Mitigation Advisory Committee Meeting Minutes
November 20, 2007

Attendees:
Gary Alexander, Thurston County
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
Julie Murray, Washington State Association of Counties
Gary Prince, King County Department of Transportation
Jim Schmidt, Office of Financial Management
Jim Turpie, Community Transit
Iwen Wang, City of Federal Way

Department of Revenue Staff: Lorrie Brown, Matthew Bryan, Kim Davis, Miki Gearhart, Don Gutmann, Tim Jennrich, Tiffany Johnson, Rebecca Johnston, Rick Manugian, Diane Mielke, James Petit, Greg Potegal

Homework from the Last Meetings

1. Annual taxpayers by location code

   Extrapolate the annuals out to represent a year based on seasonal patterns. When we get better data next year, analyze whether we need to do another extrapolation.

   Issue 01-03 is finalized.

2. Closed businesses by location code – Don Gutmann will have for the November 28 meeting.

3. Early filers – Don Gutmann is sharing the results with TAA and will have this information at the December 12 meeting.

4. PFDs – Tim Jennrich said the bill states that the measurement period is the first fiscal year. PFDs can change rates as often as they need to – there is no limitation.

Julie Murray – Should include in Department's request bill regarding streamlined. Will discuss with L&P about what to do.

Adjustment Issues

Iwen Wang – Make sure the data is as clean as possible in the first year. Not clear if mitigation funds can be taken away from a jurisdiction. Concern is to correct the data but not necessarily the distribution.

Lorrie Brown – The adjustment would be made from the next quarter.

Robert Goehring – Issue 02-06 – what is the timeframe?

Lorrie Brown – Mitigation reflects the activity during July 1, 2008, to June 30, 2009, which is the first year. Each quarter will be calculated and the amount will be set after the first year.

Jim Turpie – Concern whether we are treating the fifth quarter differently than the others.

Kim Davis – Adjustments can be made until mitigation is set, so it could be a year or 18 months until we decide we have enough information to set the mitigation amount. It may go beyond June 30, 2009.

Iwen Wang – The bill says no sooner than December 2009.

Kim Davis – If we wait five quarters it would be March. There would be some consistency with other budgets.

Robert Goehring – How is DOR going to fix the early implementers and taxpayers filing amended returns?

Lorrie Brown – Early filers and late changers will be discussed in the December meeting.

Voluntary Compliance

Lorrie Brown – There are a number of issues about voluntary sellers. Issue 09-01 deals with the calculation of the voluntary compliance offset. In mitigation you start with the net loss that a jurisdiction will experience and offset that loss by the money coming in from the voluntary sellers. Voluntary sellers sign up through the SSTA to voluntarily collect tax in all of the states. When they sign, we know who they are. Other states that are currently members and are getting the voluntary collections have found that some of the businesses are not reporting through the SSTA. They are rolling the revenues into their existing accounts. About 75 percent of their new money is not being earmarked. Multi-channel sellers want to merge storefront and remote sales together.

Gary Prince – Have you addressed merger issues such as if one business buys another business or if one voluntary complier buys another voluntary complier?

Lorrie Brown – We are dealing with those kinds of merger issues. With the base data we might be taking care of it for the voluntary sellers, though. It will be taken care of when we take care of the predecessors/successors issue.

Julie Murray – We won't be able to get data to parse out the storefront sales from the dot-com sales. It may overmitigate some, but some will be undermitigated as well.

Robert Goehring – Kent feels that the data needs to be localized as much as possible – that would be favorable to looking at national trends.

Julie Murray – As a state we should at least require the voluntary sellers who are using their current tax IDs to tell us which sales are remote sales into Washington.

Lorrie Brown – It is maybe not so important to parse out the delivered sales versus the remote sales, but we need to look at the data carefully to see if there are new storefronts. We should ask at the national level if they could capture more information to help us with our estimates. We are talking about the first year when we are setting the amount. We might be able to play around with the data from a small amount of sellers.

Is this okay with everybody? Yes.

Jim Turpie – I am comfortable with the approach, but let us know if there are any surprises.

Lorrie Brown – Issue 09-02 – voluntary sellers' adjustment. How to determine the adjustment for the years after the first year. It is supposed to change as the voluntary sellers change but, because we have this problem with the multi-channel sellers, it will be very difficult to track what is happening with the voluntary sellers. There are other things happening as you move further away from the first year. There is not a good way to measure the voluntary sellers' adjustment. Other possible solutions were derived with Julie Murray, Jim Justin, and Sheila Gall.

Julie Murray –Is the intention to try to do the same analysis for new voluntary sellers? Are we going to try to look at the before and after for these new sellers?

Gary Alexander – Is it the intention whether or not we are phasing out the mitigation over some time period? What do we use for the base?

Lorrie Brown – The part that is based on the net loss is supposed to mitigate what happened at that period in time. It phases out because the adjustment will grow little by little over time.

Gary Alexander – Does the base that is determined in year one remain as the base until more sellers come in and increase the base?

Julie Murray – It is a credibility issue whether we are offsetting the sellers appropriately.

Lorrie Brown – Solution 1 – use a growth rate that would reflect growth in national remote sales or, if there are concerns that the growth rate might be too high, use a growth rate that would be conservatively low like Washington taxable retail sales and then revisit that growth rate.

Solution 2 – Take a sample of the remote sellers that we have good data for and use their growth rate.

Julie Murray – Try to apply a new growth rate the year after they enter.

