Mitigation Advisory Committee Meeting Minutes
December 12, 2007

Attendees:
Gary Alexander, Thurston County
Dean Carlson, Senate Ways & Means
Kevin Fuhrer, City of Tukwila
Sheila Gall, Association of Washington Cities
Robert Goehring, City of Kent
Jim Justin, Association of Washington Cities
Neil Kruse, City of Kirkland
Danielle Larson, City of Tacoma
Glen Lee, City of Seattle
Lucy Liu, City of Bellevue
Julie Murray, Washington State Association of Counties
Rick Peterson, House Finance
Jeff Ristau, Community Transit
Iwen Wang, City of Federal Way

Department of Revenue Staff: Lorrie Brown, Russ Brubaker, Matthew Bryan, Kim Davis, Don Gutmann, Tim Jennrich, Tiffany Johnson, Rebecca Johnston, Diane Mielke, James Petit, Valerie Torres, Mary Welsh

Announcements

The next meeting will be held on January 10, 2008, from 10 a.m. to 2 p.m. in the fourth floor Executive conference room, Capitol Plaza Building.

DOR will go through all of the templates, make them more readable and understandable, and send them to the committee members for feedback. The goal is to have them ready by the January 10, 2008, meeting.

Lorrie Brown announced that she has accepted a position with the Office of Financial Management effective January 1, 2008. She will continue to be on the Advisory Committee in an advisory role rather than as a staff member.

Russ Brubaker announced that the National Streamlined Governing Board passed an amendment for alternate sourcing on an origin basis. The amendment does not take effect until five states adopt it. DOR will produce a document to explain what the Board has done and where that leaves us and will get stakeholder feedback. The stakeholder group would be business associations that have supported streamlined, local government, and the association representatives for the cities and counties.

Julie Murray requested that another document be provided later that explains how this amendment affects the different kinds of products.

Discussion

Tim Jennrich discussed when PFDs would be able to get determinations from the Department of Revenue. He needs to discuss this issue further with executive management to see if there are any ambiguities in the law that we should be reading more broadly than we are now. He'll have an answer in about two weeks.

Don Gutmann developed a timeline showing FY 2008 as the comparison period instead of the base period and FY 2009 as the destination year.

Lorrie Brown – The June 30 date reflects discussion from the last meeting about having two more months of data.

Don used the example of XYZ Furniture to present four options for calculating mitigation. Option 1 is to use the rate at the end of FY 2008, Option 2 is to use the actual rate changes on the effective date, Option 3 is to use the rate at the end of FY 2009, and Option 4 is to use a weighted average. A fifth option that isn't on the handout is to use the rate that was effective on July 1, 2007, which was the effective date of the new sourcing rules, during FY 2008 and going forward forever.

Julie Murray – Can you explain Option 4 where you said the weighted average?

Don Gutmann –It is what the rate would be going forward.

Julie Murray – The rate at the first day of the pre-sourcing comparison?

Lorrie Brown – One of the tenets of mitigation that was agreed upon was that FY 2009 would be the snapshot in time that mitigation would be based on.

Gary Alexander – Was a growth factor used in the fiscal note?

Lorrie Brown – Yes.

Julie Murray – Is there even any room for discussion in terms of options? There is that period of uncertainty with what is going on in your jurisdiction. Once you have the information on how your tax base has changed, you can make decisions. My argument was if we are using the changes in the tax base we should likewise look at the change in rates. We should also factor in the base and rates and close shop at the end of 2009. Do you feel the statute has a specific course of action?

Lorrie Brown – No – that's why we have options.

Julie Murray – Do you think the statute dictates one of these options?

Don Gutmann– There wasn't total agreement around the table so we do not have a definitive answer to that.

Lorrie Brown – Let us know if you have other options.

Julie Murray – I don't think the statute allows Option 5. In a lot of cases it references specifically the end of the fiscal year. I would like to stick with 1, 2, 3, and 4.

Lorrie Brown – What do people think about taking Option 5 off the list? What about further discussion of the four on the page?

Julie Murray – It is a question of looking at your timeline – are the rates in FY 2009 at the beginning, the end, or something in the middle and those are shown in the options. After FY 2009 no changes – life is done for mitigation.

Jim Justin – Does everyone agree with that?

Don Gutmann– We ignore anything that happens after FY 2009.

