OVERVIEW

Process for Commission Action on 2013 Tax Preference Reviews

October 18, 2013

2013 Reviews are placed into one of six groups based on the JLARC recommendation. Each group will be addressed using the steps noted below.

Groups A and B:

First, the Commission will consider 8 reviews that have no proposed comments.

- Commissioners will be asked if they would like to adopt individual comments for any preferences from Group A and B.
  - **GROUP A:** Continue – endorse without comment
  - **GROUP B:** Review and clarify – endorse without comment
- If there are any comments, those preferences will be moved to Groups C or D (see below).
- The Commission will then entertain a motion to act on those remaining in the Group A and Group B list.
- Any Commissioner can ask to add a minority report reflecting their individual comments. (*See Citizen Commission for Performance Measurement of Tax Preferences Bylaws, Article VII: Minority Reports on back of this page.*)

Groups C through E:

The Commission will then consider whether to endorse and adopt additional comments for preferences in Groups C 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 C:** Continue – endorse or not endorse; consider whether to provide comments
  - **GROUP D:** Review/Clarify – endorse or not endorse; consider whether to provide comments
  - **GROUP E:** Terminate – endorse or not endorse; consider whether to provide comments
- Each preference and any associated 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.

Group F:

Finally, the Commission will consider adopting comments on 11 expedited reviews.

- Each preference and any associated 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 6 tax preferences with no proposed Commission comments:*

Tax Preference		Comment
1	**Health Maintenance Organizations** (B&O Tax)	No proposed Commission comments.
2	**Medicare and Basic Health Plan Receipts** (Insurance Premium Tax)	
3	**Medical Items, Dietary Supplements, Insulin, and Kidney Dialysis Devices** (Sales and Use Tax)	
4	**Nonprofit Blood and Tissue Banks** (B&O Tax, Sales and Use Tax)	
5	**Tree Trimming Under Power Lines** (Sales and Use Tax)	
6	**Use Tax on Rental Value** (Use Tax)	

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 C. Do any Commissioners have comments on individual preferences they would like to discuss later with Group C?*

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 2013 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 2013 JLARC reports related to these preferences."

GROUP B: Review and clarify – endorse without comment

1. *There are 2 tax preference reviews in Group B with no proposed Commission comments:*

Tax Preference		Comment
1	**Fuel Used in Commercial Vessels** (B&O Tax)	No proposed Commission comments.
2	**Nonprofit Youth Recreation Services and Local Government Physical Fitness Classes** (Sales and Use Tax)	

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 D. Do any Commissioners have comments on individual preferences they would like to discuss later with Group D?*
3. *Is there a motion for the Commission to take action on the remaining reviews in Group B?*
4. *Potential motion language:*

   "The Commission acknowledges receipt of the 2013 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 the JLARC recommendations for these preferences. The Commission does not have additional comments to append to the 2013 JLARC reports related to these preferences."

GROUP C: Continue – endorse or not endorse; consider whether to provide comments

1. *There is 1 tax preference review in Group C with a proposed Commission comment (in addition to any moved from Group A):*

Tax Preference		Comment
1	**Prescription Drug Resellers** **(B&O Tax)**	**Legislative Auditor recommendation: Continue:** Because the preference is meeting the inferred public policy objective of reducing a competitive disadvantage for wholesalers operating Washington warehouses relative to out-of-state drug distributors that have no nexus to Washington and pay no B&O tax. **Possible comment: Endorse with comment:** The Commission endorses the Legislative Auditor's recommendation to continue the prescription drug resellers preference, but notes that public testimony raised questions about whether the preference provides public benefits and whether a competitive disadvantage exists which merits this preference. The Legislature could consider whether to review this preference. **Rationale for comment:** The Legislative Auditor believes the Legislature's inferred public policy objective for the prescription drug resellers B&O preferential tax rate is intended to reduce a competitive disadvantage for drug resellers operating warehouses in Washington relative to businesses that distribute drugs in the state without nexus and that owe no B&O tax. But, the preference is also available to drug resellers operating out-of-state warehouses that have nexus. The Commission received testimony questioning the necessity of this preference, but also received testimony indicating that drug reseller employment in the state has grown 182% since the preference was enacted in 1998.

2. *We will now take action on each of the preferences in Group C.*
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 2013 JLARC Tax Preference Review of [preference 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 (and does not have additional comments.)"

