

Mitigation Advisory Committee Meeting Minutes
April 23, 2008

Attendees:

Gary Alexander, Thurston County
Dean Carlson, Senate Ways & Means
Sheila Gall, Association of Washington Cities
Jim Justin, Association of Washington Cities
Lucy Liu, City of Bellevue
Julie Murray, Washington State Association of Counties
Bob Nachlinger, City of Kent
Rick Peterson, House Finance Committee
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 - Matthew Bryan, Kim Davis, Miki Gearhart, Don Gutmann, Tiffany Johnson, Rebecca Johnston, Rick Manugian, James Petit, Greg Potegal, Valerie Torres, Mary Welsh

Streamlined mitigation road show - Miki Gearhart obtained volunteers to provide feedback on the handouts - Lucy Liu, Sheila Gall, Bob Nachlinger, Jim Justin, and Julie Murray.

Greg Potegal report - The SST Governing Board adopted the destination-based sourcing alternative. Five states need to adopt it for any to become full members of the SSUTA. So far, only Utah has adopted the amendment. Tennessee and Ohio may adopt and Texas is interested.

The Legislature passed a bill to allow florists an exemption from destination-based sourcing. This exemption is allowed within the national provisions.

HB 3126 provided that registration under the national SSUTA does not create a requirement to pay a city's B&O tax or to obtain a city's business license.

Washington submitted an amendment at the national meeting to allow origin-based sourcing for direct mail printers. The amendment received 11 votes out of 14 needed. The Department is optimistic that the amendment will eventually pass.

Bob Nachlinger - Will the NAICS used for determining mitigation be adjusted for changes made regarding who must change to destination-based sourcing (e.g. if there is a change for direct mail)?

Miki Gearhart - It would seem that if there is a legislative change, those types of things should be brought up at the annual meeting (or other meeting as needed) of the Mitigation Advisory Committee.

Glossary - Julie Murray suggested that the “pre-destination” year be termed “the last year of origin-based sourcing” and that all references be consistent. Gary Prince suggested that “nexus” be in the glossary.

Feedback on Intro to Mitigation handout:

Gary Prince - Tax rates on the bottom of page 11 were not applied properly. Tax due should be ten times smaller.

Julie Murray - Asked for a table of the industries that will change to destination-based sourcing, those that already have changed, and those that will remain with origin-based sourcing. She also asked for a list of guiding mitigation statutes.

Lucy Liu - How do we “identify mitigation?” What information will be received with the distributions?

New and revised issue papers - Revised issue papers were handed out for NAICS, Annual Filers, Tax Rate Changes and New Taxes, and Pre-destination Period.

Miki and Kim asked the Committee to review the documents, make sure their recommendations were captured correctly, and give feedback on any areas where the explanation of the issue wasn't clear.

Julie mentioned that the old issue papers on adjustments were very difficult to read and references to retroactive and prospective were confusing because you didn't know if the issue paper was talking about the underlying data or the mitigation payments.

Miki and Kim said that they are trying out a new format for adjustments. They showed the Committee one issue paper and chart as an example of an issue paper that is in progress. The Committee provided feedback on the chart. Miki and Kim said they would continue to work on the new format.

Jim Justin and Julie Murray - Do not put DOR resource needs on the issue papers. Put them all in a single Excel file so we can sum them up and look at them in one place.

Julie Murray - Need to clearly define what the “true-up period” is.

What are the issue papers used for?

Answer - They are informational to build the process and keep a history of decisions on how to handle certain issues. Also, these papers can be used as handouts to answer local government questions about why their mitigation payments don't match what they thought they would get.

Negatives:

Jim Turpie - Zero out negatives unless the jurisdiction identifies a potential correction.

Don Gutmann - In most cases the jurisdiction would have to contact the taxpayer to make the correction.

Julie Murray - Maybe the threshold could be raised to 5 percent.

Jim Turpie - Doesn't think the effort of investigating negatives is worth it.

Rick Peterson - Suggests DOR forward to each jurisdiction a list of businesses with negative locations over 1 percent of the jurisdiction's sales tax and let the jurisdiction decide whether to investigate.

Bob Nachlinger - Is leaning toward zeroing out the negatives.

Jim Justin - Is nervous about sending information to jurisdictions. The city or county still has the option to appeal the mitigation.

Dean Carlson - Thinks in FY 2009 jurisdictions may have a lot of negatives due to a possible increase in corrections for location coding as a result of the change to destination-based sourcing.

Don Gutmann - Summarizes the recommendation of the Committee:

- Zero out negatives less than or equal to 5 percent of the jurisdiction's total retail sales for the reporting period being analyzed.
- DOR calls jurisdictions (by phone) with negatives greater than 5 percent to see if they want to investigate whether any adjustment can be made.
- Lists of businesses with negatives greater than 5 percent are provided to the jurisdictions. The list should be given along with a phone call so a jurisdiction knows what the list is for and what it would need to do with the list, if anything.
- Do this once a year.

Bob Nachlinger - Wants DOR to confirm that correcting the underlying data will not impact local tax distributions after the six-month window established in their contracts with DOR. Kim said we can include this statement in the general information documents regarding adjustments.

Julie Murray - Wants a write-up on what your check covers:

- When
- What
- September 2009 is a cleanup quarter for past errors in distribution.
- Will there be a separate check?

Data for PFDs - Greg presented issue papers on PFDs and possible solutions for how DOR will handle data for PFDs in the pre-destination year when the taxes are imposed during a partial year. The Committee decided to adjust the data using the taxable sales for the entire year since the boundaries coincide with the city and county for the Kent PFD and Lewis County PFD.

