STATE OF WASHINGTON

TASK FORCE ON TAX PREFERENCE REFORM

Marty Brown
Office of Financial Management

Amber Carter
Association of Washington Business

Paul Guppy
Washington Policy Center

Ross Hunter
State Representative

Troy Kelley, State Representative
Chair, Joint Legislative Audit and Review Committee

Bill Longbrake
Governor's Council of Economic Advisors

James L. McIntire, *Chair*
State Treasurer

Ed Orcutt
State Representative

Phil Rockefeller
State Senator

Joseph Zarelli, *Vice Chair*
State Senator

Ruta Fanning, Legislative Auditor
1300 Quince Street SE
PO Box 40910
Olympia, WA 98504-0910
(360) 786-5171
(360) 786-5180 Fax

AGENDA

August 31, 2010
9:00 a.m. – 12:30 p.m.
John A. Cherberg Building
Senate Hearing Room 3
Olympia, Washington

1. *Approval of August 18, 2010 Meeting Minutes
2. Practices of Other States: Treatment of Tax Preferences in Budgeting
3. Practices of Other States: Revenue Fiscal Notes
4. Governor's Consideration of Tax Preferences
5. Taxpayer Accountability Surveys and Reports
6. Legislative Intent and Intended Legislative Outcomes
7. Mechanisms for Establishing or Ending Effective Dates
8. Next Steps
9. Public Comment Period

* Action Item

Marty Brown, Office of Financial Management
Amber Carter, Association of Washington Business
Jeff Chapman, Washington Budget and Policy Center
Paul Guppy, Washington Policy Center
Ross Hunter, State Representative
Troy Kelley, State Representative, JLARC Chair
Bill Longbrake, Governor's Council of Economic Advisors
James L. McIntire, State Treasurer, *Chair*
Ed Orcutt, State Representative
Phil Rockefeller, State Senator
Joseph Zarelli, State Senator, *Vice Chair*

www.taxpreftaskforce.leg.wa.gov

Ruta Fanning, Legislative Auditor
Joint Legislative Audit & Review Committee
1300 Quince St SE
Olympia, WA 98504
360-786-5171 Phone
360-786-5180 FAX
www.jlarc.leg.wa.gov

August 18, 2010
Meeting Minutes

TASK FORCE ON TAX PREFERENCE REFORM

Members Present:

James McIntire, State Treasurer, *Chair*
Representative Troy Kelley, Chair of JLARC
Marty Brown, Director, OFM
Representative Ross Hunter
Representative Ed Orcutt
Senator Joseph Zarelli, *Vice Chair*
Amber Carter, Association of Washington Business
Paul Guppy, Washington Policy Center
Bill Longbrake, Governor's Council of Economic Advisors

Members Absent:

Senator Phil Rockefeller

Staff:

Ruta Fanning, Legislative Auditor
Keenan Konopaski, Audit Coordinator
Cindy Evans, Assistant Attorney General
Peter Heineccius, Research Analyst
Dana Lynn, Research Analyst
Mary Welsh, Senior Research Analyst

Welcome

Chair McIntire opened the meeting at 9:10 a.m. and welcomed those present.

Approval of Minutes

MOTION: A motion was made to approve the minutes of the July 22 Task Force meeting. The nomination was seconded and approved by the Task Force.

Approval of Meeting Schedule

MOTION: A motion was made to approve the proposed meeting schedule. The nomination was seconded and approved by the Task Force.

The meeting schedule is as follows:

Meeting Date	Time	Location
August 18, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia
August 31, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia
September 20, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia
October 27, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia
November 15, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia

Observations on Tax Preference Review Process

Keenan Konopaski and Mary Welsh presented an overview of tax preference performance reviews, including issues and concerns related to the review process. Paul Guppy and Bill Longbrake, who both serve on the Tax Preferences Commission, commented on the tax preference review process.

Presentation by the House Office of Program Research (OPR), Office of Financial Management (OFM), and the Department of Revenue (DOR)

Charlie Gavigan (OPR) and Jim Schmidt (OFM) gave a general overview of fiscal notes in the legislative process.

