Minutes of the Joint Legislative Oversight Committee
April 19, 2021
Room EW42, Capitol, Boise, Idaho

Cochair Representative Ilana Rubel called the meeting to order at 2:15 p.m. Attending the meeting were Senators Mark Harris (cochair), Dave Lent, Michelle Stennett, David Nelson, Representatives Caroline Nilsson Troy, Paul Amador, and Steve Berch. Also present were Rakesh Mohan, director, and other staff from the Office of Performance Evaluations (OPE). Audience members included the following:

Representatives Bruce Skaug, Tony Wisniewski, and Julie Yamamoto.

Approval of minutes from March 16, 2021

Senator Nelson moved to approve the minutes from March 16th, 2021. Senator Lent seconded the motion, and it passed by voice vote.

Report Presentation: *Designing a Review of Tax Preferences*

Rakesh Mohan explained that the report was released two weeks ago with JLOC approval. He introduced Ryan Langrill and Amanda Bartlett, principal evaluators, to present the evaluation findings.

Ryan began by thanking the Division of Financial Management, the Tax Commission, the Department of Insurance, the Legislative Services Office's Budget and Policy Division, the Pew Charitable Trusts, and Washington's Joint Legislative Audit and Review Committee (JLARC).

Ryan explained that each year billions of dollars in tax preferences go unreviewed by the Legislature, prompting a request to examine the potential of designing a systematic review of these preferences. Managing tax policy is a legislative responsibility. Legislative attempts to understand tax preferences have been cyclical, including a 2007 tax exemptions committee and a 2015 tax working group. The lack of policy change following these efforts led to a concern among some stakeholders and legislators that future attempts to examine tax preferences would be ineffective.

Ryan said that the evaluation had two main goals: to summarize information already collected by various state agencies on tax preferences and to develop a checklist for the Legislature to consider should it decide to pursue a systematic review of tax preferences.

Ryan defined and described tax preferences in Idaho. Idaho collects $7 billion of tax revenue through income, property, and sales taxes. The income tax accounts for $2.16 billion of revenue and has 42 tax preferences, estimated to be $660 million in 2020. The property tax accounts for about $2.04 billion in revenue and has 44 tax preferences. Just 15 property tax preferences have their assessed value reported to the Tax Commission. These 15 tax preferences have an estimated value of $38.2 billion in untaxed property. The sales tax accounts for about $2.09 billion in revenue and has 80 preferences. The estimated value of exempt goods, buyers, and sellers is $800 million, and the estimated value of exempt services is $1.65 billion.

Ryan caveated these estimates by explaining that there are a lot of unknowns about preferences in Idaho. Idaho's tax base is not well-defined, making it difficult to determine which policies are tax preferences. There are also limitations in the ability to estimate revenue impacts from tax preferences. The value of some preferences is not reported at all. Many preference estimates are based on old values that have been adjusted for with a growth factor, which does not account for changes in the use of a preference. Some preferences are outdated or do not have adequate data tracking measures, making it difficult to understand the purpose of an exemption and whether it is meeting legislative intent. The Legislature also has little information on whether a preference is reaching its intended beneficiaries.

Ryan said that even though Idaho does not know a lot about tax preferences, these gaps in knowledge are common in many states. He explained that although some states systematically review tax preferences, no state has a complete understanding of the potential outcomes and impacts of tax preferences. Idaho's current gaps in knowledge are not the result of any particular policy decision.

Representative Troy asked Ryan to share some examples of property tax preferences that were not reported to the Tax Commission. He responded that there are dozens of statutory entities exempt from property tax, but the Legislature does not know much about the impact of these preferences since some exempt entities may be no longer be active. He described some of the untaxed entities listed in OPE's supplemental report.

Representative Rubel asked if the digital exemption Ryan referred to was the cloud computing exemption from 2014. Ryan confirmed and explained that the exemption referred to any digital media where the permanent ownership right is not transferred. Representative Rubel asked whether the value of exempt software had been estimated. Ryan responded that he did not believe so.

Representative Berch commented that the report is not meant to pass judgement on the value of any tax preferences, but instead to point out the gaps in our understanding about them. Ryan confirmed Representative Berch's comment.

Amanda Bartlett began by stating that it is up to the Legislature to decide if the current information regarding tax preferences is sufficient for policymaking. The Legislature could continue to use their available tools. For example, the Legislature could use currently available descriptive data, expand the Tax Commission's reporting capacity, ask legislative staff or agencies for targeted analysis on an ad-hoc basis, and create interim committees to examine tax policy. However, some stakeholders raised concerns that an ad-hoc examination of tax preferences may be viewed as more political than a systematic review.

Amanda explained that OPE developed a checklist for the Legislature to consider should it wish to develop a systematic review of tax preferences. Thirty-four states have a systematic review of tax preferences. OPE focused on Idaho's neighboring states and Indiana, which was identified as having a robust review process. OPE examined statute, interviewed staff involved with reviews in other states, and surveyed stakeholders in Idaho.

Amanda described the resulting checklist with four questions the Legislature could begin with if it chooses to pursue a review. First, what is the motivation? Amanda explained the importance of the Legislature driving a review process and clearly identifying its goals. Second, how will the review inform policy? A review process should be useful. Other states report review findings to germane committees, incorporate sunset clauses, and build performance measures into policy.

Third, what is the scope? Amanda explained that a review process should clearly stipulate which preferences should be reviewed, the frequency of a review, and questions the review should answer. Fourth, what resources will be dedicated? Amanda said that a review should delegate staff, agency responsibility, access to information, and consider elements to be set in statute. Appendix E of the report includes examples of statute from other states.

Representative Berch commented that as a cosponsor of the project, he is thrilled with the report. He continued that the current process of as-needed reviews creates political issues, and therefore a systematic review would make a lot of sense.

Representative Berch motioned to keep the project open and have the cochairs appoint a working group to consider recommendations for the Legislature to establish a tax preference review process. Representative Rubel seconded the motion, and it passed by voice vote.

JLOC members discussed the potential makeup of a JLOC subcommittee, its interaction with other committees related to tax policy, and history of JLOC subcommittees. Rakesh noted that in his 18 years as director of OPE, JLOC has never had a subcommittee. Sometimes JLOC members will take it upon themselves to pursue an interim committee or bill introduction through the regular legislative process.

Representative Rubel asked for unanimous consent for Representative Troy to change her vote to no, unanimous consent was given.

Senator Lent motioned that Representative Berch come to the next JLOC meeting with a defined structure, outcomes, and costs prior to proceeding with the new subcommittee. Cochair Harris seconded the motion, and the motion passed by voice vote.

Other committee business

JLOC members and Rakesh discussed an information request from the House Business Committee.

Rakesh thanked the committee and said that a discussion of the open follow-up evaluations could be had if the committee would like to meet again before the end of the session.

Cochair Rubel thanked OPE for their work.

The meeting adjourned at 3:00 p.m.

Upon reviewing rules governing JLOC, Rakesh informed the committee via email dated 4/20/2021 that JLOC may only appoint a subcommittee to monitor "agency action" on report recommendations. OPE did not make recommendations for any agency in Designing a Review of Tax Preferences. The evaluation recommended that the Legislature consider certain elements should they decide to pursue a systematic review of tax preferences. Therefore, rules do not permit the establishment of a JLOC subcommittee in this situation.