GROUP D: Review and clarify – endorse or not endorse; consider whether to provide comments

1. *There are 6 tax preference reviews in Group D with proposed Commission comments (in addition to any moved from Group B):*

Tax Preference		Comment
1	**[Government Payments to Public and Nonprofit Hospitals]** **(B&O Tax)**	**Legislative Auditor recommendation: Review and clarify:** Because it is unclear why for-profit hospitals that provide government-subsidized health care are excluded from the preference. **Possible comment: Endorse with comment:** The Commission endorses the Legislative Auditor's recommendation but notes that the Legislature has consistently excluded for-profit hospitals from this preference since 1937 and explicitly omitted for-profit hospitals in its statement of purpose when it amended the preference in 2005. **Rationale for comment:** The Legislative Auditor observes that although exclusion of for-profit hospitals from this preference has been long-standing, no rationale for their exclusion is included in the legislative record. Only 5 percent of government subsidized payments in 2011 went to for-profit hospitals. Thus, if the preference were extended to for-profit hospitals, the reduction in B&O tax receipts would be small. If the Legislature decides to review this preference, it will need to determine whether extending this preference to for-profit hospitals would result in a public benefit. The Commission received no testimony in support of the Legislative Auditor's recommendation.
2	**[Prescription Drug Administration]** **(B&O Tax)**	**Legislative Auditor recommendation: Review and clarify:** Because while the preference is meeting the inferred public policy objective of lowering costs, the Legislature may want to consider adding reporting or other accountability requirements to provide better information on the effectiveness of the preference. **Possible comment: Endorse with comment:** The Commission endorses the Legislative Auditor's recommendation that the Legislature may want to consider adding reporting or other accountability requirements and suggests the Legislature consider how the Affordable Care Act (ACA) impacts incentives to provide services covered by this preference. **Rationale for comment**: In light of the Affordable Care Act (ACA), the Legislature may want to track how the ACA impacts incentives to provide the services covered by this preference. Depending on the results of this tracking, alterations in the preference may be appropriate.

Tax Preference		Comment
3	**[Artistic and Cultural Organizations]** **(B&O Tax, Sales and Use Tax)**	**Legislative Auditor recommendation: Review and clarify:** Because although the preferences appear to have achieved or partially achieved the inferred public policy objectives: 1) the Legislature has not yet identified if it intends any long-term offsetting relationship between beneficiary savings for artistic and cultural organizations and government funding levels for such organizations; and 2) the B&O tax exemption is broader than that provided by the federal government and other states that follow the federal exemption. **Possible comment: Endorse with comment:** The Commission endorses the Legislative Auditor's recommendation but suggests the Legislature also consider the fact the per capita impact of this preference has declined steadily over recent decades due to the significant increase in state population and effects of inflation. **Rationale for comment:** Exhibit 28 in the JLARC 2013 Tax Preference Performance Reviews illustrates the declining inflation-adjusted impact of this tax preference over the past 33 years.
4	**[Fishing Boat Fuel]** **(Sales and Use Tax)**	**Legislative Auditor recommendation: Review and clarify:** Because the preference is not meeting the inferred public policy objective of providing equitable tax treatment on fuel for Washington commercial deep sea fishing and charter fishing boats when compared to tax treatment on fuel for commercial fishing vessels engaged in interstate and foreign commerce. In addition, the $5,000 minimum gross receipts level has not been reviewed since 1987. **Possible comment: Endorse with comment:** The Commission endorses the Legislative Auditor's recommendation and encourages the Legislature to state an explicit public policy objective for this preference and to structure this preference to be consistent with the stated public policy objective. **Rationale for comment:** The Legislative Auditor determined that although the preference removes a possible disincentive for fishing boats to purchase fuel in Washington, the preference is not meeting the inferred public policy objective of providing equitable tax treatment on fuel for Washington commercial deep sea fishing and charter boats when compared to tax treatment on fuel for commercial vessels engaged in interstate and foreign commerce. The Legislature should determine whether this preference serves a public policy objective and, if so, structure the preference to align with an explicitly stated objective.

