

# Overview and Commissioner Comments

## Citizen Commission for Performance Measurement of Tax Preferences

### Commissioner comments on 2016 Tax Preference Reviews

October 14, 2016

**First, the Commission will consider JLARC staff reviews that have no proposed comments.**

#### **Group A: Endorse without comment**

- Commissioners will be asked if they would like to adopt individual comments for any preferences from Group A.
- **If there are any proposed comments, those preferences will be moved to the group with a similar Legislative Auditor recommendation.** (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 Exhibit 1: Citizen Commission for Performance Measurement of Tax Preferences Bylaws, “Article VII: Minority Reports” on the last page of this document](#))

#### **GROUP A – ENDORSE WITHOUT COMMENT**

[Custom Software Sales and Use Tax \(Continue\)](#)

[Fuel Use by Mint Growers Sales and Use Tax \(Allow to Expire\)](#)

[Standing Timber Real Estate Excise Tax \(Continue\)](#)

[Solar Energy and Silicon Product Manufacturers B&O Tax \(Review and Clarify\)](#)

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

## Groups B Through H

Action on the remaining specific preference reviews will be considered in order of the following groups. **Groups B through E** are organized based on the Legislative Auditor recommendation: the Commission will determine whether to endorse or not endorse, and adopt any additional comments. **Group F** if provided to add comments on Expedited Preferences.

**GROUP B:** Legislative Auditor Recommendation: Continue – endorse or not endorse; with comment

<b>GROUP B - LEGISLATIVE AUDITOR RECOMMENDATION: CONTINUE</b>		
<u>Data Center Equipment (Sales and Use Tax)</u>		
<i>Chair Proposal</i>	<i>Endorse with comment.</i>	<i>JLARC staff’s research confirms that this preference is currently meeting its intent. However, in light of competition to attract this industry, the Legislature should periodically evaluate whether the economic benefits of the data centers really exceed the cost of the tax incentives required over the long term to attract them. Other regions offering competing tax incentives admit uncertainty regarding whether or not the long-run benefits exceed the costs. However, local pressure to increase employment in the face of weak economic growth may override the ability of policy makers to pause to consider longer-run cost issues. Also, for the time being, Washington has a natural advantage in the form of very low power prices in Central Washington. However, should this condition change, then Washington may be in a position where more generous incentives to retain and/or attract data centers will have to be offered. In the end, the Legislature should require that this tax preference be able to show a net positive impact of good paying jobs, related economic activity, and other tax receipts that in sum exceed the loss of state revenue caused by the tax preference.</i>
Grant Forsyth	Endorse with comment.	JLARC staff’s research confirms that this preference is meeting its intent. However, the legislature should be aware that a recent news report on data center preferences indicates that bidding for data centers has generated a significant escalation in what some regions are willing to offer to attract data centers. * The escalation of tax breaks has resulted in some regions pausing to consider if the economic benefits of the data centers really exceed the tax

		<p>breaks required to attract them. The regions offering the generous tax breaks admit uncertainty regarding whether or not the long-run benefits exceed the costs. However, local pressure to increase employment in the face of weak economic growth is overriding the ability of policy makers to pause to consider longer run cost issues. Also, for the time being, Washington has a natural advantage in the form of very low power prices in Central Washington. However, should this condition change, then Washington may be in a position where more generous incentives to retain and/or attract data centers will have to be offered.</p> <p>*Tax-break Bidding War: Town’s fight for Facebook Center Raises Questions, by Lindsay Whitehurst and Morgan Lee. Associated Press, August 29, 2016. (Appeared in the Spokesman Review on August 30, 2016.)</p>
Diane Lourdes Dick	Endorse without comment.	
Ron Bueing	Endorse without comment.	
Stephen Miller	Endorse with comment.	<p>I agree with JLARC staff’s rationale. In addition, the argument this tax preference was linked to actual construction and sales was compelling versus how Oregon gave away property tax to this industry without getting guarantees of economic activity in return. The City of Quincy showed the multiplier effect of semiconductor industry employees living in Quincy and tax revenue increases for the City of Quincy. In the end, any tax preference should be able to show a net positive impact of good paying jobs, related economic activity, and other taxes raised that in sum exceed the loss of state revenue caused by the tax preference.</p>
<b><u>Self-Service Laundry Facilities (Sales and Use Tax)</u></b>		
<b><i>Chair Proposal</i></b>	<b><i>Endorse with comment.</i></b>	<b><i>Testimony from owners of coin-operated laundry operations noted that there is an increasing bias towards low-income individuals using their services. That is, because laundry hookups are now standard in many upper- and middle-income apartment units, fewer of these apartment residents need coin-operated laundromats. This has shifted the customer base to a larger share of low-income individuals. As a result, the number of coin-operated laundromats has significantly fallen.</i></b>

