below, followed by DOR’s detailed response.

ISSUE #1: Three or more firms

The Department does not disclose data that contains fewer than three firms. While this is not in statute for excise tax information in general ([RCW 82.32.330](#)), it is for tax preferences with special reporting requirements ([RCW 82.32.534\(5\)](#) and [RCW 82.32.585\(7\)](#)). The reasoning is this ensures no disclosure of confidential information as no one taxpayer can look at aggregated data for their NAICS and determine the reporting of any other taxpayer.

ISSUE #2: No one firm representing 97% or more of the beneficiary savings

During the meeting on May 22, 2015, a policy of not disclosing data if any one taxpayer represented more than 97% of the total was also discussed. This is not provided for in statute and is not a current Department practice. The Department is not aware of the source of this information and can only speculate that this may have been a practice more than 20 years ago.

JLARC staff discussed the “97% assumption” in more detail with DOR as we had worked under this assumption for a number of years. DOR reiterated that no such practice/rule exists. However they added that there may be circumstances where disclosure of aggregate data may be “tantamount” to

disclosing an individual firm's tax information because that taxpayer is dominant in the data: "In short, we should all be careful when dealing with aggregated data that could nonetheless possibly disclose CTI (confidential taxpayer information) but there is no per se 97% rule."

FULL TEXT OF DOR RESPONSE

Disclosure of Return or Tax Information

Purpose

At the May 22, 2015 meeting of the Citizen Commission for Performance Measurement of Tax Preferences, Commissioners requested clarification from the Department of Revenue (Department) on laws, rules and practices around disclosure of tax information. This briefing is in response to that inquiry.

Summary

The Department does not disclose data that contains fewer than three firms. While this is not in the general statute for disclosure of return or tax information (RCW [82.32.330](#)), it is included in the statutes that require special reporting for tax preferences (RCW [82.32.534\(5\)](#) and RCW [82.32.585\(7\)](#)). Relevant portions of these statutes are below. View the full statutes by clicking on the links above.

Statutory Authority Excerpts

RCW 82.32.330 Disclosure of return or tax information

(1) For purposes of this section:

- (a) "Disclose" means to make known to any person in any manner whatever a return or tax information;
- (b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;
- (c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW [82.32.410](#), ...

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

- (d) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof.**
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Statutory
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RCW 82.32.534 Annual report requirement for tax preferences

(1)(a) Every person claiming a tax preference that requires a report under this section must file a complete annual report with the department...

(3) Other than information requested under subsection (2) of this section, the information contained in an annual report filed under this section is not subject to the confidentiality provisions of RCW [82.32.330](#) and may be disclosed to the public upon request.

(5) The department must use the information from this section to prepare summary descriptive statistics by category. ***No fewer than three taxpayers may be included in any category.*** The department must report these statistics to the legislature each year by December 1st.

RCW 82.32.585 Annual survey requirement for tax preferences

(1)(a) Every person claiming a tax preference that requires a survey under this section must file a complete annual survey with the department....

(4) All information collected under this section, except the information required in subsection (2)(a) of this section, is deemed taxpayer information under RCW [82.32.330](#). Information required in subsection (2)(a) of this section is not subject to the confidentiality provisions of RCW [82.32.330](#) and may be disclosed to the public upon request, except as provided in subsection (5) of this section. If the amount of the tax preference claimed as reported on the survey is different than the amount actually claimed or otherwise allowed by the department based on the taxpayer's excise tax returns or other information known to the department, the amount actually claimed or allowed may be disclosed.

(5) Persons for whom the actual amount of the tax reduced or saved is less than ten thousand dollars during the period covered by the survey may request the department to treat the amount of the tax reduction or savings as confidential under RCW [82.32.330](#).

(7) The department must use the information from this section to prepare summary descriptive statistics by category. ***No fewer than three taxpayers may be included in any category.*** The department must report these statistics to the legislature each year by December 1st.

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Statutory
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RCW 82.32.808 Tax preferences – Performance statement requirement

(1) As provided in this section, every bill enacting a new tax preference must include a tax preference performance statement.

