Streamlined Sales Tax Mitigation
Advisory Committee Meeting Minutes
July 8, 2009

Attendees:
Lorrie Brown, Office of Financial Management
Dean Carlson, Senate Ways & Means
Shawn Hunstock, City of Tukwila
Bob Jean, City of University Place
Karen Jester, City of Auburn
Jim Justin, Association of Washington Cities
Jim Katica, City of Woodinville
Danielle Larson, City of Tacoma
Lucy Liu, City of Bellevue
Scott Merriman, Association of Counties
Bob Nachlinger, City of Kent
Rick Peterson, House Finance
Jim Turpie, Community Transit

Department of Revenue Staff - Matthew Bryan, Kim Davis, Miki Gearhart, Don Gutmann, Tiffany Johnson, Diane Mielke, Kathy Oline, James Petit, Greg Potegal, Valerie Torres

Discussion on Corrections to Data

Matthew Bryan: We will be working on corrections this summer as part of the true-up process. The list in your packet shows some of the adjustments that we will make to the data.

1. Fiscal Year 2009 annexations – Some businesses change their reporting because they get annexed into the city.
2. Fiscal Year 2009 predecessors/successors – A business has to be open in the destination period and the origin period to be in the mitigation calculation.
3. Contact 200 SST voluntary sellers who have not paid any sales tax to date – We know who is registered through the SST and we know who has paid money to us. We are going to contact the businesses that have not reported any business activity to their SST account.
4. Open/closed businesses – These are chain stores that open or close a store.
5. Examine restaurant businesses – We haven't determined how we are going to do this yet. Restaurants probably don't make any deliveries. We are going to look for a way to examine this.
6. Negatives in data – We look at any negative that is more than 5 percent.

Don Gutmann: This is an issue paper that we did last year. As a committee we agreed on this last fall.

Matthew Bryan:
7. Top gainers/losers by jurisdiction – We are going to identify the businesses that have the largest effects on jurisdictions' calculations and we are going to call them.

8. Analyze NAICS which are not included in mitigation calculations – We will run some analyses and see if there are other NAICS codes that should be included.
9. Continue analysis of firms doing computer installations – This is the issue about elevators and service farms. We have taken them out, but we will examine them further to be sure we haven't too broadly eliminated the entire NAICS code.

Tiffany Johnson:
10. Early and late implementers – We are continuing to track early and late implementers.
11. Out-of-state account review – These are out-of-state businesses that don't have any physical presence here.
12. Auto dealers/boat dealers
13. Direct selling/multi-level organizations

Don Gutmann: We have a deadline to get most of these adjustments made by the end of September.

Issue Papers

Don Gutmann: These are issue papers from the last meeting. We didn't feel that we gave the committee much time to discuss these.

Valerie Torres: King County Food and Beverage – we talked about how we can and can't do the calculation for the King County Food and Beverage. The document shows how we do the gain/loss calculation normally by location, and the right side shows that the King County Food and Beverage is a total and is not broken out by location. For this calculation we are only including businesses that are doing catering. We need to identify other businesses that should be included on a business by business basis.

Jim Turpie: Is it just catering or the delivery of food?

Don Gutmann: It is delivery of food. We use catering because there is too much noise in the category.

Valerie Torres: The next issue paper discusses the issues as a result of business reviews. We looked for things that were recurring themes. There were five big ones.

Businesses with minimal deliveries – These businesses are widespread throughout the state and are reporting probably in hundreds of jurisdictions. Their deliveries are a real small percentage of their total business activity. They have large gains or losses, but they are not due to deliveries.

Out-of-state firms – We have businesses that we suspect are totally out of state, so they were destination before the change and are still destination and are therefore not affected by the change to destination-based sales tax.

Auto dealers – The issue with auto dealers is that auto sales are excluded from the change, but the parts that the dealers sell are not excluded. We cannot separate the parts sales from the auto sales.

Boat dealers – Watercraft sales are specifically excluded, but yet we still see large gains and losses. We would expect to see parts deliveries which, like auto parts sales, are included in the sales but we cannot separate the parts sales from the watercraft sales.