Tax Preference		Comment
5	[Retailing](#) **(B&O Tax)**	**Legislative Auditor recommendation: Review and clarify:** Because sales tax-related changes since 1983 may impact the rationale for the level of preferential rate provided to the retail industry compared to other businesses. **Possible comment: Endorse with comment:** The Commission endorses the recommendation of the Legislative Auditor for the Legislature to review and clarify the retailing preferential B&O tax rate and encourages the Legislature to examine whether the preferential B&O tax rate should be eliminated or be changed to some other amount. **Rationale for comment:** The Legislative Auditor believes that the inferred public policy objective of establishing a preferential retailing B&O tax rate was to lessen the impact of a sales tax increase in 1983. Currently, this preferential rate is 0.471%, which is not significantly different from the 0.484% B&O tax rate that applies to manufacturing and wholesaling. Thus, elimination of the preferential rate would likely have minimal effect. However, public testimony received by the Commission suggested that the B&O tax rate places a competitive disadvantage on retailers who compete with on-line providers who are not subject to comparable sales tax rates. In its review the Legislature could examine whether there would be broad-based public benefits by revising, rather than eliminating, the preferential B&O tax rate.
6	[Rural County and CEZ New Jobs](#) **(B&O Tax)**	**Legislative Auditor recommendation: Review and clarify:** To determine if the new jobs are located where the Legislature intended and if the number of new jobs is what the Legislature intended. **Possible comment: Endorse with comment:** The Commission endorses the Legislative Auditor's recommendation to determine if new jobs are located where the Legislature intended and if the number of new jobs is what the Legislature intended. In its review the Commission recommends that the Legislature consider whether "rural" rather than "distressed" is the appropriate determinant of eligibility and whether the 15% increase in employment requirement is the most appropriate standard for retaining preference benefits. **Rationale for comment:** Shifting this preference's emphasis from "distressed" to "rural" has opened the preference to rural counties with relatively healthy economies. As a result, this may be creating an unnecessary loss of tax revenue. Population density is not a direct measure of economic distress. The Legislature should consider returning to economic measures (as opposed to demographic measures) for defining eligibility. Additionally, under current law, existing firms need to show a 15% increase in employment to retain the tax benefits. It is unclear why a 15% rate is more appropriate than some other rate, such as 10%.

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 2013 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 (and does not have additional comments.)"

GROUP E: Terminate – endorse or not endorse; consider whether to provide comments

1. *There is 1 tax preference review in Group E with a proposed Commission comment:*

Tax Preference		Comment
1	Dentistry Prepayments **(Insurance Premium Tax)**	**Legislative Auditor recommendation: Terminate :** Because the inferred public policy objective of providing a temporary exemption during the transition of health care service contractors to certified health plans is no longer applicable. **Possible comment: Do not endorse with comment:** The Commission does not endorse the recommendation of the Legislative Auditor to terminate the exemption from the insurance premium tax for health care service contractors on prepayments received for dentistry services. The Commission recommends that the Legislature review and clarify whether this exemption is serving a broad-based public policy objective and whether to modify the preference or terminate it in accord with its review and analysis. **Rationale for comment:** Based upon its review the Legislature could determine to terminate the dentistry insurance premium tax exemption, continue it, or establish a preferential insurance premium tax rate. While the 1993 law established a temporary exemption, the exemption became permanent when the part of the 1993 law pertaining to Certified Health Plans was repealed in 1995. There is no public record that the Legislature explicitly intended the temporary exemption to become permanent or whether this was simply the outcome of repealing parts of the 1993 law. The Commission received public testimony that argued that this was an intentional, not an accidental, outcome at the time the Legislature revised the law in 1995. While the Legislature did not expressly provide a permanent exemption for all health care service contractors providing prepaid dental services in the Health Care Reform Act originally adopted in 1993, the Legislature clearly intended that the tax preference apply for Limited Certified Health Plans for Dental Services. These original intended beneficiaries of the preference continue to enjoy the benefits of this preference along with health care service contractors that would not have had the benefit of this preference for dentistry services under the original 1993 legislation. The 1995 legislation adopted changes to the statute in its current form that extended the tax preference to all health care service contractors. The Legislative Auditor inferred that the absence of any specific reference in the 1995 legislation or in the legislative history of an intent to extend the preference to all health care service contractors was, in effect, an oversight and that the Legislature did not intend to provide the tax preference to all health care service contractors. However, the Commission believes the record is inconclusive as to whether the Legislature simply overlooked the fact that the 1995 legislation converted a temporary exemption into a permanent one or whether the Legislature intended to make the exemption permanent. The Affordable Care Act (ACA) and its impact may raise a new issue specific to this tax preference. According to

