

## Process for Proposing Commissioner Comments on 2012 Tax Preference Reviews

1. Below are the tax preferences reviewed by JLARC in 2012, categorized by JLARC recommendation. The Citizen Commission should consider whether it wants to add a comment to any review and whether it will endorse or not endorse each recommendation.

2012 Tax Preference Reviews	JLARC Recommendation		
	Continue	Terminate	Review and Clarify
Annuities (Insurance Premiums Tax) (pg. 15)	X		
Business Inventories (Property Tax) (pg. 33)	X		
Condominium and Homeowner Maintenance Fees (B&O Tax) (pg. 55)	X		
Ferry Boats (Sales and Use Tax) (pg. 61)	X		
Health Insurance by State Pool (Insurance Premiums Tax) (pg.79)	X		
Insurance Guaranty Funds (Insurance Premiums Tax) (pg. 101)	X		
Leases Under \$250 per Year and Short Term Leases (Leasehold Excise Tax) (pg. 117)	X		
Natural and Manufactured Gas (Sales and Use Tax) (pg. 133)	X		
Special Fuel Use Exemptions (Fuel Tax) (pg.165)	X		
Urban Passenger Transit Fuel (Sales and Use Tax) (pg. 195)	X		
Minor Final Assembly Completed in Washington (B&O Tax) (pg. 125)		X	
Biotechnology Manufacturing (Sales and Use Tax) (pg. 21)			X
Commuting Programs (Multiple Taxes) (pg. 43)			X
Fish Tax Differential Rates (Enhanced Food Fish Tax) (pg. 69)			X
High Technology R&D (Sales and Use Tax) (pg. 85)			X
High Technology R&D (B&O Tax) (pg. 85)			X
International Charter and Freight Brokers (B&O Tax) (p. 175)			X
Insurance Providers, Title Insurance Agents, and Surplus Line Brokers (B&O Tax) (pg. 107)			X
Precious Metals and Bullion (B&O Tax, Sales and Use Tax) (pg. 143)			X
Solar Energy and Silicon Product Manufacturers (B&O Tax) (pg. 155)			X
Stevedoring (B&O Tax) (pg. 175)			X
Travel Agents and Tour Operators (B&O Tax) (pg. 187)			X

2. In prior comments, the Citizen Commission indicated its intent to revisit three reviews from 2010 if the Legislature had not acted on them during the 2012 session. Since the Legislature has not addressed these preferences, the Commission may also want to make additional comments on these reviews (*see the attached Digest excerpts for more details on these preferences*):

Prior Years' Tax Preference Reviews	JLARC Recommendation		
	Continue	Terminate	Review and Clarify
Interstate Transportation, Instate Portion (PUT) (2010 Review)		X	
Transportation, Through Freight (PUT) (2010 Review)		X	
Shipments to Ports (PUT) (2010 Review)			X

3. The process for Commission action on the 2012 and other Tax Preference Reviews is noted below:

***Reviews are placed into one of four 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 the 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 the attached Commission bylaw regarding minority reports for more information*).

#### **Groups B Through D**

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

- Action on the remaining specific preference reviews will be considered in order of the following groups. For each of these preferences the Commission will determine whether to endorse or not endorse, and whether to 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:** Review and Clarify – endorse or not endorse; consider whether to provide a comment
    - **GROUP D:** Terminate – endorse or not endorse; consider whether to provide a 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 (*see the attached Commission bylaw regarding minority reports for more information*).
4. Finally, the Commission may consider adding comments to any of the tax preferences detailed in the 2012 Expedited Tax Preference Report distributed to the Commission at the May 21, 2012 meeting.

---

## **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.

---

**Digest Excerpts of 2010 Reviews: Interstate Transportation – In-State Portion (Public Utility Tax) / RCW 82.16.050(6)**

What the Preference Does	Public Policy Objective	Estimated Beneficiary Savings	JLARC Staff Recommendation
<p>Provides a deduction from the public utility tax for income the state is constitutionally prohibited from taxing. Generally, wholly instate trips (from one point in Washington to another) are fully subject to public utility tax. However, under current practice, interstate carriers are not subject to public utility tax on the instate portion of their transportation activities. The preference applies to the instate portion of interstate transportation of goods and passengers by truck, rail, and some water transportation.</p>	<p>The Legislature did not state its intent when the statute was enacted as part of the Revenue Act of 1935. However, the statute recognizes that the state cannot tax amounts derived from activities it is prohibited from taxing by the federal or state Constitution. Washington’s practice of not collecting public utility tax on the instate portion of interstate transportation activities is no longer necessary to comply with Supreme Court doctrine.</p>	<p>\$59.7 million in 2011-13 Biennium</p>	<p><b>Terminate:</b> Because the U.S. Constitution no longer prohibits the instate portion of interstate transportation from being taxed. In order to implement this, the Legislature should provide specific authorization to the Department of Revenue to develop a method of apportioning transportation income generated from activities within the state.</p>
<p><b>Commission Comment:</b> The Commission does not endorse the recommendation because it believes it is premature to authorize the Department of Revenue to develop an apportionment methodology. Although the existing preference is no longer constitutionally necessary, affected taxpayers have structured competitive activities in reliance on continuation of the preference. Because termination of the preference may have unintended deleterious consequences for taxpayers and more generally for the state, the Commission recommends that the Legislature direct either the Office of Financial Management, the Department of Revenue, or the Economic and Revenue Forecast Council conduct an economic impact study of the effects of termination on the competitiveness of affected taxpayers and the primary and secondary tax revenue impacts of termination. The Commission also recommends that the Legislature consider whether the economic impact study should identify policy options such as defining the tax base, and the revenue impacts of such options, for restructuring the public utility tax for affected taxpayers. The study should also include recommendations for how to structure an apportionment methodology that complies with the guidelines established by the U.S. Supreme Court.</p> <p>The Legislature should specify that the study should be completed by December 31, 2011, to inform a decision during the 2012 Legislative Session. After the 2012 session, if the Legislature has taken no action, the Commission intends to determine whether it should schedule this preference for another review.</p> <p><b>Legislative Action:</b> No action taken.</p>			

