

Mitigation Advisory Committee Meeting Minutes  
June 25, 2008

Attendees:

Lorrie Brown, Office of Financial Management  
Sheila Gall, Association of Washington Cities  
Jim Justin, Association of Washington Cities  
Neil Kruse, City of Kirkland  
Julie Murray, Washington State Association of Counties  
Glen Lee, City of Seattle  
Bob Nachlinger, City of Kent  
Gary Prince, King County Department of Transportation  
Jim Turpie, Community Transit  
Iwen Wang, City of Renton

Department of Revenue Staff - Matthew Bryan, Kim Davis, Miki Gearhart, Don Gutmann, Joyce Fouts, Jim Harden, Tim Jennrich, Tiffany Johnson, Rick Manugian, Greg Potegal, Valerie Torres, Cheryl Wack, Mary Welsh

**Follow-up from last meeting**

Possible businesses that are early to implement destination sourcing

Valerie Torres presented a handout entitled "Possible Early Filer Summary." DOR staff reviewed taxpayers with changes in the number of locations. The Department examined (1) the top 50 taxpayers in terms of the number of location changes and (2) the top 250 taxpayers in terms of taxable retail sales. Of the 300 accounts that were reviewed, 116 had more than one additional location, 118 had no change, 42 had a negative change in the number of locations, 19 had only one additional location, and 5 were the same on both lists.

Staff are checking to see if the taxpayers are early changers to destination-based reporting.

Annexation information

Don Gutmann stated staff looked at annexations that occurred in 2008. The analysis has been done and staff have identified the firms. There are a number of annexations that the Department does not know about because cities send annexation information to OFM but not to DOR.

Miki Gearhart: DOR hopes to do some education to let the cities know that they should send DOR the annexation shape files, etc.

Don Gutmann: We propose to send a letter asking the cities to confirm the annexations and ask if there were other annexations that we need to know about. Maybe AWC can help DOR contact the cities.

Jim Justin: Why can't OFM automatically send information to DOR? The cities send the information to Theresa Lowe in OFM.

Lorrie Brown will check with OFM staff to see if it is possible to share the annexation information with DOR.

Don Gutmann: I propose that we send out the letters and ask about the information we have presently and ask if there is information that we don't know about.

Miki Gearhart: Send any information on annexations and the shape files to Tiffany Johnson in Taxpayer Account Administration.

### **Mitigation road show documents and feedback from presentations**

#### Glossary

Miki Gearhart: This a first draft of the glossary. We will discuss true-up periods in August.

Gary Prince: Add remote sellers.

Jim Justin: Are you really going to try to define nexus?

Greg Potegal: Sales tax nexus.

Iwen Wang: Include the RCW cite for each definition that has one.

Bob Nachlinger: Define mitigation payments.

Lorrie Brown: Add multi-channel sellers.

Julie Murray: You might want to say sales tax rate that is in effect before July 1, 2008, applies to the sourcing impacts.

Sheila Gall: Indicate that it is sales tax and not use tax.

Bob Nachlinger: Since PFDs have a different mitigation calculation, can you add that?

Miki Gearhart: If you think of more terms to add to the glossary, e-mail them to us so we can include them.

Lorrie Brown: Define the origin period and the destination period.

#### Gain/loss calculations

Julie Murray: The one thing that is coming up is that people forget that a jurisdiction may have one business with a loss but three other businesses with gains. When the Department calculates the impacts, the gains may offset the loss. Can you do a slide for the slide show that recognizes that the three businesses with gains will be included when a jurisdiction's net loss is calculated? People gloss over that. I tell my people that you will have gains that may be higher for some businesses but may net out to zero.

Lorrie Brown: Emphasize that you do this calculation for each business. I think you need a new word for “net.”

Miki Gearhart: It is an aggregate, but we don’t want to confuse people by changing terms.

Kim Davis: Sheila, I know you want something that would show the businesses pictorially. Do you have some idea of what it would look like?

Sheila Gall: Take the concept shown in Example 1 and do it with the numbers attached to it – the percentages and the gains. Have a one-page document that shows more than one business and more than one jurisdiction for the example on the handout on “Impact on Businesses and Tax Reporting.”

Lorrie Brown: I will get back to the Department with ideas on terminology for “net” change.