Grant Forsyth	Endorse with comment.	Testimony from owners of coin operated laundry operations noted that there is an increasing bias towards low-income individuals using their services. That is, because laundry hookups are now standard in many upper- and middle-income apartment units, fewer of these apartment residents need coin operated laundromats. This has shifted the customer base to a larger share of low-income individuals. As a result, the number of coin operated laundromats has significantly fallen.
Diane Lourdes Dick	Endorse without comment.	
Ron Bueing	Endorse without comment.	
Stephen Miller	Endorse without comment.	

**GROUP C: Legislative Auditor Recommendation: Review and Clarify – endorse or not endorse; with comment**

<b>GROUP C - LEGISLATIVE AUDITOR RECOMMENDATION: REVIEW AND CLARIFY</b>		
<b><u>Clay Targets (Sales and Use Tax)</u></b>		
<b><i>Chair Proposal</i></b>	<b><i>Endorse with comment.</i></b>	<b><i>As the Legislature reviews this preference related to the actual fiscal impact, they should also review whether non-profit gun clubs are facing financial distress. If not, the tax preference may no longer be necessary. The rationale for most tax preferences can be linked to clear instances of industry stress, competition, or tax structure issues. No such stresses or issues were identified by the preference or the JLARC staff.</i></b>
Grant Forsyth	Do not endorse. Terminate.	It is not clear that this preference was ever needed. That is, it is not clear that non-profit gun clubs are under financial distress because of the cost of clay pigeons. The rationale for most tax preferences can be linked to clear instances of industry stress, competition, or tax structure issues. No such stresses or issues were identified by the preference or the JLARC staff.
Diane Lourdes Dick	Endorse without comment.	
Ron Bueing	Endorse without comment.	
Stephen Miller	Do not endorse. Terminate.	Clay pigeons are not an essential industry WA state needs to support. Those who engage in this hobby should pay the expenses without taxpayer support.

<b><u>Customer-Generated Power (Public Utility Tax)</u></b>		
<b><i>Chair Proposal</i></b>	<b><i>Endorse with comment.</i></b>	<b><i>The Legislature should more clearly define targets for installations and generation. This would include targets for both residential, commercial, and community solar installations. In addition, based on written testimony from Inland Power and Light (a cooperative headquartered in Spokane County), the Legislature may want to consider a utility’s administrative costs related to managing customer-installed solar panels. The testimony from Inland Power and Light indicates administrative costs are not fully compensated under the current tax preference.</i></b>
Grant Forsyth	Endorse with comment.	I concur that the legislature should more clearly define targets for installations and generation. This would include targets for both residential, commercial, and community solar installations. In addition, based on written testimony from Inland Power and Light (a cooperative headquartered in Spokane County), the legislature may want to consider a utility’s administrative costs related to managing customer installed solar panels. The testimony from Inland Power and Light indicates administrative costs are not fully compensated under the current tax preference.
Diane Lourdes Dick	Endorse without comment.	
Ron Bueing	Endorse without comment.	
Stephen Miller	Endorse without comment.	
<b><u>Flavor-Imparting Items (Sales and Use Tax)</u></b>		
<b><i>Chair Proposal</i></b>	<b><i>Endorse with comment.</i></b>	<b><i>While the stated objective of this preference was to provide tax relief, it also avoided a tax dispute between the Washington Department of Revenue (DOR) and taxpayers regarding the application of the ingredients exemption to the retail sales tax. As the Legislature reviews the actual fiscal impact of this preference, it should also consider continuing it as a clarification of longstanding sales tax principles.</i></b>
Grant Forsyth	Endorse with comment.	JLARC staff’s research confirms that this preference is meeting its intent.
Diane Lourdes Dick	Endorse without comment.	

