SENATE BILL REPORT
SB 5216

As of January 31, 2022

Title: An act relating to additional transparency and accountability for tax preferences.

Brief Description: Concerning additional transparency and accountability for tax preferences.

Sponsors: Senators Carlyle, Conway, Hasegawa, Hunt, Nguyen and Wilson, C..

Brief History:
Committee Activity: Ways & Means: 2/01/22.

Brief Summary of Bill

- Establishes new tax preference data collection requirements for the Department of Revenue (DOR).
- Authorizes public disclosure of certain state tax information for nonprofit organizations, governmental entities, and tax preference recipients.
- Requires the Joint Legislative Audit and Review Committee Review to evaluate the senior citizen and disabled persons property tax relief program and the research and development tax incentives.
- Authorizes legislators to request additional information on fiscal notes for tax preferences.
- Requires any new tax preference for economic development that applies to a limited number of taxpayers to include a provision requiring the repayment of any tax savings if the specified employment or wage standards contained in a tax preference performance statement are not met.
- Increases the report frequency and establishes new requirements for the tax exemption study submitted to the Legislature by DOR.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Alia Kennedy (786-7405)

Background: Tax Preference Performance Requirements. State law provides a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Washington has over 700 tax preferences, including a variety of sales and use tax exemptions.

Legislation that establishes or expands a tax preference must include a tax preference performance statement that identifies the public policy objective of the preference, as well as specific metrics the Joint Legislative Audit and Review Committee (JLARC) can use to review the effectiveness of the preference. Tax preferences must be reviewed by JLARC at least once every ten years, unless state statute requires otherwise. The following tax preferences are specifically omitted from any review schedule developed by the Citizens Commission on Performance Measurement of Tax Preferences (Citizen's Commission):

- any tax preferences required by constitutional law;
- sales and use tax exemptions for machinery and equipment for manufacturing, research and development, or testing;
- small business credit for the business and occupation (B&O) tax;
- sales and use tax exemptions for food and prescription drugs;
- property tax relief for retired persons and property tax valuations based on current use; and
- any tax preference that is a critical part of the structure of the tax system.

All new tax preferences automatically expire after ten years unless an alternative expiration date is provided or the tax preferences is exempted from expiration.

Disclosure of Tax Information. Returns and tax information are confidential. Neither the Department of Revenue (DOR) nor any other person may disclose any return or tax information, unless expressly authorized to do so in statute.

Tax Exemption Report. DOR must submit a report to the Legislature every four years, prior to the start of the legislative session, that lists the amount of reduced state and local tax revenue for each tax preference. The last tax exemption report was submitted to the Legislature in 2020.

Summary of Bill: Tax Preference Data Collection. A taxpayer required to file a return with DOR to report B&O or public utility taxes (PUT) must separately report the amount of any tax deduction on such return.

DOR must establish reporting codes to identify selected business tax incentives.

Selected business tax incentives includes the following tax preferences, if DOR determines that all or a majority of the taxpayers entitled or likely to claim the tax preference are businesses:

- deductions and credits for the B&O tax and PUT;
- sales and use tax exemptions and credits; and
- preferential business and occupation tax rates.

A tax preferences is not considered a selected business tax incentive if it:

- was enacted as part of the Revenue Act of 1935;
- ensures compliance with the state or federal constitution;
- eliminates multiple taxation of the same activity, transaction, or income;
- requires taxpayers to file an annual report with DOR; or
- is obsolete or redundant.

Reporting codes for selected business tax incentives must be established by January 1, 2023. DOR may also establish reporting codes to identify any other tax preferences reported to DOR on a return, as required by state law.

DOR must provide a list of all selected business incentives and must endeavor to keep the rule up-to-date.

<u>Public Disclosure of Certain State Tax Information.</u> DOR may disclose the following information:

- the amount of any tax preference claimed by a taxpayer filing an annual tax preference report or any new tax preference subject to tax preference performance statement requirements; and
- the return or tax information of any taxpayer that is a local governmental entity or nonprofit organization.

<u>Joint Legislative Audit and Review Committee Review of the Senior Citizen Property Tax Relief Program and Research and Development Incentives.</u> The senior citizen property tax relief program and the research and development tax incentives are removed from the list of tax preferences that do not require review by JLARC at least once every ten years.

<u>Legislators to Request Additional Information on Fiscal Notes for Tax Incentives.</u> A legislator may request that the fiscal note of any legislative proposal creating a new tax preference designated as an economic development incentive must include information regarding existing tax preferences currently available to taxpayers who would qualify for the new tax preference. The information, to the extent practicable, must include a brief description of any such existing tax preference and its total annual and biennial fiscal impact. If an existing tax preference's approximate fiscal impact is unknown, it must be noted in the fiscal note for the new tax preference.

<u>Clawback Provisions in Economic Development Tax Preferences Targeting a Small</u>

Number of Taxpayers. If the legislative purpose of a new tax preference is to improve industry competitiveness or to create or retain jobs, and the fiscal note for the new tax preference indicates that at least 90 percent of the benefit of the tax preference will accrue to ten or fewer taxpayers, then the new tax preference must include provisions requiring taxpayers using the tax preference to pay back the amount of the tax savings from the preference if the employment or wage standards specified in the tax preference performance statement are not met.

Department of Revenue Tax Exemption Report. Beginning in 2025, DOR must submit a tax exemption report to the Legislature every two years, rather than every four years.

The January 2026 report must include the following information:

- the estimated effective tax rate for each industry, including an estimate for each industry of employment levels, major taxes paid per employee within each industry, and the industry's average wage;
- state general fund collections as a percentage of state gross domestic product and state personal income;
- a summary of the tax preference transparency and accountability requirements; and
- JLARC's recommendation for the tax preference, along with the Citizen's Commission recommendation, for the most recent analysis of the tax preference, if a review has been completed.

Appropriation: None.

Fiscal Note: Requested on January 13, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.