Julie Murray – My preference is really Option 3. On one hand I kind of like Option 2 because you're getting partial credit, it is cleaner to do it at the end of the year. That's the rate and then we are done. It is rate and base for the four quarters.

Don Gutmann– We could do Options 2, 3, or 4 – it wouldn't be a problem for us.

Iwen Wang – I think Option 3 is good.

Jeff Ristau – Are there sufficient funds in the mitigation funds?

Jim Justin – We want the right formula and hopefully we will get the money to pay for that formula.

Robert Goehring – The city of Kent supports Option 3.

Jim Justin – Glen, do you agree?

Glen Lee – Yes. The weighted average thing is clever, but the rate is the rate. I see the weighted average as an arbitrary adjustment.

Lucy Liu – Option 3 makes sense to me as well.

Jim Justin – What do Rick and Dean think?

Rick Peterson – The annual loss in 2009 would include the rate change. Using the 1.1 rate going forward falls in the range of making an adjustment. You take into account the rate change in 2009. The law talks a lot about consulting with this committee.

Julie Murray – Greg and I wrote it and we are talking about 2009. We make that snapshot at the end of 2009 and say that's where we are done.

Rick Peterson – Does that mean you take into account the rate change in 2009?

Julie Murray – Yes.

Dean Carlson – To me it seems like the snapshot is July 1, 2008. You're comparing pre-sourcing and post-sourcing and that mark is July 1, 2008. A rate change sometime in FY 2009 does not have anything to do with destination sourcing.

Iwen Wang – But the impact occurs.

Dean Carlson – The impact takes place July 1, 2008. Compare the previous twelve months to post twelve months as of July 1, 2008.

Julie Murray – We do expect that FY 2008 is different and we are trying to measure against FY 2008. We said we would try to account for the changes in 2009 because we are trying to compare the revenue in FY 2009 to the revenue in FY 2008. If we are going to look at the changes in the base, then why aren't we going to look at the changes in the rate?

Dean Carlson – It seems to me that Option 1 is the one.

Jeff Ristau – You're inflating the revenue that is not affected by a rate change.

Julie Murray – If we say the end of FY 2008 all of our discussions on annexations would be different. This annexation occurred – let's try to look at the revenue as if it hadn't occurred to compare apples to apples. We shouldn't overcompensate people if an annexation results and they have less of a loss. That's why we were trying to factor in the changes in 2009, so we are saying you are getting the mitigation that you deserve.

Lorrie Brown – The way I look at it is that you are supposed to be mitigated for what happens in FY 2009. It is supposed to make you whole. 2008 is there because it is part of the methodology, so it is kind of incidental. That's what we had in mind. I don't know if that makes it easier or not.

Russ Brubaker – Will we accept annexations in 2009 but not accept rate changes?

Neil Kruse – You will never be able to compare apples to apples when you move from one year to another because there are too many other things going on. We had 100 percent and now we have 80 percent.

Don Gutmann– There could be a lot more noise besides mitigation. Most of the people at the table agree that we are going to keep the rate consistent during FY 2009 and the rate at the end of FY 2009 is what we use going forward.

Lorrie Brown – Vote – Option 3.

Rick Peterson – The rate changes should be considered. The question of using FY 2009 in the future goes beyond. It is more of the weighted average option out into the future. The implication of consulting with the committee means that there is some leeway.

Russ Brubaker – Would you say that Option 3 is within the bounds of the committee?

Gary Alexander – I thought we were trying to establish a point in time. We should absolutely take into account rates and changes. Do I believe we should allow all of the adjustments? The number is going to get bigger as a result of this. It is a question of raising the overall impact of mitigation. So I am not convinced that 2009 should be included. I agree with Rick that the law is pretty explicit about giving this committee a lot of latitude.

Lorrie Brown – The difference between what you and Dean are saying compared to the others is that you are looking at a point in time and the rest are looking at a span of time.

Julie Murray – If you based it on the first day, you would capture about half.

Gary Alexander – We should take into account the changes that take place during FY 2008 – I am less enamored with taking into account the changes in FY 2009.

Kevin Fuhrer – There should be a real emphasis on the actual instead of estimating. In order to make DOR’s job easier, the year to year would make sense. Weighted averages take away from simplicity. We are going to need training and outreach and it is going to take a while, so that takes me back to Option 3.