Correction to the slide on the bottom of page 24:

Voluntary compliance revenue (for multi-channel sellers) collections will be *estimated* for the voluntary sellers that do not report new revenue collections separately. The voluntary compliance revenue collections for each business will be calculated by comparing its FY 2008 sales patterns (by location) to its FY 2009 sales patterns (by location).

#### Voluntary compliance revenue offset

Kim Davis: DOR will issue a separate registration number for each business which will allow us to track its voluntary compliance revenues. We have heard from other states that some businesses may merge their revenues together, so we will not be able to track the businesses that do that. During Fiscal Year 2009 for all businesses who file under their separate registration numbers, actual voluntary compliance collections will be used.

Jim Justin: Have other states used separate registration numbers?

Julie Murray: Question for TAA: Will you put the streamlined registration number in and match it with the local reporting? So you will use the streamlined number for multi-channel sellers?

Miki Gearhart: We are giving them a separate registration number.

Lorrie Brown: Do you get the list right on July 1?

Don Gutmann: Yes.

Kim Davis: In our presentation we tell people that we will get the list but we cannot share it with anyone.

Julie Murray: On the slide “Determining Mitigation Amounts,” we need to put a term between “its” and “loss.” Put net loss or aggregate loss – something needs to be in there to show it is the gains and losses.

Miki Gearhart: We need to remove use tax from that slide.

Don Gutmann: Make it really clear that it is aggregate across all firms.

Julie Murray: When you are doing the presentation, will you label the slides Sheet 1, Sheet 2, etc.? Because people get ahead and then can’t figure out what slide they should be on.

The predominant questions that people have asked at your road shows – are they all over the map or are people asking similar questions?

Kim Davis: It is really dependent on the group.

Miki Gearhart: The counties were very concerned that they are not getting the right amount of tax. We showed them that this will improve everyone’s business in Washington to help them code correctly. The other question is, “How is this going to benefit me?”

Kim Davis: There were also a lot of questions on what they are going to receive.

### **DOR web pages (mitigation and local government)**

Miki Gearhart: People asked for a toolbox of documents. From our new local government web page, you can go to our mitigation web page. We set up a local government web site subcommittee, and you’re welcome to be on the web site. Send me an e-mail if you want to join.

We have these documents on the mitigation web page, but we don’t have the issue papers yet. We are trying to revise them so everyone can understand them. Last time we had a request to create a document to explain why we have the issue papers and how we are going to use them.

### **Requests for information to be provided before mitigation is determined**

Miki Gearhart: These questions have come up at our mitigation road shows.

Will DOR provide more detailed information than usual with local tax distributions before the end of December?

Miki Gearhart: We are saying no. They will get their regular tax distributions like they normally do. We are not giving them anything else at this time.

Beginning September, can locals get a list of all of the out-of-state businesses that report voluntary compliance revenue in their local jurisdictions?

Miki Gearhart: We are saying no – streamlined prohibits us from doing that.

Can DOR provide guidance on how to forecast revenue based on September data?

Miki Gearhart: On the road show before the budget workshops we will do something with information to help forecast the revenues.

Mary Welsh: We are going to add information on what you will get in September. You are going to want to compare the September list of businesses and amounts with September of the previous year. We want to prepare a list of how to use those tables and how not to use those tables. You can make mistakes when you compare businesses.

Jim Justin: Could you include NAICS and address?

Don Gutmann: Let's wait because there are some problems with what we are doing currently.

Mary Welsh: We are telling people not to rely on the 2002 data.

Julie Murray: I have been telling my people that for the first six months your sales tax will be all over the place. People are learning over time to report correctly. What would we do if we send the first check out and there is a major reporting error by a business and now they're a loser - will we go back and correct that?

Don Gutmann: No – we are only going forward.

Tiffany Johnson: If there is a major reporting error and we can't figure it out internally, we will ask the business about it and we will adjust it.

Julie Murray: We need to figure out a way to factor in the element of adjustments in their general sales tax. That is part of the reason for the true-up period because all of this stuff affects your local sales period. Don't spend this money because there might be an adjustment and it will change.

Glen Lee: For planning purposes, it is extremely difficult. We have to put money aside to deal with the uncertainty of what's happening. It is driving us crazy at this point.