Direct selling/multi-level organizations – These are businesses that have distributors across the state and they do direct selling through in-home parties or sales. This should be smaller than what we are seeing. The businesses should be showing small gains or losses because they don't make many deliveries outside of their local areas.

Some of these businesses might fall in four of these five categories. They are not cut and dried, falling into only one category. For out-of-state firms we do have a way to identify them, but the businesses are not required to let us know if they change to out of state or in state. We reviewed 400 businesses. We did an initial review of 60 and about 80 percent were out of state. For the auto dealers, 33 were brought forward and when we reviewed them, 20 had no change. Nine of the businesses sold parts, and they made the change. For the boat dealers, there were 212 of them in the boat dealers NAICS. We reviewed the top 20 gainers and losers and found that many of them had large gains or losses in a single location, so they probably aren't aware that watercraft sales are exempt from the destination-based sales tax.

We have agreements with many of the direct selling businesses so the business will pay the sales tax and each distributor doesn't need to pay the sales tax. We did find that those businesses that have agreements with the Department had fewer changes in the number of locations that they reported to after destination-based sales tax. If they didn't have an agreement, we could tell very obviously that some had switched and some had not.

We would like the committee to decide what some solutions are for each group.

Businesses with minimal deliveries – Two possible solutions are to leave them in or remove them. We only find them when the jurisdictions bring them forward.

Bob Nachlinger: What is the maximum and minimum impact to a jurisdiction? Before we take them out, I would like to know what the impact would be.

Valerie Torres: When we contact the business we find that the amount should be $200 instead of $200,000. These are mostly firms like a large retail firm that does all of its sales from one jurisdiction, but now it does some sales online, so the items are being delivered.

Don Gutmann: Are we proposing that we take these out on a case-by-case basis?

Valerie Torres: Yes, but we only look at them when a jurisdiction brings them forward.

Don Gutmann: We just want the committee to confirm what we have been doing. When the jurisdiction contacts us we call the businesses, and if they don't make deliveries, we take them out.

Miki Gearhart: If you take the business out because it is a small impact to one jurisdiction, it could be a large impact to the other jurisdiction.

Valerie Torres: It could be, but it is not due to destination-based sales tax.

Don Gutmann: We want to continue what we have been doing on a case-by-case basis.

Bob Nachlinger: My concern about this approach goes back to my concern about firms being excluded. We have a distribution firm that got excluded and it was $100,000 of sales tax that we didn't get mitigated for.

Valerie Torres: That was a different issue. When we called the firm it first said they didn't do deliveries. When we called again, it said they do deliveries.

Lucy Liu: During the confirmation process you are probably asking if they do minimal deliveries. You are only proposing to take out those that do minimal deliveries.

Valerie Torres: Right.

Miki Gearhart: The decision to keep the business in or not may or may not have an impact on the previous payment and it might have an impact going forward. There is still going to be an impact – either positive or negative – and it could be large even if it is not due to the destination sourcing. Is it possible to get consensus on this if we don't know what the impact will be?

Lucy Liu: Is that any different for any other item we have decided to adjust for? We have that similar concern for every item that we have decided to adjust.

Scott Merriman: It is hard to take this document and give you any guidance because it doesn't give you any pros and cons or outline the process you are using.

Don Gutmann: This document reflects what we have been finding in our review process. We have been sending each jurisdiction a list of its businesses and asking it to review the firms and contact us if it has questions. We have been contacted by about 40 jurisdictions at this point that have asked us questions about their firms. What we have been doing up to this point is the jurisdiction calls us to look at the firm, we contact the firm and keep it in or remove it based on the information it gives us.

Scott Merriman: If it is the current practice, you should identify that in the paper so we know that it is working. How do firms gain or lose?

Don Gutmann: It is a gain or loss for each business. We do the calculation firm by firm and do it up to the jurisdiction level.

Miki Gearhart: I would agree that it makes sense to take those businesses out if they aren't an impact due to destination-based sales tax. But in the bigger scheme of things, the decisions you make are going to impact these other calculations or decisions that are made. I am not sure exactly what we are looking for. At this point it makes sense to do it this way.

Jim Turpie: This is to true up to make our annual payments, right?

Don Gutmann: Yes.