Don Gutmann (DOR) presented information on the fiscal note process as it relates to the Department of Revenue.

Review of Upcoming Meetings

Ruta Fanning reviewed the agenda items for the upcoming Task Force meetings. Proposed Task Force recommendations may be forwarded to staff prior to the September 20 meeting or provided in writing at the meeting. Staff will draft a preliminary report for review at the October 27 meeting. The final report will be adopted at the November 15 meeting and forwarded to the Governor and Legislature.

Public Comment

No members of the public signed up to comment.

The meeting was adjourned at 11:50 a.m.

CHAIR

VICE CHAIR

Practices of Other States:
Treatment of Tax Preferences in Budgeting

Task Force on Tax Preference Reform

August 31, 2010

Mary Welsh,
JLARC Staff

What is a Tax Expenditure?

"TAX PREFERENCES"
(all exemptions, exclusions, deductions, credits, preferential rates, deferrals, etc.)

Basic Tax Structure

- Define the tax system
- Distribute the cost of government
- Describe a "normal" tax

Tax Expenditure

- Substitute for direct spending
- Promote economic activity
- Incentivize certain behaviors
- Provide relief to specified groups

Examples

Basic Tax Structure	Tax Expenditure
• Not final consumption - Sale for resale - Ingredients/components • Taxed under an alternate system - Insurance premiums • Not considered income - Bad debt • Conformity among states - Nonresident exemptions	• Promotes social policy - Exemptions food and clothing • Economic development - R&D credit • Conservation of natural resources - Property tax exemptions for conservation land

What Are "Tax Preference Reports" and "Tax Expenditure Budgets"?

- Tax Preference Report
  - Provides information about tax preferences to the Legislature and the public
- Tax Expenditure Budget
  - Integrates a tax preference report into the budgeting process

What Are the Elements of a "Tax Preference Report?"

	States	In WA
Periodic publication	43	DOR, JLARC
Description	16	DOR, JLARC
Purpose	12	DOR, JLARC
Fiscal impact	34	DOR, JLARC
Evaluation	5	JLARC

What Are the Elements of a "Tax Expenditure Budget?"

	States	In WA
Released with budget	12	No
Classify by budget area	11	No
Identify tax expenditures	22	No
Recommendation	2	*JLARC (but not for budgetary purposes)*
Require legislative action	0	No

Oregon Has Many of the Elements of Both Report and Budget

Oregon's governor submits a tax expenditure budget each biennium since 1995

Tax Preference Report	Tax Expenditure Budget
Periodic publication	Released with budget
Description	Classify by budget area
Purpose	~~Identify tax expenditures~~
Fiscal impact	Recommendation
Evaluation	~~Require legislative action~~

Oregon: A Closer Look

Evaluation

- Evaluations are done by 27 different agencies responsible for program areas
- These agencies conclude that most preferences are achieving their purpose

Recommendation

- The Governor is required to recommend whether an expiring preference should be extended
- For preferences expiring in 2009-11, the Governor recommended all 10 be extended

Washington's Reports Have Elements of Report and Budget

…but the elements are not integrated with the budgeting process

Tax Preference Report	Tax Expenditure Budget
Periodic publication	~~Released with budget~~
Description	~~Classify by budget area~~
Purpose	~~Identify tax expenditures~~
Fiscal impact	Recommendation
Evaluation	~~Require legislative action~~

Contact Information

Mary Welsh
360-786-5193
Welsh.mary@leg.wa.gov

Additional information:

JLARC:
www.jlarc.leg.wa.gov

Citizen Commission on Tax Preferences:
www.citizentaxpref.wa.gov

Task Force on Tax Preference Reform:
www.taxpreftaskforce.leg.wa.gov

WHICH STATES HAVE ELEMENTS OF A TAX PREFERENCE REPORT?