Jim Justin: Can you share with the group what the business community is saying? What they are concerned about? They were very vocal yesterday. They need more help.

Rick Manugian: Our feedback from the business advisory group is that the larger businesses tend to be more up to stride on this. The smaller businesses are busy with their day-to-day business and don't pay attention. This represents a very small percentage of the revenue. Whatever has to be true-up will be small. Another thing is that the tools that we put together are good and businesses are using them. We have a QuickBooks download that businesses can use. One sticking point is online shopping. Since it is an electronic transaction, there is no way to find out where it is. We see a process that will take a lot of time to get everyone up to speed. We are doing lots of daily communication with businesses who are calling. There is an education process going on.

Julie Murray: Is there going to be any organized effort by the Department to look at the 2,000 businesses in the first month and see what the change is? We will have better information for the mitigation payments.

Rick Manugian: We are pulling off the larger businesses and checking to see how they're doing.

Julie Murray: My biggest request is to have that done.

Jim Justin: Do we have three CSPs?

Rick Manugian: There are four now.

Julie Murray: Put out a sheet that tells finance people that there will be changes.

Miki Gearhart: Can we put that into the document that Mary is doing?

Julie Murray: Yes, but it could also be a separate document that I could send out to my finance people in August or September.

Bob Nachlinger: For local governments to partner on this, what is happening on that horizontal information sharing agreement?

Miki Gearhart: We have a subcommittee for this.

Bob Nachlinger: But destination-based sourcing is starting in five days.

Miki Gearhart: It will not be done by then. You cannot expect that on July 1 we will share information horizontally.

Bob Nachlinger: To true up the base period is what I am after and if it takes us too long to make changes, it is a moot point.

Miki Gearhart: We don't have all the details yet.

Bob Nachlinger: You're thinking it is an administrative change and not a legislative change?

Miki Gearhart: We don't think it is a legislative change.

Rick Manugian: In terms of expectations and time tables, Washington faces a larger challenge because we rely so heavily on sales taxes. What we are undertaking is a lot more ambitious than other states so it may take us a lot longer to get there, but when we get there, it will be a lot better system.

Bob Nachlinger: We could help you.

Iwen Wang: What can we expect to see in our September distribution data? Attached with each record we will know where their business is located so we can somewhat tell if it is a local business?

Don Gutmann: You might see a firm that you never saw before.

**What terminology will be used to identify each mitigation payment?**

Miki Gearhart: An additional line will be added that will say “streamlined mitigation.”

Don Gutmann: The source code is 05F.

Sheila Gall: It is technically state shared. The state treasurer’s office wasn’t sure yet whether it would be distributing the mitigation funds.

Neil Kruse: It is going to come in as tax and it will be state shared.

**What does my mitigation payment cover?**

Matthew Bryan: This illustrates what activity is covered in the first check and when the distribution is made. The actual distributions are two months late.

Julie Murray: I would say distributions for sales tax activity occurring in July are not distributed until September. I think you should flip it.

Any adjustments that are made up to September 15 are included in the distribution, but corrections will continue after that.

Lorrie Brown: On the October line you might want to say “other July adjustments made here.”

Julie Murray: This first check covers sales made in Third Quarter, 2008.

Bob Nachlinger: September 15 could be the July return and June through July corrections made.

Miki Gearhart: I think you’re saying to clarify the timing of additional adjustments.

Matthew Bryan: The second side of the handout is the period of time when we will pick up the annual filers.

Don Gutmann: We will treat annuals differently because the annuals will have six months of pre-sourcing and six months of sourcing, so we will have the quarterlies and monthlies in the data.

## **Who receives mitigation money?**

Miki Gearhart: The zoo tax, public safety tax, and criminal justice tax are imposed by the county so the county will be mitigated for them.

Iwen Wang: Are you saying we need to talk to our county to make sure we get our money?

Julie Murray: To me there are two problems here. The first is the cities will feel that they should get the money. The second is the county is a gainer and then they get that piece and become a loser.

Mary Welsh: The two taxes won't be netted out against each other. They will be mitigated separately.

Jim Justin: How is the money distributed?

Miki Gearhart: Criminal justice tax is distributed through the state treasurer. Grant County is the only county doing its own distribution for the public safety tax.