We look at the taxable retail sales for the two periods. Due to the economic situation, due to opened and closed businesses, there has been a change for that firm and it could be a large positive or a large negative. And that's all we know. If the jurisdiction questions it, that is when we call the business and get more information on the cause for the change. This is a weakness in the methodology behind the calculation. We are finding that there are other things that are happening for these businesses in the state.

Miki Gearhart: I don't think you can make this decision in isolation. It would be more useful to me to say what we are doing in current practice, what we know the other alternative is, and when we get closer to the end when these decisions are made we can go back and discuss it. I don't know if the committee can make a decision at this time.

Rick Peterson: This kind of situation, where a firm has a large gain or loss, shows up and you do mitigate it. But if you check with the firm and find out that the change is not due to destination sourcing but due to opening another business, the jurisdiction no longer gets mitigated for it. When you pull that data out, that windfall ends. The jurisdiction got a previous payment for this firm, but it won't in the future.

Valerie Torres: On the businesses that are out of state, we are looking at the top 117 businesses in addition to the businesses that are brought to our attention by the jurisdictions. Of those, 50 percent were out-of-state businesses. Because of the high amount of these that were out of state, we decided we need to fix all jurisdictions. We are reviewing them and then TAA is reviewing them.

Currently we have all the auto dealers on hold. We have not removed any of them from the calculation yet. You have another sheet of paper that shows the breakdown on these businesses. It is a breakdown of what they file on Line 25 of the Excise Tax Return. It is the multimodal tax on new and used car sales.

Don Gutmann: We can see what they are doing in addition to selling new and used cars. They could be selling parts and doing repairs.

Rick Peterson: You're getting contacted about these folks? So there are changes that are having a noticeable impact. Do you have an idea of what is causing the changes?

Valerie Torres: We found some that opened a new location and then we have some that we can't determine why their percentage is so different from last year.

Rick Peterson: There are a lot of dynamics going on in that industry right now.

Valerie Torres: When you look at these percentages you can see that most of the dollars fall between 80 and 89 percent. We looked at how the top 250 businesses break down. That tells us that if a dealership is doing 70 percent or more auto sales, they are less likely to have large gains or losses due to the sale of parts.

Don Gutmann: We are proposing that any firm with an auto dealer NAICS and if their new and used car sales represent 70 percent or more, we want to take them out. Right now all auto dealers are in the calculation. We are proposing to remove them for the next calculation and going forward. A lot of these do a lot of other things besides sell cars.

Valerie Torres: The businesses that fall in the bottom percentages are parts dealers but they are paying the multimodal tax on a percentage of their sales.

Scott Merriman: How do we deal with this right now when there is huge disruption going on with certain taxpayers in the auto industry?

Don Gutmann: We look at all the various location codes that they are reporting under and we compare them against the 2008 data. If the vast majority of activity is selling new or used cars, they should not be in the calculation. Some of these firms own different brands across many locations and that complicates the issue.

Bob Nachlinger: What is the methodology for determining opened and closed businesses?

Valerie Torres: If a firm is opening a business in a jurisdiction, usually the jurisdiction can tell us that. We take those particular locations out. A closed business works exactly the opposite. If they closed I have to take them out of the origin period. This is a specific issue for businesses that are still open somewhere in our state but they have closed some businesses.

Kim Davis: That is why Valerie mentioned that these firms could be in more than one category.

Don Gutmann: With auto dealers it could be a shift because one brand is doing better than another. If the brands are in different locations, it will show as a shift. Are you comfortable with the 70 percent cutoff for auto dealers?

Scott Merriman: Have you checked with the Auto Dealers Association to validate your assumptions with what is going on with the industry?

Lucy Liu: We are hearing from some dealerships that their service is going up.

Valerie Torres: The issue with boat dealers came up since the June payment. A jurisdiction called to let us know about it, but we had already found it. Watercraft sales were excluded from destination sales. We have reviewed some of these businesses. Our initial review found that there are dealers that do just boat sales and some do boat sales and sales of accessories. We are contacting the businesses to find out if they actually deliver parts and accessories.

Don Gutmann: We are proposing to do possible solution b – review the top businesses in terms of taxable retail sales in the Boat Dealer NAICS that reported to more than one location in the destination period. We would also review any businesses that local jurisdictions ask us to review.