State	Periodic Publication of Tax Preference Report	Description of Preference & Beneficiaries	Purpose of Preference	Fiscal Impact of Major Taxes (sales/use, property, income taxes, etc.)	Evaluation of Effectiveness
Alabama *(No Report)*					
Alaska *(No Report)*					
Arizona	✓	✓		✓	
Arkansas	✓				
California	✓	✓	✓	✓	✓
Colorado	✓				
Connecticut	✓		✓	✓	
Delaware	✓	✓	✓	✓	✓
Florida	✓			✓	
Georgia	✓			✓	
Hawaii	✓	✓			
Idaho	✓			✓	
Illinois	✓			✓	
Indiana *(No Report)*					
Iowa	✓	✓			✓
Kansas	✓	✓		✓	
Kentucky	✓			✓	
Louisiana	✓		✓	✓	
Maine	✓	✓	✓	✓	
Maryland	✓			✓	
Massachusetts	✓			✓	
Michigan	✓	✓		✓	
Minnesota	✓	✓		✓	
Mississippi	✓		✓	✓	
Missouri	✓			✓	
Montana	✓	✓	✓	✓	
Nebraska	✓			✓	
Nevada *(No Report)*					
New Hampshire	✓				
New Jersey	✓			✓	
New Mexico *(No Report)*					
New York	✓	✓		✓	
North Carolina	✓			✓	
North Dakota	✓				
Ohio	✓			✓	
Oklahoma	✓			✓	
Oregon	✓	✓	✓	✓	✓
Pennsylvania	✓	✓	✓	✓	
Rhode Island	✓	✓		✓	
South Carolina	✓				
South Dakota *(No Report)*					
Tennessee	✓			✓	
Texas	✓			✓	
Utah	✓				
Vermont	✓	✓		✓	
Virginia	✓		✓		
Washington	✓	✓	✓	✓	✓
West Virginia	✓		✓	✓	
Wisconsin	✓			✓	
Wyoming *(No Report)*					
Total	43	16	12	34	5

Source: "Tax Expenditure Budgets, Budget Policy." Public Budgeting & Finance, Winter 2002, John Mikesell; Promoting State Budget Accountability Through Tax Expenditure Reporting, Center on Budget & Policy Priorities, 2009; National Association of State Budget Officers, 2008; and other sources.

HOW ARE STATES INTEGRATING TAX PREFERENCE REPORTS INTO BUDGET PROCESSES?

State	Released With Budget	Classify by Budget Area	Identify Tax Expenditure	Recommendation	Require Legislative Action
Alabama *(No Report)*					
Alaska *(No Report)*					
Arizona					
Arkansas					
California		✓	✓		
Colorado					
Connecticut		✓	✓		
Delaware		✓	✓		
Florida					
Georgia	✓				
Hawaii					
Idaho	✓		✓		
Illinois			✓		
Indiana *(No Report)*					
Iowa			✓		
Kansas			✓		
Kentucky			✓		
Louisiana		✓	✓		
Maine	✓	✓	✓		
Maryland			✓		
Massachusetts			✓		
Michigan	✓		✓		
Minnesota			✓		
Mississippi		✓	✓		
Missouri	✓		✓		
Montana		✓	✓		
Nebraska					
Nevada *(No Report)*					
New Hampshire					
New Jersey	✓				
New Mexico *(No Report)*					
New York	✓		✓		
North Carolina			✓		
North Dakota					
Ohio	✓		✓		
Oklahoma					
Oregon	✓	✓		✓	
Pennsylvania	✓	✓	✓		
Rhode Island					
South Carolina					
South Dakota *(No Report)*					
Tennessee	✓				
Texas					
Utah					
Vermont					
Virginia		✓			
Washington				✓	
West Virginia		✓	✓		
Wisconsin	✓				
Wyoming *(No Report)*					
Total	12	11	22	2	0

Source: "Tax Expenditure Budgets, Budget Policy." Public Budgeting & Finance, Winter 2002, John Mikesell; Promoting State Budget Accountability Through Tax Expenditure Reporting, Center on Budget & Policy Priorities, 2009; National Association of State Budget Officers, 2008; and other sources.