Julie Murray: If there is a loss, the total loss is going to accrue to the county and it doesn't become a factor for the cities at all.

Jim Justin: If it is a gain it would be distributed through the state treasurer.

Julie Murray: Are we looking at that net gain/net loss by each tax?

Jim Justin: To each tax.

Julie Murray: The cities will ask the county for their piece of the mitigation.

Miki Gearhart: We are measuring the net gain on each tax. The city doesn't impose the tax so we are not mitigating anything.

Jim Justin: Why wouldn't it be distributed by the state treasurer?

Miki Gearhart: Because it is not a tax – it is mitigation money.

Jim Justin: My strong preference is not to go to Speaker Chopp and say, "I need another SST bill."

Julie Murray: I am fine with putting out the mitigation money because I think it is an expectation to pass it to the cities.

Jim Justin: I would like the Department to look really hard at why you can't distribute the money through the state treasurer.

Miki Gearhart: If you want to work out an agreement, it would be between the city, the county, and the state treasurer.

Greg Potegal: The law says the treasurer distributes it the way DOR tells it to.

Don Gutmann: Do we want to think about this and get back to the committee?

Miki Gearhart: There is a strong preference to ask the state treasurer to distribute the money.

Don Gutmann: We don't even need to ask the treasurer.

Julie Murray: I am especially concerned about the metro parks. We all need to agree.

Don Gutmann: Do we have the authority to make the distribution for them?

Miki Gearhart: We will work that out internally.

Don Gutmann: We have to do some checking to replicate what's happening now.

Kim Davis: I am hearing that you want to make it similar to what we did in the sourcing study. Is that how you want to see it?

Tim Jennrich: No -- we don't have a right to enforce how the jurisdictions use the money.

Jim Justin: How is the state auditor going to look at this?

Julie Murray: The funds are dedicated to the purpose for which the tax is collected. Mitigation was meant to be a replacement for the sales tax dollars.

If you were overcompensated, then you have to use the money in the areas that are the dedicated funds. The solution is that we just have to stick with it. If people do start using the money for general purposes, we get into trouble with the state auditor five years later.

Jim Justin: I agree that the language needs to be more proscriptive.

Iwen Wang: Will this page potentially have multiple lines?

Don Gutmann: No. There will be one line, one lump sum for mitigation.

Julie Murray: You need something that says, "This is what you need to do and this is what you will get. But if you do it wrong from the get-go, there will be no mercy."

Jim Justin: I would like it to be from the Department of Revenue. I would like something on DOR letterhead that says you need to use the money for the purposes intended.

Greg Potegal: This sounds more like something you would ask the state auditor to do rather than DOR.

Miki Gearhart: As a committee, can we ask the state auditor?

**Do the tax rates used for calculating mitigation match the tax rates imposed by ordinance?**

Kim Davis: The 1 percent administrative fee is being deducted from the distribution amount.

Miki Gearhart: We are not taking an administrative fee from the mitigation money. We are deducting an administrative fee from the distribution amount.

Kim Davis: This seems to be the correct way to do it because that is how it was done in the sourcing study.

Julie Murray: You're basically mitigating distributions. This sounds like you're saying the fee is for the service for calculating mitigation. Is the Department mitigating the tax or mitigating the distribution and you would say you are mitigating the distribution. It is the distribution which already includes the 1 percent.

Is your administrative fee included in the base? Yes.

Miki Gearhart: One percent of the zoo tax goes to CTED. It wouldn't include the portions that normally go to CTED.

Kim Davis: We will rewrite this so it doesn't sound like we are taking 1 percent from the mitigation.

Miki Gearhart: This also would follow the same rule. We are only using what they are getting in distributions.

**What kind of information do local governments receive from DOR currently and how do they receive it?**

Miki Gearhart: One hundred eighty-five cities and counties receive paper printouts through the mail.

Don Gutmann: The printouts include registration number, name of firm, address of firm, and taxable amount.

Kim Davis: Is it the UBI or the registration number?

Don Gutmann: The TRA.

Miki Gearhart: Twenty-two cities and counties get a CD through the mail; nine counties, two cities, and Skagit Transit get downloads that go through DIS. They are special files that we make for DIS to download.

