

Chair's Motions for 2020 Tax Preference Review Schedule

Tobacco and Marijuana Tax Exemptions

Discussion

The Commission received testimony from tribal representatives regarding several items the Commission was considering for review in 2020. It appears that several tribal-related tax exemptions for taxes on tobacco and marijuana meet the technical definition of a tax preference in RCW 43.136.021. That said, the testimony outlined a compelling case that these exemptions reflect one aspect of broader government-to-government compact agreements signed between the Tribes and the State.

When the Legislature established the tax preference review process, it acknowledged that some tax preferences should not be subject to review due to legal constraints. For example, in RCW 43.165.045, the Legislature noted tax preferences necessary to conform to constitutional law must be omitted from review, recognizing that the Legislature cannot unilaterally change the requirement to comply with the federal government's constitution. Additionally, the Commission was granted the authority to omit from review preferences it deemed critical to the tax system structure.

The tribal tobacco and marijuana compacts are intergovernmental agreements on taxation between sovereign nations. Consequently, while those agreements are in place, the taxation treatment related to those compacts also cannot be unilaterally changed by the Legislature. The Commission notes the Legislature did not explicitly exclude tribal tax exemption statutes in general from the tax preference review process. However, given the broad definition of a tax preference, it is also possible the Legislature did not realize tax exemptions that relate to implementing intergovernmental agreements with Tribes would be subject to review. Given the rationale for exceptions for other tax preferences that cannot be unilaterally changed, it is reasonable to consider whether these should be treated similarly.

Conclusion

The Commission is unclear whether the Legislature intended to include tax exemptions related to intergovernmental compacts in the tax preference review process. Given this uncertainty, the Commission requests that the Legislature indicate whether these tax exemptions were intended to be reviewed. Unless there is specific direction to include these exemptions, the Commission will consider these tax exemptions to be a critical part of the structure of the tax system and not subject to review.

Motion

I move that the Commission declare that the following tax preferences are critical to the structure of the tax system, and absent specific legislative direction, these preferences will not be subject to review:

- Tribal Compact Marijuana (sales and use)
- Cigarettes Covered by Indian Tribal Contracts (tobacco tax)
- Tobacco Sales to U.S. or Indian Tribes (tobacco tax)
- Cigarettes Sold via Tribal Contracts (sales and use)

Tribal Lands Use for Government Purposes

Discussion

Unlike the tobacco and marijuana tribal tax exemptions, this property tax exemption does not appear to be related to implementing inter-governmental compacts.

While this exemption could be reviewed, due to its relatively small size and apparent governmental purpose it may not merit a full JLARC evaluation. That said, it still may be useful for the Commission to solicit testimony about this exemption, to ensure tribal representatives have an opportunity to bring forward their views on this exemption in 2020. Moving this preference to the list titled “Not Subject to Full Review” would provide this testimony opportunity to the Tribes, while clarifying that JLARC staff are not evaluating it.

Motion

I move that the Commission remove the following preference from the “Alternates” list and place it on the “Not Subject to Full Review” list in 2020:

- Tribal Lands Used for Government Purposes (property tax)

Update 2020 Schedule

Discussion

Adopting the first two motions provides the Commission with the capacity to add additional reviews to the 2020 schedule. Based on feedback from legislative staff of items potentially of interest to members, staff have proposed adding four agricultural-related preferences, outlined in Exhibit A, which is attached.

Motion

I move the Commission adopt the 2020 review schedule as indicated on Exhibit A.

Exhibit A

Proposed 2020 Review Schedule						
RCW	Preference Name	Category	Biennial Savings	Expires	Mandated?	Commission Ranking
82.16.0496	Alternative Fuel Commercial Vehicle Credit (Public Utility Tax)	Alternative Energy	\$12M	1/1/2022	Yes	2
82.04.4496	Alternative Fuel Commercial Vehicle Credit (B&O Tax)	Alternative Energy	Not separately stated	1/1/2022	Yes	3
82.16.0499	Hiring Unemployed Veterans (Public Utility Tax)	Military & Veteran	\$0.9M	7/1/2023	Yes	5
82.04.4498	Hiring Unemployed Veterans (B&O Tax)	Military & Veteran	\$0.1M	7/1/2023	Yes	6
84.36.010 (2)	Tribal Lands Used for Economic Development (Property Tax)	Tribal	\$2.5M	1/1/2022	Yes	7
82.04.449	Workforce Training (B&O Tax)	Education & Childcare	\$0.1M	7/1/2021	Expires 2021	4
82.08.02745; 82.12.02685	Farm-Worker Housing (Sales and Use Tax)	Agricultural Equipment & Other	\$1.7M	N/A	No	2018 alt
82.08.900; 82.12.900	Anaerobic Digesters for Dairies (Sales and Use Tax)	Agricultural Products	\$1.15M	N/A	No	2018 alt
82.08.890; 82.12.890	Livestock Nutrient Management Equipment (Sales and Use Tax)	Agricultural Products	\$1.6M	N/A	No	2018 alt
82.16.050(10)	Shipping Farm Products to Port (Public Utility Tax)	Agricultural Services	\$2.7M	N/A	No	2018 alt

What drops off under this scenario?						
RCW	Preference Name	Category	Biennial Savings	Expires	Mandated?	Commission Ranking
82.08.025661; 82.12.025661	MOVE TO 2024: Airplane Repair Facility New Construction (Sales and Use Tax)	Aerospace	\$0	1/1/2027	Yes three years after operationally complete	1. Per DOR, no facility has been built to date.
82.32.055	Active Duty Military Penalty Waiver (Multiple Taxes)	Military & Veteran	Not disclosable		No	8
84.36.665	Military Housing (Property Tax)	Military & Veteran	\$3.8M		No	9
82.29A.130(19)	Military Housing (Leasehold Excise Tax)	Military & Veteran	\$1.1M		No	10
84.39.010	Veteran Widows and Widowers (Property Tax)	Military & Veteran	\$0.03M		No	11

Critical Part of Tax Structure and Not Reviewed						
RCW	Preference Name	Category	Biennial Savings	Expires	Mandated?	Commission Ranking
43.06.490; 82.08.9997; 82.12.9997	Tribal Compact Marijuana (Sales and Use Tax)	Tribal	Not disclosable		No	12
82.24.295(1)	Cigarettes Covered by Indian Tribal Contracts (Tobacco Tax)	Tribal	\$193.6M		No	13
82.26.110	Tobacco Sales to U.S. or Indian Tribes (Tobacco Tax)	Tribal	\$120M		No	14
82.08.0316; 82.12.0316	Cigarettes Sold via Tribal Contracts (Sales and Use Tax)	Tribal	\$45.2M		No	15

Expedited Review – No JLARC Review						
RCW	Preference Name	Category	Biennial Savings	Expires	Mandated?	Commission Ranking
84.36.010(1)	Tribal Lands Used for Government Purposes (Property Tax)	Tribal	\$5.2M	1/1/2022	No	16 (1 st alt)

What can we start on earlier for 2021?						
RCW	Preference Name	Category	Biennial Savings	Expires	Mandated?	Commission Ranking
82.16.130	Customer-Generated Power (Public Utility Tax)	Alternative Energy	\$55M	1/1/2030	Yes	1
82.85.050	Manufacturer's Job Creation Deferral	Other Manufacturing	\$4.3M	1/1/2026	Performance statement	3