Bills Introduced to Modify Revenue Fiscal Note Process
1985 to 2010

2010 SSSB 6374

Required the Department of Revenue (DOR) and the Office of Financial Management (OFM) to perform economic modeling of three examples of economic development legislation enacted in 2010. Required the DOR and the OFM to compare actual results of the legislation. Did not pass.

2009 HB 2336
Moved responsibility for preparing fiscal notes from OFM to the Legislature. Notes were to be prepared jointly by the House and Senate nonpartisan staff. Did not pass.

SB 5741
Required dynamic impact statements based on the behavioral response of taxpayers directly impacted and the effect of those changes on the overall economy. Dynamic impact statements may not be prepared unless revenue impact is greater than $10 million. Established a Dynamic Fiscal Impact Statement Advisory Committee. Reintroduced in 2010. Did not pass.

HB 1458
Required fiscal notes that would increase or decrease state revenues to be made available before final passage of bills. Did not pass.

2005 HB 2022
Required the DOR to prepare fiscal notes on both the direct impact on revenues as well as changes in the overall economy. Did not pass.

2004 HB 3118
Required final incidence estimates for proposed legislation that changed tax revenue by more than $10 million a year. Notes shall report on the changes in the distribution of the tax burden by income class or other taxpayer characteristics. Did not pass.

2001 HB 2114
Moved responsibility for preparing fiscal notes from OFM to the Legislature. Notes were to be prepared jointly by the House and Senate nonpartisan staff. Did not pass.

SB 5071
Required final incidence estimates for proposed legislation that changed tax revenue by more than $5 million a year. Notes shall report on the changes in the distribution of the tax burden by income class or other taxpayer characteristics. Did not pass.

1999 HB 1879
Required final incidence estimates for proposed legislation that changed tax revenue by more than $5 million a year. Notes shall report on the changes in the distribution of the tax burden by income class or other taxpayer characteristics. Did not pass.

1992 SSB 6188
Moved responsibility for preparing fiscal notes to the Fiscal Note Council. Members of the Council included four members of the Legislature and the directors of OFM and Department of Community Development (now Commerce). Where necessary, notes were to include cost-benefit analysis. Did not pass.

1985 SB 4253
Moved responsibility for preparing fiscal notes from OFM to the Legislative Budget Committee and the Legislative Evaluation and Accountability Program Committee. Did not pass.

PREPARATION OF FISCAL NOTES IN SELECTED STATES

Based on a question submitted to the FTA Research listserv, the following summarizes the responsibility for preparation of official fiscal notes in the 28 states that responded. The responsibility is evenly split between the principal tax collection agency (12 states) and the Legislature (12 states).

More detail is provided below:

Tax Collection Agency	12*
Other Executive Branch Agency	1 (Budget Office in KS)
Legislature:	
Tax committee staff	2 (AZ, CA)
Separate legislative office	10**
Joint (both tax agency and legislature)	3 (FL, OH & PA)

It should be noted that in virtually all instances where the formal fiscal note responsibility resides with an office other than the tax collecting agency, the tax department does provide data and analysis of the proposed legislation which it used in the fiscal note. The response from Iowa is typical: "In Iowa, the Legislative Services Agency has the formal responsibility for issuing fiscal notes. As a practical matter, on almost every tax bill the Tax Research Section of the Department of Revenue actually does the fiscal impact estimates."

---

*AR, IL, MA, MI, MN, NY, ND, OK, SD, WA, WV, WI.

**CT, DE, ID, IA, NE, NC, OR, TN, UT, VT.

Washington State Department of Revenue, Research Division, August 17, 2010.