Tiffany Johnson: There are 80 cities and counties who get the data through a third party, Microflex. Another third party, Thomas Carlson, takes care of 17. An estimated 33 jurisdictions don't receive anything.

**What information do local governments want provided with mitigation payments and in what format?**

Don Gutmann: There are some set parameters that we have to operate under. We cannot send confidential data directly to jurisdictions by e-mail.

Miki Gearhart: When we send out the first payment and decide what information they want, how do we get it to them?

Don Gutmann: When you get the paper you will also get a CD with the mitigation information. Or we can mail it directly to a contact in the city.

Gary Prince: Why don't you eliminate paper all together?

Sheila Gall: You might use that as an educational process to tell them that there are other ways to receive the information.

Jim Justin: What will be on the CD?

Miki Gearhart: If the treasurer does the distribution of the county taxes to the cities, do you need that breakdown as part of that information?

Jim Justin: Yes, please.

Don Gutmann: We are proposing to have the information on the handout on our web site. This will be the summary data. When we send the payment to the treasurer, this information would go to the web site shortly thereafter. We would update this each quarter.

Julie Murray: Would we be able to see every jurisdiction separately so we don't have to roll all the amounts together?

Kim Davis: We might be able to have a cover page with the information for the jurisdiction.

Mike Gearhart: Would there be an individual one for each tax?

Kim Davis: Yes.

Bob Nachlinger: I would like to see how they calculate the mitigation.

Don Gutmann: We can't do that.

Miki Gearhart: We are limited in what we can provide.

Don Gutmann: We will have a percent for each jurisdiction, and we cannot share that on a firm by firm basis. We can give you a dump of every firm in your jurisdiction.

Julie Murray: If a firm used to get 100 percent and now they are getting 45 percent -- we want to know the percentages.

Don Gutmann: I want to think about providing the percentages. I want to pass that through our disclosure officer.

Lorrie Brown: It will be a lot of work to get all the percentages.

Don Gutmann: If there are more than three location codes, it gets really complicated.

Glen Lee: We would like to know how the industry is changing, if there is a pattern so we can adjust our forecasting process. That is critical information for us.

Miki Gearhart: So you would get the information for those that are positively impacted and those that are negatively impacted.

Sheila Gall: If you say "data dump," would you do a dump of all the businesses?

Don Gutmann: Yes – it would be an Access file.

Jim Justin: So what about voluntary compliance?

Don Gutmann: We cannot individually tell you those businesses according to the streamlined agreement. We can supply a total. The only limitation is disclosure. We can't supply any tax information for less than three firms.

Julie Murray: If the majority are the multi-channel ones, who are the top ten businesses? What were your assumptions in terms of the sales growth and the remote sales? What is the factor you put in?

Miki Gearhart: You want both the actual and the estimate and the total?

Julie Murray: We want the voluntary compliance amount, the multi-channel, and the business percentages.

Sheila Gall: Would the data dump have the NAICS codes in it?

Don Gutmann: We can supply that.

Julie Murray: The NAICS should be included because not all NAICS are included in mitigation.

Lorrie Brown: The percentages for 2008 and 2009.

Don Gutmann: Both?

Julie Murray: Yes — so you can see the change.

Don Gutmann: I have at the firm level, the registration number and the gain or loss due to sourcing; and for each location and firm, the 2008 percentage and the 2009 percentage for each firm.

Lorrie Brown: Is the gain or loss in terms of taxable sales?

Don Gutmann – Yes – the gain or loss in taxable retail sales. We will have micro data and summary data.

Miki Gearhart: We will talk with TAA and other people to make sure we can give you this data.

Sheila Gall: Will this data have the same level of confidentiality that the local distributions have?

Julie Murray: Sure.

Don Gutmann: We were thinking we could share the results with the committee at the October meeting.

Miki Gearhart: At the August 20 meeting we will try to finalize as many issue papers as possible. We will hopefully get the issue papers out for review in advance.

Kim Davis: There were questions about when the next meeting will be after October.

Julie Murray: My preference is that we have a meeting a week or two after the first check is cut, so in early January. Could we have the October meeting in the first week or two near when the first distribution goes out?

Glen Lee: We can work with you to test the programs. Call me soon and we will plan that.