May 20, 2016 Citizen Commission for Performance Measurement of Tax Preferences

Items for discussion

1. Pages 2-6: Key points from issue paper discussion, including additional comments from Commissioners Kahng, Forsyth and Longbrake
2. Page 7: Chair proposal for developing 10-year schedule
3. Page 8: Chair proposal regarding additional evaluation questions
4. Page 8: Chair proposal regarding additional data collection
5. Page 8: Chair proposal regarding additional JLARC resources

Note: Additional detail, regarding the April 22 issue paper discussion, can be found in a document on the Commission's website: *"Summary of April 22 Commission Discussion"*

Summary of Issues Discussion

Issue: Should preferences receive greater priority in the schedule if they have an expiration date or if the Legislature specifically requests a JLARC review? (#4)

Key point from April 22nd discussion

- Expiration dates and legislative mandates are an important determinant on when to review a preference. A concern is whether they should take preference over other groupings in setting the review schedule, and at what point such preferences might "crowd out" other preference reviews.

Additional comment from Commissioner Kahng

Where practicable, preferences with an impending expiration date and those for which the Legislature specifically requested a JLARC review should be prioritized.

Additional comment from Commissioner Forsyth

I'm open to giving some priority to preferences that are about to expire, even if they are not part of a planned industry grouping. However, I would like to see an analysis of these preferences by order of their economic impact. Personally, I'm more inclined to prioritize these preferences if they represent a large economic impact; likewise, I am less inclined to prioritize them if they represent a small economic impact.

Additional comment from Commissioner Longbrake

Priority of preferences with expiration dates should be subordinate to legislatively-mandated reviews and should be prioritized relative to size of impact subject to availability of JLARC staff resources.

Issue: Should the Commission continue to group preferences, such as by industry sector or by similarity of purpose? (#2)

Key point from April 22nd discussion

- Industry groupings are valuable as they provide a "big picture", with industry groupings providing valuable context.
- Groupings may be valuable based upon commonality of purpose, such as economic development, low income, and education

Additional comment from Commissioner Kahng

The Commission should continue to group preferences, such as by industry sector or similarity of purpose.

Additional comment from Commissioner Forsyth

I would like to continue the grouping of preferences by industry. Doing so means the Commission will get a wide variety of testimony from different players in a given industry. I found this greatly improved my understanding of an industry's challenges from different perspectives. Good past examples include the testimony from aerospace and agriculture.

Issue: Should preferences with a new "performance statement" provision receive greater priority in the schedule? (#5)

Key point from April 22nd discussion

- A performance statement may serve as a "tiebreaker" or as a key factor to determine when to review. There could be concerns that review of preferences with performance statements could "crowd-out" the review of other preferences

Additional comment from Commissioner Kahng

Preferences with a new "performance statement" provision should not necessarily receive greater priority in the review schedule.

Additional comment from Commissioner Longbrake

Priority should be given to preferences with a new "performance statement", but that priority should be subordinate to other priorities and be subject to the availability of JLARC staff resources.

Are there factors with respect to previously reviewed preferences that should be considered in determining the review process? (#1)

Key point from April 22nd discussion

- Previously reviewed preferences that haven't changed at all since the review may be a lower priority. Previously reviewed preferences with no data or metrics to evaluate should not necessarily be ignored.

Additional comment from Commissioner Kahng

Previously reviewed preferences should be prioritized for re-review where (1) JLARC staff recommended action, but no legislative action was taken, or (2) JLARC staff noted the need for additional or missing data.

Additional comment from Commissioner Longbrake

Previously reviewed preferences that haven't changed at all where JLARC staff recommended action, but no legislative action was taken, should receive a low priority; however a higher priority should be given if additional data or metrics are available (note: if additional data and metrics do not exist but there is a possibility that such information could become available prior to a scheduled review, such preferences should be given a higher priority on a tentative basis).

Are there preferences that the Commission should determine as critical to the tax structure, and thus not subject to review? (#3)

Key point from April 22nd discussion

- The Commission has discretion to label preferences as critical to the tax structure, making them not subject to the review process.

Additional comment from Commissioner Kahng

The Commission should identify preferences as critical to the tax system, thereby exempting them from review. The starting point for this process would be the 94 preferences identified in Issue Paper 1.

Additional comment from Commissioner Longbrake

The Commission should identify preferences as critical to the tax system, thereby exempting them from review. The starting point for this process would be the 94 preferences identified in Issue Paper #1 plus the 46 expedited preferences defined by DOR as tax base defining.

Are there questions evaluated by JLARC staff that should be de-emphasized? Are there questions that should be modified or added? (#6)

Key point from April 22nd discussion

- The Commission has discretion in determining which questions to answer for each tax preference.

Additional comment from Commissioner Kahng

The questions evaluated by JLARC staff should remain the same, with discretion accorded to JLARC staff to refine their analysis as noted in Issue Paper 6.

Additional comment from Commission Longbrake

An additional question could be added to evaluate the impact of applying an alternative tax method to a particular preference (see discussion below on Issue Paper #7b).

Should there be a more specific question for evaluating a tax preference's impact on the distribution of the tax liability? (#7a)

Key point from April 22nd discussion

- Any change in taxes may have distributional consequences and tax preferences that benefit one industry could have competitive impacts on another industry. The benefits of this additional analysis should be weighed against its complexity and the cost of the resources required to perform the analysis.

Additional comment from Commissioner Kahng

There should not be an additional specific question for evaluating a tax preference's impact on the distribution of tax liability. It would not be productive to attempt to evaluate each individual tax preference's distributional impact on citizens. Rather, the overall tax system should be evaluated in terms of its distributional effects.