Jim Justin – Mitigation in our minds is the change of rate and base. When our group met, they said what did they lose? 2009 is important to us – what did they lose? It’s mitigating that.

Lorrie Brown – We will capture the majority and minority opinions.

Glen Lee – It strikes me that we can change some of these rules afterwards. If six counties made rate changes in FY 2009, maybe we can review the issue. I would like to move forward with Option 3.

Lorrie Brown – Is there a possibility of revising it?

Dean Carlson – It just shows evidence that that is possible. When we were doing the legislation I was thinking that you would take the 12 months before and 12 months after. You don’t just take a snapshot point in time. You mitigate the actual loss. It makes sense that if you went to Option 3, you would get that.

Lorrie Brown – The majority opinion is that you prefer Option 3 and we will revisit it at the end of FY 2009.

Lorrie Brown – Voluntary Sellers – Issue 09-02 – Instead of saying the committee did not decide on a recommendation, I should say that the committee recommends that we do as many as possible. Some of the ideas suggested at the last meeting are:

(1) Use the actual data as it comes in.
(2) Use data on new firms as they sign up.
Number (3) deals with other firms that are not reporting under the new SSTP account but are rolling the money into their regular accounts. By the time that the numbers are set in stone we would have an estimate of what these firms are bringing in. The firms in the sample would be Washington firms, so it would be a Washington-specific growth rate.
(4) We would need to collect some data from the voluntary sellers.
(5) Use to check numbers 3 and 4 to see if they are reasonable.
(6) Review this process after a number of years.

Did I capture your recommendations appropriately?

Iwen Wang – I can't remember if we talked about potential informational returns from these firms to be as accurate as possible. When firms haven't registered or are multi-channel, it will be even harder to determine the voluntary seller revenue. We could ask the firms to provide us with a breakdown of Internet and store sales. We believe most firms will track the data. The question is whether they would give us the data.

Lorrie Brown – Are you suggesting that we send out informational returns that are voluntary?

Julie Murray – Did we agree to use the sample of firms for the growth rate? I want people to feel comfortable doing a sample. Are we talking about the multi-channel firms or all firms?

Lorrie Brown – I think what we want to capture are Washington remote sales. If we look at a sample of multi-channel sellers we will have the same problem. We need pure remote sales into Washington State for the sample.

Julie Murray – Firms that are primarily online sellers?

Lorrie Brown – Remote sellers – yes.

Kevin Fuhrer – Using ESD data would be helpful here as well.

Julie Murray – The sample is a combination of the remote sellers' information that is adjusted to reflect the economic demographics. There could be an adjustment up or down. What would those adjustments be against the statewide data if you are trying to make it jurisdictional?

Lorrie Brown – We should also reflect in here that we may not know exactly how we are going to do this until we get some data from remote sellers.

Julie Murray – Be sure to add that in so we remember four months from now.

Iwen Wang – We need to discuss how the sample firms are determined and how you get the data from the sample firms.

Lorrie Brown – Issue 06-01a

Don Gutmann– We have the shape file for the first three months of FY 2008 so we are going to start looking at this.

Lorrie Brown – Issue 06-01b

Iwen Wang – Make "later" more clear.

Don Gutmann– Issue 04-01 – Firms closed during CY 2006 are for firms that are likely to make deliveries. This is compared to the taxable income in all NAICS. There are 19 industry groupings that we identified that would likely do deliveries. A proposed solution would be to look at the top 100 firms in taxable retail sales and make sure they are true closures. On top of that, we will look at the firms that exceed 1 percent of any jurisdiction's taxable retail sales. That will add 200 more to the list. We will do that for both 2008 and 2009.

Lucy Liu – Are you still looking for cities to help you find out if firms are truly closures? Would DOR be able to share the list of firms?

Don Gutmann– We can only share with cities that have an information sharing agreement with DOR. I can show you the firms in Bellevue but not the whole list. Timing – we would have to think about when we would need the information from the cities. We can bring it up at the January 10, 2008, meeting. We are proposing that we look at the firms that closed in 2009 during the summer of 2009. They wouldn't be included in 2009 until after the true-up.

Robert Goehring – Would it be the top 100 firms for each NAIC?

Don Gutmann– No – the top 100 firms overall.

Julie Murray – When they are really closed, will they be taken out of the data?