DYNAMIC REVENUE ESTIMATING
Use of Secondary, Macroeconomic Analysis for State Tax Proposals
January 25, 2010

Arizona	Joint Legislative Budget Committee is required to add the "behavioral response" of taxpayers to fiscal note impacts, unless it is "unreasonable" to do so. Typically, the REMI model is used only for two analyses per year.
Arkansas	Reported 2-3 dynamic estimates annually in 2003; discontinued since then.
California	Developed in the 1990s to evaluate proposals with at least $10 million impact. The requirement had a sunset provision in 2000 and this is no longer used.
Iowa	Although not required as a part of the state budgetary process, occasionally a REMI model is used to evaluate large policy proposals.
Louisiana	Legislative Fiscal Office produces dynamic revenue impacts for proposals with large budgetary impacts for unofficial, informational purposes only.
New Mexico	A two year pilot program to explore use of dynamic revenue estimating was undertaken several years ago. The REMI model is not currently being used.
New York	Internally developed economic models are used for internal analytical purposes. Not a formal part of the budgetary process.
Ohio	REMI was used in 2005 to analyze a broad tax reform proposal. Not an on-going part of the state budgetary process.
Oregon	Legislative Revenue Office uses a macroeconomic model to analyze dynamic impacts of proposals with greater than $10 million annual impact.
Texas	A REMI model is used to estimate the macroeconomic revenue feedback effects of proposals with greater than $100 million annual impacts. However, the results are not considered as part of the budget process.
Wyoming	A REMI model is used occasionally to estimate the impact of tax proposals.

Source: based largely on "Dynamic Scoring: Should Florida Do More?" Staff Research Paper by Florida House of Representatives, October, 2008.

How are Taxpayer Accountability Surveys/Reports Constructed in the Law?

Annual Survey (SHB 3066, 2010)	Annual Report (SHB 3066, 2010)
Due date	
• Apr 30 of year following when preference claimed • Extension available • For deferral, Apr 30 after completion & for the next 7 years	• Apr 30 of year following when preference claimed • Extension available
Information requested	
• # total employment positions • % full, part, temporary positions • # positions within wage bands of >30K, 30-60K, <60K • # positions with medical, dental & retirement benefits by wage band • Additional information DOR may request to measure results of or eligibility for preference	• # of full, part & temporary employee positions • Employee wages • Employer provided health & employment benefits in WA • Additional information DOR may request to measure results of or eligibility for preference
Penalty for not filing report/ survey	
• If survey not filed, tax immediately due with interest (no penalty) • Amounts owed publicly disclosable	• If report not filed, tax immediately due with interest (no penalty) • Amounts owed publicly disclosable
Summary statistics	
• DOR must prepare summary stats by category in report to Legislature by Oct 1 each year, at least 3 taxpayers per category	• DOR must prepare summary stats by category in report to Legislature by Oct 1 each year, at least 3 taxpayers per category
Disclosable	
• Only dollar amount taken and taxpayer name disclosed • If less than $10K saved during period, taxpayer may request confidentiality for dollar amount	• Everything disclosable except additional information requested by DOR • Dollar amount taken not disclosed or detailed in report
Preferences subject to reporting (13 surveys, 18 reports, 8 additional)	
Deferral/waiver • Rural deferral • High tech • Food processors • Biotech/ medical device • Corporate headquarters ***Credit*** • High tech B&O credit • Customized training B&O credit • Rural county software programming/ manufacturing B&O credit (expires 12/31/10) • Rural county 3rd party help desk B&O credit (expires 12/31/10) ***Preferential rate*** • Timber product manufacturers ***Exemptions*** • Fresh fruit/vegetable processors – B&O • Raw seafood manufacturers – B&O • Diary product manufacturers – B&O	***Credit*** • Commercial aircraft manufacturer property & leasehold excise tax B&O credit • Aerospace preproduction development expenditures for manufacturer/ nonmanufacturer B&O credit • Aluminum smelter property tax B&O credit • Candy manufacturer employee B&O credit ***Preferential rate*** • Commercial airplane manufacturers • FAR Part 145 commercial airplane repair stations • Aluminum smelters • Solar energy systems manufacturers & wholesalers • Semiconductor material manufacturers • Newspaper printers/publishers ***Exemptions*** • Tangible personal property used at & in construction of aluminum smelters – RST/UT • Aluminum smelter brokered natural gas used – UT • Gases used to manufacture semiconductor materials – RST/UT • Power sold to electrolytic processors – PUT • Construction of superefficient airplane manufacturing facility RCW 82.08/12.980 – RST/UT • Property exempt under RCW 82.08/12.980 – property tax • Property exempt under RCW 82.08/12.980 – leasehold excise tax • Data center equipment/infrastructure – RST/UT • Eight additional tax preferences are contingent on a $1 billion investment in WA by a semiconductor microchip manufacturer. If contingency is met, subject to annual report.