## Digest Excerpts of 2010 Reviews: Interstate Transportation – Through Freight (Public Utility Tax) / RCW 82.16.050(8)

What the Preference Does	Public Policy Objective	Estimated Beneficiary Savings	JLARC Staff Recommendation
<p>Provides a deduction from the public utility tax for instate portions of interstate shipments of goods where the carrier authorizes the shipper to stop the shipment in Washington to store, manufacture, or process the goods, then continues to transport the same goods or their equivalent, in the same or a converted form, to the final destination noted under a through freight rate (also known as a through bill of lading). The preference applies to transportation of goods by truck, rail, and certain water transportation.</p>	<p>The Legislature did not state its intent when the preference was enacted in 1937. However, the implied intent appears to be based on the 1930s-era U.S. Supreme Court’s analysis and interpretation of federal Commerce Clause prohibitions. This interpretation held that taxing any portion of interstate transportation activities, even instate portions, was a burden on interstate commerce and unconstitutional.</p> <p>However, this interpretation is outdated and no longer compatible with current Commerce Clause interstate taxation doctrine.</p>	<p>\$32.2 million in 2011-13 Biennium</p>	<p><b>Terminate:</b> Because this preference is no longer constitutionally necessary.</p>
<p><b>Commission Comment:</b> The Commission does not endorse the recommendation. Although the existing preference is no longer constitutionally necessary, affected taxpayers have structured competitive activities in reliance on continuation of the preference. Because termination of the preference may have unintended deleterious consequences for taxpayers and more generally for the State, the Commission recommends that the Legislature direct either the Office of Financial Management, the Department of Revenue, or the Economic and Revenue Forecast Council to conduct an economic impact study of the effects of termination on the competitiveness of affected taxpayers and the primary and secondary tax revenue impacts of termination. The Commission also recommends that the Legislature consider whether the economic impact study should identify policy options such as defining the tax base, and the revenue impacts of such options, for restructuring the public utility tax for affected taxpayers.</p> <p>The Legislature should specify that the study should be completed by December 31, 2011, to inform a decision during the 2012 Legislative Session. After the 2012 session, if the Legislature has taken no action, the Commission intends to determine whether it should schedule this preference for another review.</p> <p><b>Legislative Action:</b> No action taken.</p>			

**Digest Excerpts of 2010 Reviews: Shipments to Ports (Public Utility Tax) / RCW 82.16.050(9)**

What the Preference Does	Public Policy Objective	Estimated Beneficiary Savings	JLARC Recommendation
<p>Provides a deduction from public utility tax for transportation of commodities from a point in Washington directly to an instate port, dock, wharf, export elevator, or shipside for direct shipment by vessel outside the state. The preference is not available when the origin and point of delivery are within the same city. The preference applies to transportation of commodities by truck, rail, and certain water transportation.</p>	<p>The Legislature did not state its intent when the preference was enacted in 1937. However, the implied intent appears to be based on the 1930s-era U.S. Supreme Court’s analysis and interpretation of federal Commerce Clause prohibitions. This interpretation held that taxing any portion of interstate transportation activities, even instate portions, was a burden on interstate commerce and unconstitutional.</p> <p>However, this interpretation is outdated and no longer compatible with current Commerce Clause interstate taxation doctrine.</p>	<p>\$15.2 million in 2009-11 Biennium</p>	<p><b>Review and clarify:</b> Since this tax preference is no longer required by the Constitution, the original public policy objective is no longer applicable. Statutory changes in 1949 and 1967, however, imply that the Legislature may have had additional policy objectives. Because the Legislature did not identify its objectives at those times, the Legislature should reexamine and clarify this preference to identify what, if any, public policy objectives still exist.</p>
<p><b>Commission Comment:</b> The Commission endorses the recommendation but suggests the Legislature conduct its reexamination of the intent of this preference in conjunction with the economic impact study that the Commission recommends for the <i>Through Freight in Interstate Transportation Public Utility Tax Deduction</i> and <i>Instate Portion of Interstate Transportation</i> tax preferences.</p> <p>The Legislature should specify that the study should be completed by December 31, 2011, to inform a decision during the 2012 Legislative Session. After the 2012 session, if the Legislature has taken no action, the Commission intends to determine whether it should schedule this preference for another review.</p> <p><b>Legislative Action:</b> No action taken.</p>			