Ron Bueing	Do not endorse. Continue	While the stated objective may have been to provide tax relief, this exemption also avoided a tax dispute between the Washington Department of Revenue (DOR) and taxpayers regarding the application of the ingredients exemption to the retail sales tax. There is longstanding case law that an item that is an ingredient need not have a primary purpose as an ingredient, but may qualify based on being a desirable ingredient in the final product. For example, the DOR readily agrees that oak casks used in winemaking qualify as an ingredient eligible for sales tax exemption. The items here are similar in nature; however, any individual taxpayer would find it cost prohibitive to challenge a contrary position taken by the DOR on the ingredients exemption. The exemption should be continued as a clarification of longstanding sales tax principles.
Stephen Miller	Endorse without comment.	
<b><u>Timber and Wood Products Reduced B&amp;O (B&amp;O Tax): Timber and Wood Products Reduced B&amp;O Tax Rate</u></b>		
<b><i>Chair Proposal</i></b>	<b><i>Endorse with comment.</i></b>	<b><i>The preference for timber and wood products may be helping offset environmental costs not borne by foreign competitors. The Legislature should review and clarify the preference, to provide a more measurable performance statement. As it undergoes this review, the Legislature should also measure the tax burden of this extractive and manufacturing industry and consider whether there is a disproportionate burden of B&amp;O tax that is not faced by other industries or its competitors in other taxing jurisdictions.</i></b>
Grant Forsyth	Endorse with comment.	In the case of the first preference, it is scheduled to expire in 2024. Given the expiration date is eight years from now, it may be in the legislature's interest to review this preference sooner rather than later. However, written testimony submitted by the Washington Forest Protection Association suggests this preference is helping to offset environmental costs not borne by foreign competitors. This suggests the preference still has some value, but should be clarified to provide a more measurable performance statement.
Diane Lourdes Dick	Endorse without comment.	
Ron Bueing	Do not endorse. Continue.	Extractive and manufacturing industries, such as the timber industry are faced with Washington B&O tax on 100% of their gross receipts without

		apportionment. This produces a disproportionate burden of B&O tax that is not faced by other industries that are taxed merely on the gross receipts generated from sales placed on such an industry compared with its competitors in other taxing jurisdictions, where the benefit is received in Washington. Further analysis should be done to measure the tax burden rather than making the rash and unsupported determination that this rate is indeed any sort of preference other than a broad and unfounded declaration by the Washington Legislature.
Stephen Miller	Endorse without comment.	
<b><u>Trade-Ins (Sales and Use Tax)</u></b>		
<b><i>Chair Proposal</i></b>	<b><i>Endorse with comment.</i></b>	<b><i>As the Legislature reviews this preference, the Commission notes the JLARC staff's review concludes the \$182 million associated with automobile sales is estimated to only generate \$31 million in new sales, causing a net loss of \$151 million in tax revenue.</i></b>
Grant Forsyth	Endorse with comment.	JLARC staff's research confirms that review and clarify is appropriate for this preference.
Diane Lourdes Dick	Endorse without comment.	
Ron Bueing	Endorse without comment.	
Stephen Miller	Do not endorse. Terminate.	Per JLARC staff's review, this \$182-million-dollar tax preference only generates \$31 million in tax revenue causing a net loss of \$151 million in tax revenue. Since stimulating enough sales to offset the lost revenue was an inferred objective, the legislature should eliminate this preference for failing to meet this objective.

**Semiconductor Materials Manufacturing: Multiple Taxes** (NOTE: there are eight preferences in this review, two with a review and clarify recommendation and six with a terminate recommendation)