Lorrie Brown – Use growth for a sample of firms and then add the new firms.

Julie Murray – We only need to add the growth rate to the ones reporting under one number. My preference is that we always use the actual when we know it – no growth needs to be attached. I don't want to try to use a higher growth rate rather than look at the new people. Take a sample of the people who are registered under streamlined or look at a firm level, looking at the people with big dollars. Estimate the growth in the codes that we know are for remote sales. There needs to be some threshold.

Lorrie Brown – If it is a big retailer who has a fair number of stores, the stores might be in the same areas where it has high remote sales.

Julie Murray – Ask the businesses for their growth number. At the firm level for those with high sales.

Lorrie Brown - Solution 3 – That's pretty iffy. Ask if we can somehow use our actual data to determine the sales year by year. We can explore it but don't think we can do it. Their B&O wouldn't match up with their retail sales tax. We are pursuing that and we are not very hopeful.

Julie Murray – What if a jurisdiction doesn't increase its growth rate over the years?

Gary Alexander – Why not put together a market basket for each jurisdiction and continue to measure those market baskets to get the growth rate? Don't want to see jurisdictions get additional resources that they are not entitled to. Or jurisdictions not get enough mitigation because their growth rate hasn't grown.

Julie Murray – For all those locations that don't have a problem with a storefront, why not look at the actual dollars that they sell into Washington? The assumption of growth needs to apply only to those who have a storefront.

Lorrie Brown – Track the businesses that we are pretty sure are just remote sales.

Kim Davis – How does this work in year 15 or 16?

Jim Turpie – How many years will mitigation continue?

Lorrie Brown – About 15 years.

Jim Justin – I definitely don't like national growth rates and I don't like local growth rates – we should use actual growth rates.

Jim Turpie – For the initial voluntary sellers, isn't that new income to those jurisdictions? Are we making an assumption that they would get it anyway? It should be part of the phasing out of mitigation.

Lorrie Brown – The intention is to capture any new growth for jurisdictions to grow out of mitigation.

Julie Murray – Look at the people who are registered and are reporting under the agreement.

Lorrie Brown – Would only think that they are newly collecting on remote sales if we see a big increase in location codes.

Iwen Wang – For the larger jurisdictions some growth rate will be okay as long as we monitor the growth rate and apply it to the base year. When you have some with special cases like Tukwila, we are adjusting only the base. New voluntary sellers will be added to the base and they will be monitored. That should give us pretty high accountability.

Julie Murray – If we look at voluntary sales at one point in time and the growth doesn't match the returns, how do you parse out the difference between the growth rate and the sales?

Robert Goehring – Kent would be very nervous about looking at national demographics. Use a national or state trend as long as you can true it up to reality.

Jim Turpie – We need to have a built-in plan if people aren't comfortable with national trends. We have a plan to figure out the trend and be able to say we are no longer looking at this in detail, we are going to use the trend. We can't expect you to calculate this forever, there needs to be some sort of a sunset.

Jim Justin – I wouldn't want a sunset but rather a review.

Jim Turpie – If revenues are growing at a certain rate, the numbers become insignificant at some point.

Jim Justin – This will continue to be important to our people.

Julie Murray – Add this to the JLARC review.

Lorrie Brown – There are a number of ways to increase the estimate. We will sit down and lay out what is doable and what is not.

Julie Murray – Give us an estimate on the labor that is required to do these estimates. We shouldn't always be making the decision based on the same amount of resources. We don't want the jurisdictions to say we cut corners because we didn't have the resources.

Lorrie Brown – I am hearing that people like the idea of using the actual data as much as possible. It would add to the credibility. We can use actual data where we know they are remote sales. For firms that are left, we might have to apply a statewide growth rate. We will write up these ideas and bring them to a future meeting.

Issue 09-03 was part of the last conversation.

Issue 09-07 – what we decide on the last issue will pertain to this issue, too.

Issue 04-05 – How voluntary sellers affect the base. This is the flip side of the issue with multi-channel sellers. If we compare FY 2008 to FY 2009, we will be looking for changes in their selling patterns but we won't know if the change is from deliveries or from remote sales. In a way it doesn't matter because there will be an adjustment either way.

Issue 04 -04 – the voluntary sellers that sign on early because we are now an associate state. They are in our deliverables for FY 2008 and will be in our deliverables for FY 2009. We need to be careful not to include them in the base to determine net losses. It won't be a problem because we will have a list of these businesses and we will pull them out of the FY 2008 data.

Issue 09-05 – What if Quill is overturned?

There is a hope that if there is enough momentum with streamlined, Quill would be overturned and all remote sellers would remit sales tax. All that new money coming in isn't supposed to be included in the offset.

Greg Potegal – What would become part of the adjustment? It would be anybody registered under streamlined who wasn't previously registered with the state of Washington.

Lorrie Brown – We will lay out what it is and put it off until Quill is overturned.

Jim Turpie – If legislation is going to be changed for other reasons, have this issue on the back burner. If there is a recommendation from the Department, it should be included in the offset.

Lorrie Brown – Issue 09-06 – take off the list because it is redundant, already covered.

Kim Davis – Issue 07-01 – Some jurisdictions qualify for 6050 funds and will also get mitigation funds – there is nothing in law that says you can't get both.

Jim Justin – It is not our intent to use mitigation to create another means for cities and counties to qualify for 6050 funds.

Julie Murray – Assuming that the legislation will be fixed. This group can’t do anything other than say we don’t want double-dipping.