Additional comment from Commissioner Longbrake

Distributional effects most often occur in property tax preferences where a preference granted for one set of beneficiaries will increase the tax burden imposed on other beneficiaries with no net change in total tax revenues. The Commission has chosen not to review such preferences and should continue this practice. However, because redistribution of the tax burden will have economic consequences for individual taxpayers and could have broader impacts on the state's economy, the Legislature should consider whether distributional impacts of tax preferences should be evaluated on a broader basis.

For preferences intended to accomplish using one tax approach over another, should there be an additional evaluation question to identify changes in fiscal impacts over time? (#7b)

Key point from April 22nd discussion

- Fundamental is the question of whether additional analysis in such cases is warranted. At some point policymakers decided on the state's tax structure, with specific preferences geared toward avoiding double taxation.

Additional comment from Commissioner Kahng

There should not be an additional evaluation question for preferences where the Legislature chooses one of two approaches to taxing an activity. If the Commission requests such an analysis, it is within the discretion of JLARC staff to perform the analysis.

Additional comment from Commissioner Longbrake

There is a choice for certain preferences of what tax methodology to apply. There are two situations in which this can be an issue for a particular preference. First, sometimes, but not always, the stated or implied purpose of such preferences is to avoid double taxation. Frequently the Commission has chosen to omit preferences from review whose stated or implied purpose is to avoid double taxation. Second, certain other preferences, where double taxation is not a stated or implied purpose, could be taxed pursuant to a different method. In both cases, the Legislature's choice of which tax method to apply can result in considerable differences in the size of the tax burden to beneficiaries. In determining the priority for scheduling a preference for review, the Commission should consider the potential significance of applying a different tax method. If the Commission choses to schedule such a preference for review, JLARC staff should evaluate the preference with respect to both the existing tax method and the potential alternative tax method.

Does the overall review effort merit additional JLARC staff resources? (#8)

Key point from April 22nd discussion

- Previously, the Commission advocated for and JLARC received additional staff and consulting resources because the Commission believed this could add more value to the Legislature. It may be useful to know how much more can be analyzed with each additional staff member. How many more reviews, or what additional questions/issues can be analyzed?

Additional comment from Commissioner Kahng

The review effort may merit additional resources if the Legislature is seriously committed to greater transparency, efficacy and accountability in its use of tax preferences. In addition, the Legislature should devote additional resources to perform an overall assessment of the fairness, efficiency and adequacy of the state's tax system.

Additional comment from Commissioner Forsyth

Given the number of tax preferences and the Legislature's interest in a careful analysis, I would support an increase of resources for JLARC. In this case resources could be increased personnel, budget dollars for consulting assistance, or software and database access. The type of resources needed will depend on legislative needs regarding the analysis they would like to see.

Additional comment from Commissioner Longbrake

Whether additional JLARC staff resources are merited should depend on the net value added from the examination of additional preferences that would be possible if JLARC were provided additional resources. This can be informed by developing a 10-year review schedule constrained by existing resources and then estimating the net value added that each unit of additional resources (staff and consulting), might reasonably be expected to provide.

Chair Proposal for Developing the 10-year Review Schedule

A. To start, agree on items that will not be subject to JLARC review (e.g., structural or defining the base).

Include 94 structural preferences previously reviewed by JLARC and Commission, plus 46 expedited preferences identified by DOR as tax base defining,

B. With the remaining preferences, an initial schedule framework could be prepared based on three points (in this priority order). Preferences where the Legislature:

1. Directed a review.
2. Included an expiration date.
3. Made an explicit performance statement, which may include metrics.

C. Once these guidelines are developed, establish options for the detailed review schedule.

Incorporating the guidelines above, JLARC staff will develop options for ten year schedules using two separate approaches:

1. Using industry groupings, such as aerospace, agriculture, and medicine.
2. Using topic areas, such as economic development, low income, and education.

These options will illustrate the extent of "crowding out" as well as note which preferences are considered structural or base-defining.

Based on direction from commissioners, and combining the decisions on priorities with the two approaches, after the May 20th meeting, JLARC staff will forward draft 10-year schedule options to commissioners for their consideration.

Chair proposal regarding additional evaluation questions

There is no need to amend current statute to include additional evaluation questions. Statute currently contains an appropriate set of question and provides JLARC staff with leeway in addressing them, or additional question, depending on their relevance to any given preference.

Chair proposal regarding additional data collection

In consultation with JLARC staff, the Commission should determine whether to request additional data reporting from beneficiaries for a particular preference. In considering the merits of additional data reporting, JLARC staff should work with DOR to determine potential costs and benefits. JLARC staff should determine whether additional data reporting can be required under existing authority or whether legislative enablement will be required. Preferences that would clearly benefit from additional data and metrics should be scheduled later in the 10-year review cycle to enable the design and authorization of appropriate data reporting tools and the accumulation of relevant information.

Chair proposal regarding JLARC resources

Whether additional JLARC staff resources are merited should depend on the net value added from the examination of additional preferences that would be possible if JLARC were provided additional resources. This can be informed by developing a 10-year review schedule constrained by existing resources and then estimating the net value added that each unit of additional resources (staff and consulting), might reasonably be expected to provide. A preliminary evaluation of the benefits of additional resources should begin with adoption of the 10-year review schedule but should be revisited annually when the Commission determines specific preferences for review during the next fiscal year. The annual review should take into consideration the net value added from additional resources in evaluating additional preferences over the next several years.