

State of Washington
Citizen Commission for Performance Measurement of Tax Preferences

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November 3, 2021

The Honorable Senator Reuven Carlyle
The Honorable Senator Annette Cleveland
The Honorable Senator Perry Dozier
The Honorable Senator Doug Ericksen
The Honorable Senator Karen Keiser
The Honorable Senator Curtis King
The Honorable Senator Mark Mullet
The Honorable Senator Ron Muzzall
The Honorable Senator Christine Rolfes
The Honorable Senator Lynda Wilson

The Honorable Representative Matt Boehnke
The Honorable Representative Eileen Cody
The Honorable Representative Mary Dye
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The Honorable Representative Noel Frame
The Honorable Representative Shelley Kloba
The Honorable Representative Drew MacEwen
The Honorable Representative Ed Orcutt
The Honorable Representative Timm Ormsby
The Honorable Representative Cindy Ryu
The Honorable Representative Joe Schmick
The Honorable Representative Drew Stokesbary

Re: 2021 Tax Preference Reviews

Dear Senators and Representatives:

I am pleased to forward to you the comments that the Citizen Commission for Performance Measurement of Tax Preferences **unanimously adopted for this year's review of tax preferences**. Our comments are informed by JLARC staff work, public testimony and our professional knowledge of Washington's tax structure.

The Citizen Commission consists of five voting members appointed by each of the four caucuses and the Governor's office and represent a broad range of ideologies and professional backgrounds. Members include a retired tax attorney and CPA, a Seattle University law professor, the president of the Edmonds Education Association, a University of Washington public policy professor, and myself, the Chief Economist at Avista. Notably, reviews this year included:

Four preferences in which the Legislative Auditor recommended legislative or agency action:

- A review of a preference for **Manufacturers' Deferral**, in which the Legislative Auditor concluded that *"Four businesses used the tax deferral and met job goals through temporary construction work rather than permanent manufacturing jobs. Businesses likely would have built the facilities without the deferral. To increase manufacturing jobs or training, the Legislature should consider modifying the deferral program."*
- A review of a **Reduced B&O Rate for Printing and Publishing Newspapers**, in which the Legislative Auditor concluded that *"The preference provides tax relief to newspaper printers and publishers and saves these businesses money. However, the newspaper industry*

continues to lose revenue and jobs as it seeks to stabilize financially. The Legislature should review this preference to determine if it provides sufficient relief.”

- A review of seven preferences for [Medical Cannabis](#), in which the Legislative Auditor concluded that “Seven medical cannabis tax preferences provide tax relief to patients and cooperatives. After 2019 statutory changes, it is unclear how pending taxpayer guidance may affect beneficiary savings. The Legislature should continue the preferences and the Department of Revenue and Department of Health should update guidance.”
- An exemption for the Washington [Health Benefit Exchange](#), in which the Legislative Auditor concluded that “The preference reduces the Exchange's administrative costs by \$1 million per year, allowing it to maximize its funding for operating a health insurance marketplace. The Legislature should extend the July 2023 expiration date or make the preference permanent.”

Recommendations to allow one preference to expire and to clarify the intent of another

- A review of a [Credit for Renewable Energy Program Payments](#), in which the Legislative Auditor concluded that “The tax credit program increased Washington's solar capacity and met its solar-related employment target. It did not broaden low-income participation. Solar installations have continued after the program reached its funding limit. The Legislature should allow this preference to expire.”
- An exemption for [Nonprofit Outpatient Dialysis Facilities](#), in which the Legislative Auditor concluded that “Preference provides tax relief to nonprofit outpatient dialysis facilities, which outperform for-profit counterparts on two standard measures. The Legislature should clarify its intent.”

One recommendation implemented during the 2021 session

- During the 2021 session, the Legislature amended chapter 84.25 RCW, related to a [Targeted Urban Area Exemption](#) to change the population criteria and extend the expiration date, in response to the Legislative Auditor's recommendation.

The Commission endorses all of the Legislative Auditor's recommendations. The full text of the Commission's recommendations is included below and will be added to JLARC's proposed final report in December. Summaries of the JLARC staff's analysis and recommendations and brief video summaries of each preference are available [here](#).

As Chair of the Citizen Commission, I would be pleased to discuss the Commission's position and comments with you and any interested legislators. These reviews provide valuable information as the Legislature considers whether individual preferences are meeting policy objectives. Please feel free to contact me (grant.forsyth@leg.wa.gov) or the Legislative Auditor, Keenan Konopaski (keenan.konopaski@leg.wa.gov or 360-786-5187).

Sincerely,



Grant D. Forsyth, Chair

Citizen Commission for Performance Measurement of Tax Preferences

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Commission Comments Adopted on 10/20/2021

Name	Possible Comment	Rationale for comment
<p>1. Health Benefit Exchange (Business and Occupation Tax)</p> <p>Legislative Auditor Recommendation: Extend the expiration date or make the preference permanent (structural purpose)</p> <p>The Legislature should:</p> <p>Extend the July 2023 expiration date or make the preference permanent. The preference appears to address a structural tax issue. The Exchange is a public-private partnership and the state funding it receives would be subject to B&O tax without this preference.</p> <p>Add a performance statement that specifies the public policy objective for the preference.</p> <p>The Citizen Commission for the Performance Measurement of Tax Preferences should consider whether the preference is critical to the tax structure. If so, it will be excluded from future tax preference reviews.</p>		
Commission Comment	Endorse Legislative Auditor recommendation with additional comment.	This preference should be excluded from future reviews. It serves a structural purpose related to the state's broader healthcare policy.