<b>Chair Proposal</b>	<b>Endorse with comment.</b>	<b><i>In addition to JLARC staff's research, a recent research paper released by the Congressional Research Service (CRS) on the U.S. semiconductor industry highlights some important points. First, the CRS study finds that about 87% of fabrication is located outside of the U.S. with little evidence this will change significantly in the future. Second, between 2001 and 2015 U.S. employment in semiconductor manufacturing has fallen 38%. Third, the decline in employment reflects both the shift of production to outside of the U.S.; increasing automation of production facilities; and a shift in favor of U.S. employment focused on semiconductor design work. The trends laid out by the CRS paper suggest that the current set of preferences will be, for the foreseeable future, underutilized or not utilized.</i></b>
Grant Forsyth	Endorse with comment.	In addition to JLARC staff's research, a recent research paper released by the Congressional Research Service (CRS)* on the U.S. semiconductor industry highlights some important points. First, the CRS study finds that about 87% of fabrication is located outside of the U.S. with little evidence this will change significantly in the future. Second, between 2001 and 2015 U.S. employment in semiconductor manufacturing has fallen 38%. Third, the decline in employment reflects both the shift of production to outside of the U.S.; increasing automation of production facilities; and a shift in favor of U.S. employment focused on semiconductor design work. The trends laid out by the CRS paper suggest that the current set of preferences will be, for the foreseeable future, underutilized or not utilized.  *U.S. Semiconductor Manufacturing: Industry Trends, Global Competition, Federal Policy, by Michaela D. Platzer and John F. Sargent Jr. Congressional Research Service, June 27, 2016.
Diane Lourdes Dick	Endorse without comment.	
Ron Bueing	Endorse without comment.	
Stephen Miller	Endorse without comment.	



**GROUP D: Legislative Auditor Recommendation: Modify-endorse or not endorse with comment**

<b>GROUP D - LEGISLATIVE AUDITOR RECOMMENDATION: MODIFY</b>		
<b><u>Rural Electric Cooperative Finance Organization (B&amp;O Tax)</u></b>		
<b><i>Chair Proposal</i></b>	<b><i>Do not endorse. Continue.</i></b>	<b><i>The organization to which this exemption applies is a federally chartered organization created to provide cost effective financing to rural electric cooperatives. Savings due to the preference are likely passed on to all rural utility customers across the nation through electric rates. To assure that the benefit of the exemption is solely received by Washington based cooperatives, such cooperatives must bear the cost of this tax from which they are otherwise exempted by this law. Accordingly, such a clarification is unnecessary, would force the cooperative to amend its bylaws and rules for no reason, and will undoubtedly create undue confusion.</i></b>
Grant Forsyth	Do not endorse. Continue.	Savings are likely passed on to customers through electric rates.
Diane Lourdes Dick	Endorse without comment.	
Ron Bueing	Do not endorse. Continue	The organization to which this exemption applies is a federally chartered organization created to provide cost effective financing to rural electric cooperatives. The only possible application of the exemption under Washington’s market based sourcing apportionment methodology is to exempt from taxation interest paid by Washington rural cooperatives. Interest income received from out of state rural cooperatives are not subject to Washington taxation. The only way to assure that the benefit of the exemption is solely received by Washington based cooperatives would be to force such cooperatives to bear the cost of this tax from which they are otherwise exempted by this law. Accordingly, such a clarification is unnecessary, would force the cooperative to amend its bylaws and rules for no reason, and will undoubtedly create undue confusion with no benefit to any person.
Stephen Miller	Endorse with comment.	With no guarantee the savings are passed on to customers in rural communities, JLARC staff’s recommendation is aligned with the stated objective of this tax preference.

**GROUP E:** Legislative Auditor Recommendation: Allow to expire or repeal-endorse or not endorse with comment

<b>GROUP E - LEGISLATIVE AUDITOR RECOMMENDATION: ALLOW TO EXPIRE OR REPEAL</b>		
<u><b>Nonresident Large Airplanes (Sales and Use Tax)</b></u>		
<b>Chair Proposal</b>	<b>Do not endorse. Continue.</b>	<b><i>While it appears the preference has not been used to date, it provides an opportunity for local companies to better compete on future bids for this type of work. The Commission believes the preference should continue at this time and defers a conclusion on the expiration date until it is reviewed again in 2019.</i></b>
Grant Forsyth	Endorse with comment conditional on a second review being performed in 2019.	There does appear to be at least one company in the Puget Sound area doing this work, so it is unclear why they are not using the preference. It could be a flaw in the preference’s design, or some other factor known only to the firm or firms in this industry.
Diane Lourdes Dick	Do not endorse. Continue.	Although the preference has not been used, it provides an important exception to the sales and use tax that should be available if and when qualifying activity takes place.
Ron Bueing	Do not endorse. Continue	This exemption allows for modification services to be provided with respect to certain large, private aircraft owned by nonresident individuals without retail sales or use tax applying to the aircraft or the modifications. Although the exemption may have not been used, without the exemption such work would never be performed in Washington. The presence of the exemption allows local companies providing such modification services to have an opportunity to bid on such jobs. If the exemption is terminated, then no such opportunity remains in Washington.
Stephen Miller	Endorse with comment.	In 2021 this tax preference will have been in existence for 8 years. If it isn’t utilized by any company, then it should be allowed to expire. The legislature can enact a new preference that actually stimulates economic activity in this industry.