Washington State Department of Revenue

Taxpayer Accountability Surveys and Reports

Stuart Thronson
Assistant Director Special Programs Division
State of Washington, Department of Revenue
August 31, 2010

For Today

Department of Revenue Washington State

Purpose:

Describe how the Department of Revenue defines, collects, verifies and reports tax preference information contained in the tax preference survey and report.

Topics to be Covered:

- How we identify businesses needing to file
- How the data is gathered
- Data verification
- Distribution and use of information, and
- Compliance efforts

How We Identify Businesses Needing to File

- An application is required for all deferrals and selected exemptions and credits.
- We identify businesses needing to file using:
  - Information contained on the Combined Excise Tax Return
    - –Most B&O credits
    - –Preferential tax rates
  - System data
    - –NAICS code
    - –Filing history

How the Data is Gathered

- Annual surveys and reports are statutorily required and are made available each January.
- All 2010 surveys/reports will be due April 30, 2011
- In 2011, all businesses will be required to e-file
  - – An exception process for using paper is available
  - – Electronic filing has many benefits
    - • Certain fields are "pre-populated" (convenience to businesses)
    - • Appropriate questions are pre-selected depending upon the tax preference
    - • System won't allow incomplete surveys/reports
    - • Reduces time spent correcting and verifying answer

Data Verification

- Report/survey information is reconciled with system data available to the Department
  - Tax data reported to the Department
  - Employment Security information
- Logic models are run against the data
- Follow-up questions are asked

Distribution and Use of Information

- Information is summarized in a report to the legislature:
  - Descriptive Statistics for Tax Incentive Programs
  - Due September 1st of each year
- The Department also conducts evaluation studies on the High Tech and Rural County deferral programs
- *Survey* information is confidential (except for business name and type of tax incentive)
- *Report* information is not confidential
- Information is made available on the Department's website

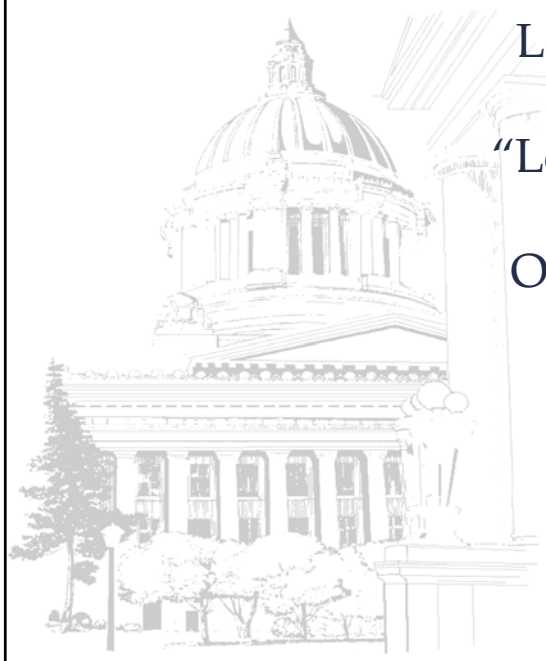
6

Compliance Efforts

- The Department attempts to:
  - Determine if a report/survey was due
  - Sort out and correct errors
  - Determine if tax is due because of failure to file
- Failing to file a timely survey/report
  - **Deferrals** - results in a billing for a portion of the deferred taxes
  - **Credits** - results in the denial of credit for the current year
  - **Exemptions/reduced rates** - results in assessment of tax for the period
- In 2009 we billed 68 taxpayers and collected $1.2 million for failure to file the 2008 report/survey

Washington State Department of Revenue

Questions?