Name	Possible Comment	Rationale for comment
<p>2. Manufacturers' Deferral (Sales and Use Tax)</p> <p>Legislative Auditor Recommendation: Extend and modify</p> <p>The Legislature should extend the January 1, 2026, expiration date because each business has met the legislative goal of creating 20 jobs. Although no businesses have repaid deferred taxes yet, the repayments are expected to fund training in the future.</p> <p>If the Legislature wants the deferral program to encourage businesses to create and retain more manufacturing jobs in the state, and provide more training and apprenticeship opportunities earlier, it should consider:</p> <p>Modifying the deferral program to focus more on creating full-time manufacturing jobs, rather than temporary construction work.</p> <p>Directly appropriating money for training and apprenticeships in the manufacturing sector to the State Board for Community and Technical Colleges.</p>		
Commission Comment	Endorse Legislative Auditor recommendation without comment.	

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Commission Comments Adopted on 10/20/2021

Name	Possible Comment	Rationale for comment
<p>3. Reduced B&O Rate for Printing and Publishing Newspapers (Business and Occupation Tax)</p>		
<p>Legislative Auditor's Recommendation: Review</p>		
<p>The Legislature should review this preference to determine if the relief to newspaper printers and publishers is sufficient and if additional assistance is needed to help these businesses stabilize financially. If the Legislature is interested in helping the newspaper industry more broadly, it should consider additional approaches.</p>		
<p>Commission Comment</p>	<p>Endorse Legislative Auditor recommendation with additional comment.</p>	<p>The Legislature should consider additional approaches to supporting local newspapers. Testimony suggests (1) the current preference may be too small relative to the challenges facing local papers, and (2) local papers still support democratic and community vitality with the dissemination of local news absent from newer, national digital providers. Additionally, local papers offer an alternative for residents with barriers to accessing newer digital formats.</p>

Name	Possible Comment	Rationale for comment
<p>4. Medical Cannabis Tax Preferences (Business and Occupation Tax, Sales and Use Tax)</p>		
<p>Legislative Auditor's Recommendation: Continue</p>		
<p>The Legislature should continue the preferences because they provide tax relief to medical cannabis patients.</p>		
<p>The Department of Revenue and the Department of Health should update guidance to reflect 2019 statutory changes.</p>		
<p>Commission Comment</p>	<p>Endorse Legislative Auditor recommendation with additional comment.</p>	<p>Testimony suggests the state should consider reviewing the definitions and guidelines associated with medical cannabis. The Legislature may want to evaluate approaches used in other states, such as Colorado, and consider whether and to what extent Washington's laws can be altered to better meet patient needs. The Legislature may find that additional interventions may be needed to address the issues raised in testimony. These issues largely revolve around quality and price differentials between the regulated and unregulated market.</p>

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Name	Possible Comment	Rationale for comment
<p>5. Targeted Urban Area Exemption (Local Property Tax)</p> <p>Legislative Auditor Recommendation: Review and consider whether to extend</p> <p>The Legislature acted in response to the Legislative Auditor's January 2021 recommendation by amending the preference population criteria and extending the expiration date to December 31, 2030.</p> <p>In light of this legislative action, the Legislative Auditor updated the recommendation in May 2021 to recommend that the Citizen Commission should schedule the preference for review in 2028, to determine if the revised preference has achieved the goals of encouraging new development on undeveloped or underutilized land in targeted urban areas and increasing family living wage jobs.</p>		
Commission Comment	Endorse Legislative Auditor recommendation without comment.	

Name	Possible Comment	Rationale for comment
<p>6. Credit for Renewable Energy Program Payments (Public Utility Tax)</p> <p>Legislative Auditor's Recommendation: Allow to expire</p> <p>The Legislature should allow the credit to expire because the objectives are mostly met and installations have continued after the program reached its funding limit. If the Legislature wants to broaden low-income participation in the production and use of solar energy, it should consider other options.</p>		
Commission Comment	Endorse Legislative Auditor recommendation with additional comment.	Low-income participation in solar programs is problematic because (1) Low-income households lack money to pay the upfront costs of installing solar; and (2) many low-income households are renters and, therefore, the decision to install solar is not theirs to make. As part of their review, the Legislature will want to read the commentary provided by the Washington Department of Commerce, which highlights the connection between household resiliency and distributed energy resources.

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Name	Possible Comment	Rationale for comment
	<p>7. Nonprofit Outpatient Dialysis Facilities (Property Tax)</p> <p>Legislative Auditor's Recommendation: Clarify intent</p> <p>The Legislature should clarify the objectives of the preference by including a performance statement. The preference was enacted before the Legislature required a performance statement for new tax preferences. There is no explicit public policy statement for the tax preference in statute.</p> <p>If the Legislature believes the tax preference is intended to support certain outcomes, the Legislature should clarify its expectations by adding a performance statement that clearly states the public policy objectives and metrics to determine if the objectives have been met.</p>	
Commission Comment	Endorse Legislative Auditor recommendation without comment.	