Voluntary Compliance - Greg explained that the voluntary compliance offset is from actual dollars collected which are based on the current rates of taxes being collected by the voluntary sellers. In cases where a calculation must be made, the current tax rates will be used to best reflect actual dollars received.

Early Filers - The top 50 firms with changes in the number of locations filed between January 2007 and January 2008 and the top 250 firms in terms of taxable retail sales were examined. Of the 116 taxpayers researched, none had switched to destination-based sourcing early. A breakdown was provided of the reasons taxpayers gave for the change in the number of locations.

There was a question of why there were only 116 taxpayers and not at least 200 (with duplication between the two lists). Valerie will investigate and get back to the Committee.

Lewis County and natural disasters:

Julie Murray - Expects to see extraordinary deliveries into the county as a result of the December 2007 storm. Lewis County may show up as a winner in FY 2009 instead of a negatively impacted jurisdiction as previously thought because of decreased deliveries from store fronts with location codes in Lewis County in FY 2008 as a result of the storm.

Don Gutmann - We will need more than one year to determine a “normal” year sales pattern after destination sourcing is in effect.

Gary Alexander - Mentioned he was very concerned about big delivery impacts from major big box store and chain store deliveries when they have multiple locations. What happens to the Lewis County jurisdictions in FY 2009? Will we suspend mitigation payments (in Julie’s example)? Answer - Yes. Based on what has been decided by the Committee for other types of adjustments, if it is determined that Lewis County is not a negatively impacted jurisdiction in 2009.

Would mitigation payments going forward be increased to make up for the loss in 2009? If the county brings the anomaly forward for an adjustment to the underlying data and the adjustment results in a determination that the county is negatively impacted in subsequent years, mitigation distributions will be provided in the subsequent years. However, mitigation distributions going forward will not make up for mitigation amounts lost in the previous year when the county was determined not to be a negatively impacted county. Mitigation payments will only reflect adjustments to the underlying data going forward.

Gary also argued that we will see a percentage decrease for chain stores located in Lewis County for FY 2008. A possible example is Home Depot. Thurston County and other surrounding cities (Tumwater, Olympia, and Kelso) may be impacted because of deliveries to Lewis County.

Discussion took place about whether a natural disaster should be handled any differently than any other large economic impact, such as a large plant closure. Some mentioned that the impacts of retail sales happen in both cases. Others mentioned natural and unnatural spikes.

More discussion continued around how difficult it would be to determine physical boundaries for areas impacted. Although Lewis County had floods, other counties had wind damage that was severe, and King County had flood damage too. How would the Committee determine what to consider as an exception to the decisions already made by the Committee about adjustments? How would a natural disaster be defined?

Rick Peterson mentioned that trying to define a natural disaster was very difficult during this last legislative session too.

No one seemed to think a decision had to be made right away, that it would be something that a jurisdiction would bring to the Committee if it ended up being an issue. Thoughts were to wait and see what the data showed.

Don Gutmann - Looked at firms with deliveries in Lewis County in the last half of Calendar Year 2007. Only an auto dealer appeared to have been impacted.

We will use backward-looking data to adjust FY 2008 and will retroactively adjust FY 2009 using a forward-looking perspective.

Jim Justin - Asked DOR to look at data before and after the flood.

The question came up about what if we just treated the flood like we treat all other economic impacts and not take it into consideration.

Jim Justin - It would seem that DOR and the Committee have a duty to hear a case and consider it. The Legislature would probably expect the same.

DOR will look at the data from January 2008–June 2008 when it is available.

Jim Turpie - Asked if it would be a good idea to look at the top 50 large building supply stores in the surrounding counties.

Mary said that the data wouldn't be too useful because it is mixed with impacts from the credit crisis.

Kim – DOR will continue to work on an issue paper for natural disasters.

Format for information going to local governments with mitigation distributions - Don asked folks to think about the kind of format they would like. Don presented a format that was used during the sourcing study. He explained that the handout is only being presented as an example of the format and has no other impact on DOR's process for calculating mitigation.

Local Contacts for DOR - Another discussion on contacts will take place, but for the interim DOR should ask Sheila Gall at AWC to get the best contact in a location if we have questions about an annexation.

Homework

For DOR:

1. Draft mitigation road show documents will be sent out to the subcommittee over the next week to get prepared for the May 9 road show in Spokane.
2. Paper on the information that will be included with the checks. Will the true-up be a separate check? Will the check be itemized to fund type?
3. Remove “resources” from the issue papers and consolidate into one paper.
4. Look at January-June data for Lewis County and surrounding areas to detect the effects of flooding.
5. DOR will talk with Sheila from AWC about key contacts for annexations.
6. Create some kind of document about how mitigation payments can be used. Are they tied to the taxes that were lost?
7. Valerie will get back with why there were only 116 taxpayers looked at as potential early filers and not 200 or more.

For the Committee:

1. Think some more about key contacts for DOR to use.
2. Think about the format for documentation with mitigation payments.

Possible agenda items for next meeting and future meetings:

Tools for destination-based sourcing changes

Packets for local governments to give to businesses and demo on where to get information on the DOR web site

Timelines and true-up periods – clarify timing and when it will impact mitigation checks, etc.

Adjustment issue papers

More revised issue papers

Format for documentation with mitigation distributions

Update on early filers (when more data is ready)

Road show handouts

More on Lewis County when more data is available