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September 18, 2014

Via E-mail

Mr. William Longbrake, Chair
Washington State Citizen Commission for Performance
Measurement of Tax Preferences
P.O. Box 40910
Olympia, WA 98504-0910

Re: 2014 Expedited Tax Preference Review /
Baseball Stadium Leasehold Excise Tax

Dear Chair Longbrake:

The Seattle Mariners appreciate the opportunity to respond to you and the members of the Commission, urging continuation of the baseball stadium leasehold excise tax provision set forth in RCW 82.29A.130(14). Let me first give some background on how and why this provision was drafted. As Mariners counsel I was involved personally in that process in 1995, working closely with Governor Lowry's staff, legislative staff and others from the Department of Revenue and the Attorney General's Office.

RELEVANT BACKGROUND

In 1995 the Mariners 20-year Use Agreement for the Kingdome had one year remaining. It was universally understood that the franchise could not survive in Seattle without a new ballpark. A King County citizens' task force studying this issue the previous year had concluded that a new ballpark was necessary, and recommended financing alternatives to the King County Council and the State Legislature.

Legislative leaders from both parties¹ worked with Governor Lowry and the Mariners to negotiate a detailed ballpark financing package to keep the Mariners in Seattle on a financially stable footing. Ultimately, this package was enacted as EHB 2115 (the "Ballpark Legislation"). Part of that package was the leasehold excise tax provision set forth in RCW 82.29A.130(14). The Mariners made many commitments in return. Most

¹ In 1995 the State Senate was under Democratic control; the State House of Representatives was under Republican control.



notably, the Mariners pledged to contribute at least \$45 million toward the construction of the new ballpark and ultimately contributed almost \$145 million for this purpose. The Mariners also signed a lease through 2018, incorporating many other financial obligations, including being responsible for the operational, maintenance and capital needs of the ballpark.

The leasehold excise tax provision may have been the least controversial of all of the components of the Ballpark Legislation, because it provided nothing new. It simply clarified and continued the existing application of the leasehold excise tax that had applied, without statutory exemption, since the Mariners first season in the Kingdome in 1977.

King County owned and operated the Kingdome. The Mariners were a tenant under a Use Agreement with King County, just as the Seahawks were. The Mariners (and presumably the Seahawks) paid leasehold excise tax on those portions of the Kingdome that they had exclusive private use of – and where the public was not permitted. In general, this meant the locker room and clubhouse, owners' suite, and some limited office areas. The public and entertainment areas were never part of the leasehold excise tax calculation in the Kingdome. RCW 82.29A.130(14) simply continued that existing practice.

The Ballpark Legislation expressly recognized that a major league baseball stadium is a unique form of public/private partnership. It was paid for with both public and private funds. It combines public purposes and private purposes,² public spaces and private spaces. RCW 82.29A.130(14) defines what portion of that unique facility should be considered to be private and to be taxed as such. It is a carefully-considered definition, reflecting historic practice, and not a preference.

RESPONSE TO SPECIFIC QUESTIONS

The Commission has asked stakeholders to answer four specific questions in stating their support for existing tax preferences:

1. Is there evidence that the tax preference achieved its purpose, as noted in the 2014 tax preferences reports?
2. Does the preference provide benefits in addition to those stated in its intended or implied purpose?
3. Does the economic activity stimulated by this tax preference exceed the loss of revenue to the state?
4. Does this preference have negative consequences?

² The Legislature specifically recognized the important public purpose of building a baseball stadium in the Ballpark Legislation. The Washington Supreme Court specifically upheld the legitimate public purpose intended by the legislature in *King County v Taxpayers* 133 Wn.2d 584 (1997).

The purpose of RCW 82.29A.130(14) has to be considered in the context of the overall purposes of the Ballpark Legislation. It was but one component of a far more intricate financing package. The primary purpose of the Ballpark Legislation was to keep Major League Baseball as a financially stable regional asset in the Northwest, at a time when it appeared lost. There can be no question that this purpose has been achieved.

Before the Ballpark Legislation was passed in 1995, Seattle's major league baseball franchises had experienced constant upheaval and instability. The Seattle Pilots played in Seattle in 1969, filed for bankruptcy at the end of that season, and ultimately left Seattle for Milwaukee after only one season. The Mariners franchise emerged from the post-Pilots litigation, and in 1977 began play in the Kingdome, a multi-purpose facility originally designed for football. The Mariners experienced financial losses in the Kingdome virtually every year there, on several occasions leading to the sale of the team.³ The Ballpark Legislation's purpose was to cure this instability, and it has.

Since Safeco Field opened in 1999, the same locally-based ownership has owned the team and there has been no hint of instability or demands for new facilities or financial concessions. The Mariners have lived up to all of their lease commitments, including paying for all of the operating and maintenance requirements of the ballpark, and many capital improvements.⁴ Periodic studies done by the PFD, benchmarking Safeco Field against other Major League ballparks, show that Safeco Field is maintained at the highest level.

Without the Ballpark Legislation, Major League Baseball would not exist today in the State of Washington. And while it is beyond the expertise of the Mariners to assess all of the economic impacts of Major League Baseball on the State and local economy, we can point to some specific facts that show how the Mariners' presence in Seattle benefits the region's economy:

1. Since 1999, the Mariners have averaged over 2.6 million fans per year in paid attendance. The high mark was 3,540,482 in 2002. We believe that in every year since 1999, the Mariners have drawn more fans than the Seahawks, Sounders, Sonics and UW Football combined. Safeco Field is typically ranked as the second most frequented tourist destination in Seattle, trailing only the Pike Place Market.

³ The Mariners' unsatisfactory experience of playing in a multi-purpose facility was not unique. All of the multi-purpose sports facilities built for baseball teams around the country in the 1960s and 1970s have since been replaced by ballparks designed exclusively for baseball.

⁴ Although Safeco Field is publicly-owned, the Mariners paid for approximately 28% of the initial construction, and for virtually all of the capital replacement and improvements to the ballpark since it opened. Through the 2013 season, in addition to the \$145 million paid toward initial construction and rent payments to its public landlord, the Mariners have spent over \$70 million on ballpark maintenance and over \$42 million for capital replacement and improvements.

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2. Our statistically-verified surveys tell us that, in any given year, between 50-60% of our fans come from outside King County, and 30-40% of them travel from more than an hour outside Seattle. We draw many baseball fans from out of state, since our television territory extends to Alaska, Oregon, Idaho, Montana, British Columbia and Alberta. This generates considerable tourism dollars for Seattle and King County.
3. Since 1999, the Mariners have paid more than \$112 million in taxes to state and local entities. This does not include taxes paid by others that are generated by the presence of Major League Baseball in Seattle. None of these taxes would have been paid had the Ballpark Legislation failed.
4. In each year since 1999, the Seattle Mariners charitable arm, Mariners Care, has contributed over \$1 million in donations and merchandise to various local and regional causes.

There can be no doubt that the sum of these benefits vastly exceeds any nominal loss of leasehold excise tax dollars.

In conclusion, RCW 82.29A.130(14) was part of a larger package that saved major league baseball in Washington. It continued the longstanding practice of taxing only the private spaces of a stadium, and not the portions that serve the public. This is consistent with the unique form of public/private partnership that a publicly-owned sports facility represents. This approach is logical and appropriate, and should be continued.

Sincerely,



Bart Waldman

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cc: Howard Lincoln, Mariners Chairman and CEO
Kevin Mather, Mariners President
PFD Board Members
Tom Backer, PFD Legal Counsel