(2) A tax preference performance statement must state the legislative purpose for the new tax preference. The tax preference performance statement must indicate one or more of the following general categories, by reference to the applicable category specified in this subsection, as the legislative purpose of the new tax preference:

(a) Tax preferences intended to induce certain designated behavior by taxpayers;

(b) Tax preferences intended to improve industry competitiveness;

(c) Tax preferences intended to create or retain jobs;

(d) Tax preferences intended to reduce structural inefficiencies in the tax structure;

(e) Tax preferences intended to provide tax relief for certain businesses or individuals; or

(f) A general purpose not identified in (a) through (e) of this subsection.

(4) A new tax preference performance statement must specify clear, relevant, and ascertainable metrics and data requirements that allow the joint legislative audit and review committee and the legislature to measure the effectiveness of the new tax preference in achieving the purpose designated under subsection (2) of this section.

(5) If the tax preference performance statement for a new tax preference indicates a legislative purpose described in subsection (2)(b) or (c) of this section, any taxpayer claiming the new tax preference must file an annual survey in accordance with [RCW 82.32.585](#).

(6)(a) Taxpayers claiming a new tax preference must report the amount of the tax preference claimed by the taxpayer to the department as otherwise required by statute or determined by the department as part of the taxpayer's regular tax reporting responsibilities. For new tax preferences allowing certain types of gross income of the business to be excluded from business and occupation or public utility taxation, the tax return must explicitly report the amount of the exclusion, regardless of whether it is structured as an exemption or deduction, if the taxpayer is otherwise required to report taxes to the department on a monthly or quarterly basis. For a new sales and use tax exemption, the total sales or uses subject to the exemption claimed by the buyer must be reported on an addendum to the buyer's tax return if the buyer is otherwise required to report taxes to the department on a monthly or quarterly basis and the buyer is required to submit an exemption certificate, or similar document, to the seller.

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Statutory
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continued

(7)(a) *Except as otherwise provided in this subsection, the amount claimed by a taxpayer for any new tax preference is subject to public disclosure and is not considered confidential tax information under RCW [82.32.330](#), if the reporting periods subject to disclosure ended at least twenty-four months prior to the date of disclosure and the taxpayer is required to report the amount of the tax preference claimed by the taxpayer to the department under subsection (6) of this section.*

(b)(i) *The department may waive the public disclosure requirement under (a) of this subsection (7) for good cause. Good cause may be demonstrated by a reasonable showing of economic harm to a taxpayer if the information specified under this subsection is disclosed.* The waiver under this subsection (7)(b)(i) only applies to the new tax preferences provided in chapter 13, Laws of 2013 2nd sp. sess.

(ii) *The amount of the tax preference claimed by a taxpayer during a calendar year is confidential under RCW [82.32.330](#) and may not be disclosed under this subsection if the amount for the calendar year is less than ten thousand dollars.*

(c) *In lieu of the disclosure and waiver requirements under this subsection, the requirements under RCW [82.32.585](#) apply to any tax preference that requires a survey.*

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Disclosure of Return or Tax Information, Continued

Disclosure Procedures

The Department does not disclose data that contains fewer than three firms. While this is not in statute for excise tax information in general ([RCW 82.32.330](#)), it is for tax preferences with special reporting requirements ([RCW 82.32.534\(5\)](#) and [RCW 82.32.585\(7\)](#)). The reasoning is this ensures no disclosure of confidential information as no one taxpayer can look at aggregated data for their NAICS and determine the reporting of any other taxpayer.

For example, if there were two taxpayers with aggregated information released, each of the two taxpayers could easily determine the confidential tax information of their competitor. Only releasing aggregated data on three or more firms ensures that one taxpayer is not able to ascertain the confidential tax information of the other two.

As noted above, some tax preference information is disclosable to the public and we post information about the Annual Report and Annual Survey online: <https://fortress.wa.gov/dor/efile/MyAccount/TaxIncentivePublicDisclosure/>.

Some data routinely received by the Department may be exempt from RCW 82.32.330 and disclosable. Examples include:

- Property tax levy information, and
- Real and personal property tax roll information.

Other programs may have disclosable information. We direct our employees before any release of data to:

- Check with their supervisor to verify how to proceed.
- If in doubt, contact the agency Public Records Officer.

Per RCW 82.32.330 (3) (k), the Department may not provide lists of taxpayers to anyone for commercial purposes. Commercial purposes includes:

- Any use for gain.
- Any unsolicited contact of the taxpayers named on the list for:
 - Advertising, or
 - Soliciting.

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