Legal Issues with Establishing "Legislative Intent" or Intended Outcomes for Tax Preference Legislation

Kristen Fraser
Counsel, Office of Program Research

August 31, 2010

What will be covered in today's discussion?

Task Force on Tax Preference Reform

- Background on judicial use of legislation and legislative history in identifying "legislative intent."
  - This may affect how policymakers choose to identify intended outcomes for tax preference statutes.
- How "legislative intent" and related legal issues may affect:
  - The choice of procedural method for identifying these intended outcomes.
  - What the declaration itself does.

Why are we talking about "legislative intent"?

Task Force on Tax Preference Reform

Important to distinguish between two concepts:

- Legislative intent:
  - Courts try to ascertain legislative intent for purposes of statutory construction and some constitutional analysis.
- Intended outcomes of legislation:
  - Goals, objectives, or similar statements to be used in future evaluation of legislation.

What is "legislative intent" and how do courts determine it?

Task Force on Tax Preference Reform

- 1 member? 147 members? 75 members? Governor?
- Statutory Construction 101:
  - Is primary purpose to give effect to intent of the legislature? Or, to apply law as written?
- First source of legislative intent: Text of legislation.
- Ambiguity? It lurks everywhere.
- Canons (tools) of construction:
  - Judicial presumptions about legislation and legislature.
- Legislative history.

What are intent sections?

Task Force on Tax Preference Reform

- Part of legislation; voted upon by legislature and signed by governor.
- Not part of operative law but courts may use:
  - To interpret operative law.
  - In a constitutional analysis.
  - To reach conclusions about common law.
- Intent sections have benefits and risks.

What is legislative history?

Task Force on Tax Preference Reform

- Sequential drafts
- Bill analyses and bill reports
- Oral and written testimony in committee
- Fiscal notes and other executive material
- Floor debate
- "Official" legislative history
  - Budget notes
- Veto message (governor acts in legislative capacity)
- Other

What does all this mean for today's discussion?

Task Force on Tax Preference Reform

- In construing a statute, courts strive to implement legislative intent and will use available tools.
- If policymakers create declarations of intended outcomes, the courts and others may consider these declarations to be legislative history.
- In crafting a declaration requirement, policymakers need to consider the possibility of judicial and other uses.

Should tax preference legislation include a declaration of intended outcomes?

Task Force on Tax Preference Reform

- Evidence of intended outcomes may be useful in policy analysis of tax preference legislation.
- If policymakers want new tax preference legislation (or its legislative history) to include a declaration of intended outcomes or similar kind of statement:
  - Procedurally, what form should this requirement take?
  - Substantively, what should the requirement require?

What method should be used to establish the requirement?

Task Force on Tax Preference Reform

- Some non-exhaustive possibilities:
- Constitution (addressing legislative and/or executive procedures).
- Statute (addressing legislative and/or executive procedures).
- Executive order or policy (addressing executive procedures).
- Legislative procedural rule (addressing legislative process).
- Legislative policy (chair, leadership, etc.).

What should the requirement actually require?

Task Force on Tax Preference Reform

- Some non-exhaustive possibilities:
- Declaration section in bill.
- Executive review process.
- Statement in legislative history.
- Colloquies.
- Sponsor statement in bill file.
- Other?

Resources

Task Force on Tax Preference Reform

Publications and Presentation Materials

Marlin J. Appelwick, *Law School for Legislators: Statutory Construction: Be Careful What You Write* (2007) (unpublished presentation on file with JLARC) (judicial statutory interpretation).

William Bridges & Aldo Melchiori, *Fumbling in the Ashcans* (2008)(unpublished presentation on file with JLARC) (judicial use of legislative history).

Kristen L. Fraser, *Washington Legislative History: How to Find It, How Courts Use It* (1999) (unpublished presentation on file with JLARC) (sources of legislative history) .