Valerie Torres: A lot of times when we are assigning the NAICS code we have to determine which they are doing more of, boat sales or sales of parts and accessories.

Scott Merriman: What about the boat dealer who has a store that sells parts and accessories and another store that sells boats?

Valerie Torres: They would report all of that on one tax return and would have one NAICS code and it probably would be the Boat Dealer NAICS.

The last one on the list is direct sellers. The current process on this one is we take them out if we find that they were destination before and are destination after. We would propose to remove those that have an agreement with the Department. If they don't have an agreement, we are reviewing them to find out if their NAICS code needs to be changed. This wouldn't be an effect of destination-based sales tax.

Jim Turpie: Why would we impose it based on whether or not they have an agreement? That just complicates the issue.

James Petit: The agreement allows the business to collect the sales tax for its distributors and to report it on one tax return.

Lucy Liu: So instead of having each of the representatives reporting individually, it's all combined on the business's tax return. Can you tell who has switched to destination-based sales tax?

Valerie Torres: I can't tell who was destination before and is destination after. I can tell if they have an agreement with the Department.

Lucy Liu: Are these the more significant taxpayers in terms of impact?

James Petit: I don't think so. Some are big, but not all of them. It is a lot easier for the selling organization to pay the tax on behalf of its representatives.

Jim Turpie: My recommendation would be to change the wording to say we would review those who have agreements and take them out and then the rest of them, if they don't have an agreement, we will leave them in. Does that make sense?

Valerie Torres: That makes sense and I can change that.

Past Payment Adjustments

Don Gutmann: We briefed Russ Brubaker on this topic. He asked us to draft a question to our Attorney General's office to see if we have the statutory authority to do past payment adjustments.

Greg Potegal: We went to the AG because we didn't know if we had the authority or not. They came back and said their response was not a formal opinion. We only asked the question with respect to the payments before the annual losses are fixed. The AG said the law gives a lot of flexibility to the Department of Revenue to determine losses. The Department probably did have the authority to make changes to past periods. But if the Department chose to do that, they would have to adjust all payments that impact other jurisdictions. The AG also said that, if an adjustment would take money away from a jurisdiction that is no longer getting mitigation payments, the money would have to be repaid.

Jim Turpie: Is it only adjustments that have to do with that $184,000, or if you do one adjustment you have to do adjustments for everybody?

Greg Potegal: Yes. To the extent that it impacts other jurisdictions, there would have to be adjustments.

Scott Merriman: Is it subject to attorney-client privilege? I think it would be useful to see the discussion in order to give some guidance.

Don Gutmann: If it can be shared, it will be sent out to everybody electronically.

Scott Merriman: How are you expecting us to give you guidance on that much information?

Greg Potegal: We do have the authority to make adjustments.

Jim Justin: We could go back to the Legislature if we had to.

Scott Merriman: Is this in theory or do we have a big problem that we need to deal with?

Jim Turpie: In the last discussion we were only talking about a small number of firms.

Don Gutmann: We are talking about three firms for Kent and one for Woodinville. But those firms impact a lot of jurisdictions. We have to run it through a whole group of programs.

Jim Turpie: As a committee we had recommended that we were not going to make adjustments going backward. Then we found out we had some significant issues. This question was related to dealing with those jurisdictions. Our hope was that we could fix those two jurisdictions because they were substantial. Now you are saying you have to fix all of the jurisdictions.

Valerie Torres: The AG says you have to do the plus and the minus.

Kim Davis: You can't just fix one part of it.

Jim Turpie: What are the dollar impacts right now for the two jurisdictions?

Don Gutmann: You're talking about $184,000 for Kent and less for Woodinville.

Jim Turpie: We could set thresholds. If we set the threshold you don't have to do the rest of it.

Bob Nachlinger: I am confused because I was told that the firms that got excluded for that quarter were included in the next quarter. Why don't you have the data? If the data was corrected, even if we are not making a retroactive adjustment, you already have the change.

Don Gutmann: But we don't have it for the second quarter. If we make an adjustment for you in the second quarter we also have to make adjustments for the other jurisdictions that were impacted. If we are going to make you whole in the September payment, we will add $200,000 to your payment and you will be made whole. Along with that we will have to adjust the payment information for all the jurisdictions that were impacted by those three firms.