		public testimony, the industry is facing a 2% tax (instead of 1.5%) on insurance obtained in the new ACA-mandated insurance exchange. For pediatric dentistry, the higher tax rate is intended to help pay the costs of running the exchange. The industry argued that increasing the tax from 1.5% to 2% (by terminating the tax preference) would lower the amount of dental services provided to vulnerable populations. If this assertion is true, it raises the question of whether the 2% tax on exchange-obtained insurance would result in a similar outcome. The industry did not comment on this possibility. Furthermore, if the Legislature intended this tax preference to be temporary when enacted in 1993, it is possible the tax preference may have had the unintended consequence of increasing the supply of dental services to vulnerable populations. If so, this may have some social-welfare benefits. The Legislature should request the industry to clarify the specific programs that are at risk if the tax preference is terminated. In response to a commission question during public testimony, the industry was either unable or unwilling to comment on specifics about programs at risk. Finally, there is a question of whether program cuts, if they occur, would be mitigated by increased health insurance coverage generated by the ACA exchanges. The Commission also received public testimony which indicated that most providers of dentistry services are not-for-profit organizations which engage in substantial public service initiatives. Thus, it is possible that some of the benefits of the tax preference, perhaps a significant portion, are passed on to the public through various educational programs to reduce oral disease and improve overall health.

2. *We will now take action on the preference in Group E.*
3. *Is there any discussion of the above preference: [proceed with the item above]?*
4. *Is there a motion for the Commission to take action on this review?*
5. *Potential motion language:*

   "The Commission acknowledges receipt of the 2013 JLARC Tax Preference Review of [preference being discussed]. The Commission has provided a forum for discussion and public comment on this review. The Commission (endorses) OR (does not endorse) the JLARC recommendation for this review, (subject to the following additional comments.) OR (and does not have additional comments.)"

GROUP F: Expedited – consider whether to provide comments

1. *There are 11 tax preferences in Group F with a proposed Commission comment:*

Comments on Expedited Reviews	
1 Expedited Review - Baseball Stadiums (Leasehold Excise Tax)	*RCW 82.29A.130(14)*
Legislative Auditor recommendation: None	
The Commission recommends the Legislature terminate the leasehold tax exemption for all interests in the public or entertainment areas of a professional baseball stadium located in Seattle.	This exemption was enacted in 1995. Its stated purpose was to encourage construction and operation of Safeco Field. After nearly 20 years that purpose should have been achieved. The primary beneficiary is the Seattle Mariners. The Commission believes that the citizens of Washington should not continue to supplement the profits of the Seattle Mariners at an estimated annual rate of $108,000.
2 Expedited Review – Boats Under 16 Feet (Watercraft Excise Tax)	*RCW 82.49.020*
Legislative Auditor recommendation: None	
The Commission recommends the Legislature reassess the administrative costs versus the potential revenue of this exemption when taxing small and human-powered boats used for recreation.	The stated purpose of this tax exemption for small and human-powered boats is that it is intended to minimize administrative costs. The Legislature should review whether the revenues foregone exceed administrative costs.
3 Expedited Review –Fish Cleaning (B&O Tax)	*RCW 82.04.2403*
Legislative Auditor recommendation: None	
The Commission recommends the Legislature terminate the tax exemption for cleaning fresh-water fish.	This exemption was enacted in 1994. It is unclear that this tax exemption provides a public policy benefit. It impacts a small number of firms in an industry that does not appear to be under temporary economic stress or facing unfair competition.
4 Expedited Review - Inmate Employment Programs (Leasehold Excise Tax)	*RCW 82.29A.130*
Legislative Auditor recommendation: None	
The Commission recommends the Legislature terminate the leasehold tax exemption for firms that use space in state adult correctional facilities in conjunction with comprehensive inmate work programs.	The Washington State Supreme Court found the Inmate Employment Program to be unconstitutional in 2004. As such, there are no beneficiaries currently.