Don Gutmann– They have to be in existence for all four quarters.

Jeff Ristau – The concern is taking out a firm that didn't really close.

Don Gutmann– A large firm that didn't really close.

Lorrie Brown – Does everyone agree that if a jurisdiction tells us during the quarter by quarter period, we can add the data in?

Don Gutmann– Issue 01-01 – these are usually small firms and we zero out the activity for that reporting period. The adjustments could be for multiple past periods. We propose to do the same thing for this process.

Neil Kruse – If a large firm reported incorrectly, that could skew the data. We need to discuss whether to include large firms.

Don Gutmann– I will investigate more and get back to you.

Iwen Wang – This will not reflect the report for the wrong jurisdiction?

Don Gutmann– I'm not sure – there are more factors going on.

Neil Kruse – It needs to be on a case by case basis.

Julie Murray – Maybe we could use the same threshold and see if it works.

Lucy Liu – I have a question from the cities – is there a reason why the Department doesn't have firms amend their past returns?

Rebecca Johnston – We will allow a bad debt. We put a deduction in the current period. If there is an accounting error, we will ask the firm to go back and reflect it in the proper period.

Jim Petit – If we are talking about moving from one location to another, it probably would initially have been in there anyway.

Valerie Torres – Issue 03-02 – If we find firms with locational changes we are asking them to submit an amended return which fixes the location. The bigger question is whether we can even find them. Those people have a large number of locational changes because they had some kind of conversation with the DOR which was not related to streamlined. Or they were firms that do Internet sales now and are outside of Washington and ship into Washington. They are reporting it correctly now and it depends on where the person buys the merchandise, so it didn't have anything to do with streamlined.

Don Gutmann– We looked at July and August 2007 compared to July and August 2006. We looked at the 50 firms that had the most changes in location codes.

Valerie Torres – We looked at the top 250 firms. Many of these businesses were more stable. The change in location codes wasn't as great. None had contact with the Department but almost half were because they had started Internet sales or they opened a new store or stores. We are proposing that we continue to review the accounts and do more analysis when we have more data. We will make adjustments within the six-month time period that we have to correct and adjust the distributions. We may find some of them after July 1, 2008, so we will do the analysis again.

Kevin Fuhrer – Bottom line is that DOR will review these and try to check them in the distribution, but it is not easy to know if this is an early implementer and some are early implementers for other reasons.

Don Gutmann– The next time we will look is after January 1. Tiffany Johnson is the DOR contact.

Lorrie Brown – Issue 05-02 – We would do the calculations and fix the payments for the June 2010 payment. What happens the two quarters before when we are cleaning up the data? Mitigation is supposed to reflect FY 2009 and is not supposed to reflect those two quarters, so they are in limbo. We will take the four quarterly payments in FY 2009, sum them up, and divide by four.

Iwen Wang – You will have a long time in terms of compliance, so if you do this they might be understating because some firms are late to comply.

Lorrie Brown – We are not quite sure how to deal with that.

Julie Murray – An average of the four quarters is okay.

Iwen Wang – You should keep the temporary period for the whole six quarters.

Lorrie Brown – For the two quarters in limbo, do you do a quarter-by-quarter comparison? We will do what we can to roll in the late filers before the amount is fixed.

Julie Murray – If you have a huge retailer who took until the last quarter to figure it out, it would be adjusted. I see it being an issue with some large firms that come in late in the game. There is a two-month data gap. We should not look at only six months of their data.

Lorrie Brown – We will roll the two limbo periods into the recommendation.

We believe we have gone through the whole list of thorny issues.

At the January meeting we will look at your recommendations and start looking at the resources that they would take. We will discuss them when we come back in January. If there are resource issues, we would like you to prioritize in case we don’t have the resources. We will polish up the templates and finalize them. We will be ready to pick things up after session and start the programming.

Julie Murray – The one resource item that is related but not specifically is when mitigation happens, how many resources will you add to answer questions from cities and counties? I think you need to have somebody available to answer questions. That is equally important as any of these individual things.

Lorrie Brown – We will look at future adjustments and communication issues after Legislature is over. After streamlined goes into effect we want to know the resources that we will need.

Julie Murray – There will be work that is data driven and we can't help you with that.

Don Gutmann– We are already discussing that.

Minutes Submitted By
Diane Mielke