Lisa M. Jackson, *Explore Legislative History with the King*, XXV The Legislative Lawyer (2010) (available at http://www.ncsl.org/default.aspx?TabId=20374)

National Conference of State Legislatures, *Inside the Legislative Process* (2010) (available at http://www.ncsl.org/default.aspx?tabid=13506)

Philip A. Talmadge, *A New Approach to Statutory Interpretation in Washington*, 25. Seattle U. L. Rev. 179 (2001) (proposing hierarchy of legislative history).

Joe Panesko, *Selected Maxims of Statutory Construction* (2008) (unpublished presentation on file with JLARC).

Arthur C. Wang, *Legislative History in Washington*, 7 U. Puget Sound L. Rev. 571 (1984) (sources of legislative history).

Selected Authorities:

Legislative Intent and Statutory construction: *Segaline v. L&I*, __ Wn.2d __ (2010) (using intent section to construe "person"); *Tobin v. L&I*, __Wn.2d __ (2010) (structural interaction; apparent intent to codify and limit court decision); *State v. Cooper*, 156 Wn.2d 475 (2006) (intent statement about caregivers did not limit plain meaning of "person" in operative text); *State v. Glas*, 147 Wn.2d 410 (2002) (despite evident intent, text of statute did not accomplish apparent legislative objective).

Process of law-making: *Brown v. Owen*, 165 Wn.2d 706 (2009) (legislative discretion over rules and parliamentary procedure); *Farm Bureau v. Gregoire*, 168 Wn.2d 284 (2007) (some justices questioned use of statute to restrict law-making power); *ATU v. State* , 142 Wn.2d 183 (rejecting statutory "extra-constitutional" requirements for validity of legislation); AGO 2001 No. 9 (validity of legislative rules).

Timing of Legislative Changes to the Tax Code:

- Effective Dates,
- Expiration Dates, &
- Conditions to Qualify

Effective Dates

Default Effective Date

Default Rule: if there is no express effective date, the bill takes effect 90 days after the end of session.

Purposes of an Effective Date

- Set the effective date before the 90 days (emergency clause).
- Set the effective date at the beginning of a tax reporting period (month, quarter, fiscal year, calendar year).
- Delay the effective date to provide sufficient time for implementation.
- Delay the tax change until future periods.

Effective Date Examples

- *This act takes effect July 1, 2010.*
- *Sections 204 through 207 of this act take effect July 1, 2011.*

Expiration Dates

Purposes of an Expiration Date

- Policy or fiscal considerations: to limit the duration of an increased tax; to provide tax relief for a limited period; and other policy ends.
- To keep the tax code more simple (to merge double amendments, to automatically remove obsolete provisions).

Expiration Dates vs. Sunset Clauses

Sunset Clause: The sunset process is not the same as a termination or an expiration; rather, it is a process under chapter 43.131 RCW which involves a review by the Joint Legislative Audit and Review Committee and is intended to terminate an agency or program in a given year and repeal the underlying statutes in the next year.

Expiration Date Examples

- *This act expires December 31, 2020.*
- *This section expires June 30, 2013.*

Establishing Conditions

Purposes for Setting Conditions to Qualify for Tax Preferences

- To create a precondition that must be met before a tax preference takes effect.
- To remove the benefit of a tax preference if a later condition does or does not occur.

Purpose of Null and Void Clauses

- To nullify a bill if funding to support the bill is not provided.
- "Null and void" clauses have appeared in other contexts. However, the use such clauses in non-budget contexts have been to establish requirements based on external factors and are best expressed as preconditions required for legislation to take effect.

Precondition Examples

By a date certain, taxpayer must take action for a bill to take effect or to qualify, such as:

- Sign a memorandum of understanding to site new firm in Washington;
- Hire new employees;
- Begin construction; or
- Invest a set amount of money in a project.

Post-Hoc Examples

By a date certain, taxpayer may to claim the tax preference only if certain conditions continue to be met, such as:

- Maintaining a number of employees;
- Filing an annual survey or report; or
- Using a structure (built with tax preferences) for certain types of manufacturing or other activity.