5 Expedited Review - Trade Shows (B&O Tax) *RCW 82.04.4282* **Legislative Auditor recommendation: None**	
The Commission recommends the Legislature terminate the B&O tax deduction for nonprofit or professional organizations for charges made in conjunction with trade shows, conventions, and educational seminars, as long as the event is not open to the general public.	The stated purpose of this tax deduction is to encourage trade shows, conventions, and educational seminars to take place in Washington. It is questionable whether this deduction, which has an annual revenue impact of $11,000, benefits Washington State taxpayers. The Legislature should determine whether supporting nonprofit organizations that sponsor trade shows is appropriate.
6 Expedited Review - Tuna, Mackerel, and Jack Fish (Enhanced Food Fish Tax) *RCW 82.27.010* **Legislative Auditor recommendation: None**	
The Commission recommends the Legislature terminate the enhanced food fish tax exemption for tuna, mackerel, and jack fish.	The exemption was originally created in 1995 to support the industry in response to economic conditions. It is questionable nearly 20 years later whether economic conditions are such that this exemption is still merited. Generally, tax preferences based on economic conditions should have termination dates and be reviewed to determine whether the preference still serves a public policy objective.
7 Expedited Review - Wax And Ceramic Materials To Create Molds (Sales and Use Tax) *RCW 82.08.983; 82.12.983* **Legislative Auditor recommendation: None**	
The Commission recommends the Legislature allow the tax exemption for wax and ceramic materials used to create molds that are consumed during the process of creating ferrous and nonferrous investment castings used in industrial applications to expire as scheduled in 2015.	The purpose of the exemption was to encourage the production of castings in Washington. The Commission notes that five years should provide sufficient time to encourage the production of castings in Washington State.

8 Expedited Review – Biodiesel and Alcohol Fuel Production Facilities (Leasehold Excise Tax) *RCW 82.29A.135(1)(a)-(d),(2)*

2008 Legislative Auditor recommendation: Continue and modify expiration date.
Because the preference is beginning to meet the inferred public policy objectives of encouraging new production of biofuels in Washington and developing new markets for oilseeds.

2008 Commission Comment: Endorses without comment.

The Commission endorses the Legislative Auditor's recommendation.	

9 Expedited Review – Biodiesel and Alcohol Fuel Production Facilities (Property Tax) *RCW 84.36.635*

2008 Legislative Auditor recommendation: Continue and modify expiration date.
Because the preference is beginning to meet the inferred public policy objectives of encouraging new production of biofuels in Washington and developing new markets for oilseeds.

2008 Commission Comment: Endorses without comment.

The Commission endorses the Legislative Auditor's recommendation.	

10 Expedited Review – Wood Biomass Fuel Production Facilities (B&O Tax) *RCW 82.29A.135(1)(e),(2)*

2008 Legislative Auditor recommendation: Continue and modify expiration date.
Because the tax preference is not currently being utilized, it should be reviewed for effectiveness in the future should this industry become more developed.

2008 Commission Comment: Does not endorse; recommends Review and Clarify - The Commission recommends that these preferences be allowed to expire in 2009 unless there is evidence that taxpayers plan to use them.

The Commission reaffirms its 2008 comment and recommendation to terminate this preference.	Since 2008 no evidence has surfaced that indicates that taxpayers intend to take advantage of this preference.

11 Expedited Review – Wood Biomass Fuel Production Facilities (Property Tax) *RCW 84.36.640*

2008 Legislative Auditor recommendation: Continue and modify expiration date.
Because the tax preference is not currently being utilized, it should be reviewed for effectiveness in the future should this industry become more developed.

2008 Commission Comment: Does not endorse; recommends Review and Clarify - The Commission recommends that these preferences be allowed to expire in 2009 unless there is evidence that taxpayers plan to use them.

The Commission reaffirms its 2008 comment and recommendation to terminate this preference.	Since 2008 no evidence has surfaced that indicates that taxpayers intend to take advantage of this preference.

2. *If a Commissioner would like to have individual comments adopted on any of the other preferences that received expedited review, we will add those preferences to Group F. Do any Commissioners have any preferences they would like to discuss with Group F?*
3. *We will now take action on each of the preferences in Group F.*
4. *Is there any discussion on each of the above preferences: [proceed with the first item above]?*
5. *Is there a motion for the Commission to take action on these expedited reviews?*
6. *Potential motion language:*

   "The Commission acknowledges receipt of the 2013 JLARC Tax Preference Expedited Report of [preferences being discussed]. The Commission has provided a forum for discussion and public comment on these preferences. The Commission (adopts the following comments)."