**Syrup Taxes Paid (B&O Tax)**

<b><i>Chair Proposal</i></b>	<b><i>Endorse with comment.</i></b>	<b><i>The Commission recommends repealing the B&amp;O tax credit contingent upon also repealing the underlying syrup tax.</i></b>
Grant Forsyth	Endorse with comment.	JLARC staff's research confirms it is appropriate to repeal the preference and the underlying syrup tax.
Diane Lourdes Dick	Endorse with comment.	My agreement with the recommendation to repeal the tax credit is based upon my assumption that the associated tax would also be repealed.
Ron Bueing	Endorse without comment.	
Stephen Miller	Endorse without comment.	

## EXPEDITED PREFERENCES

### GROUP F: Expedited Preferences, not reviewed by JLARC staff

EXPEDITED PREFERENCES		
<u><a href="#">Amphitheater (Leasehold Excise Tax)</a></u>		
<b>Stephen Miller</b>	Terminate	It is not the state's responsibility to provide amphitheater entertainment and the recipient of this tax break remains anonymous since less than 3 individuals or companies receive this tax break. State revenue should not be given away anonymously in Washington state.
<u><a href="#">Computer for Publishers (Sales and Use Tax)</a></u>		
<b>Stephen Miller</b>	Terminate	There isn't a unique economic hardship in the printing and publishing industry to justify the State of Washington supporting the industry through a tax break.
<u><a href="#">Direct Mail Delivery (B&amp;O Tax)</a></u>		
<b>Stephen Miller</b>	Terminate	There isn't a unique economic hardship in the direct mail industry to justify the State of Washington supporting the industry through a tax break.
<u><a href="#">Direct Mail Delivery (Sales and Use Tax)</a></u>		
<b>Stephen Miller</b>	Terminate	There isn't a unique economic hardship in the direct mail industry to justify the State of Washington supporting the industry through a tax break.
<u><a href="#">Fund-Raising Sales of Magazines (Sales Tax)</a></u>		
<b>Stephen Miller</b>	Review and clarify	Fund-raising sales of magazines is unlikely to fall if the customer pays the retail sales tax. Additionally, the prices of these magazines goes up after one year, and it is unclear if these future full price annual subscriptions are also exempt from the retail sales tax. Also, does the school receive revenue from these renewals? The legislature should review these issues before allowing this tax break to continue.
<u><a href="#">Grocery Distribution Co-Ops (B&amp;O Tax)</a></u>		
<b>Stephen Miller</b>	Terminate	State revenue should not be given away anonymously in Washington state. Repeal would force the recipients of this preference to reveal themselves publicly if they want to defend the preference.

<u>Liquefied Gasses (Petroleum Products Tax)</u>		
<b>Stephen Miller</b>	Terminate	There isn't a unique economic hardship in the petroleum products industry to justify the State of Washington supporting the industry through a tax break.
<u>Nonprofit R&amp;D (B&amp;O Tax)</u>		
<b>Stephen Miller</b>	Terminate	On the face of it, nonprofit research and development is probably a good investment for Washington state. However, state revenue should not be given away anonymously in Washington state. Repeal would force the recipients of this preference to reveal themselves publicly if they want to defend the preference.
<u>Public Corporations (Property Tax)</u>		
<b>Stephen Miller</b>	Review and Clarify	The Meydenbauer Convention Center doesn't preserve a historical site, provide for public transportation, prevent the existence of blighted property, or provide public housing. The users of the convention center pay a market rate rental fee for Bellevue which could easily include a prorated share of the Meydenbauer's property tax. The State of Washington shouldn't be supporting the users of the Meydenbauer through this tax break.

## ***EXHIBIT 1: 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.