Jim Justin: It will all come out in the wash for the annual payment.

Scott Merriman: If an error occurred in the previous fiscal year, how do we correct it? Because we have already crossed into the next fiscal year.

Rick Peterson: The appropriation is for the biennium. It is split for the two fiscal years, but it covers the biennium.

Jim Justin: From the Department's perspective, what happens if we don't want to do what the AG's opinion says?

Greg Potegal: If someone wants to challenge that action, you will just have to challenge it. I don't know.

Don Gutmann: There was a lot of leeway in that opinion.

Jim Justin: I thought about this. I am interested in retaining the credibility of the change in the tax policy. There are little grumblings among my people.

Lorrie Brown: What would happen if we got challenged? We would just have to fix it.

Bob Jean: It seems that there is another struggle we have here. There was sort of a premise that we were in a steady state. I think that premise has shifted. Are we trying to create a steady state on top of an unsteady fix? If an auto dealer closes in one jurisdiction and disperses it into lesser concentrated areas, is that an SST issue or the economy?

Miki Gearhart: If we corrected the error with Kent and other jurisdictions were affected, they would have to pay back money from that error. There are other errors or corrections that are being made all the time. It is not a perfect calculation.

Don Gutmann: Pandora's Box has been opened. I will contact Russ about this issue.

Kathy Oline: I think the expectation that Russ has is that this group will have a recommendation on making adjustments.

Don Gutmann: We talked about the AG's opinion. We have a series of questions about the past payment adjustments. The first question is, when underlying mitigation data is adjusted, should the Department of Revenue retroactively correct previous mitigation payments? How far do we go back, or do we even go back?

Jim Justin: In the case of the discrepancies with Kent and Woodinville, didn't the cities come to you?

Don Gutmann: Yes. In both cases as soon as the detail data was available, the cities immediately contacted us.

Jim Justin: How much is too much time to give them to notify you?

Valerie Torres: They have until the last day of the first month of the following quarter, so they have about a month and a half.

Miki Gearhart: We have done some training on how to analyze the data, so up to that point some jurisdictions may not have known how to analyze the information.

Jim Justin: So 30 days is plenty of time for the jurisdictions to notify you? I guess my answer to the first one would be yes, we should correct previous periods. How many quarters should we adjust for? We should adjust for every quarter if there is a problem.

Don Gutmann: So if we have a new jurisdiction that never contacted us before and it contacts us in the fourth quarter, we can only adjust for the fourth quarter?

Jim Turpie: Aren't we saying generally we are not making adjustments retroactively?

Kim Davis: After the first quarter we had several jurisdictions that sent us information for the first quarter. So are we taking all those adjustments and making them now.

Valerie Torres: Is it a mistake that we are correcting for or is it any adjustment that is brought forward?

Bob Nachlinger: It is any adjustment that is brought to you by a jurisdiction.

Scott Merriman: Bob, in your situation where the firm was excluded, was it an error?

Bob Nachlinger: In my opinion it was an error.

Jim Turpie: I am uncomfortable with the way we are wording this – it sounds like, if someone contacts us in 30 days, we are going to go back and correct it. We need to get a handle on this. It is too much effort, too much work, too much potential for impacts to other jurisdictions.

Jim Justin: I am still not saying I want to make corrections in both directions. I am hearing that the Department hasn't had responses from very many jurisdictions. Is that correct?

Don Gutmann: We have heard from about 40 jurisdictions. We have always said any changes would be reflected in your next payment because that is what we agreed to in this committee.

If we make the threshold large enough, that will help a lot. Are we talking about 25 percent of their tax due for each quarter – would that work?

Jim Turpie: I was going to suggest $25,000 or 25 percent of your payment.

Valerie Torres: Are we talking taxable or tax due?

Don Gutmann: We are talking about tax due.

Kim Davis: When we are reviewing these businesses that we are getting from the jurisdiction, how are we going to determine that this particular one has a $25,000 or 25 percent impact?

Valerie Torres: Matt and I were talking about that. We would have to do two runs to determine that.

Don Gutmann: Why do you have to do two runs? This is after the fact. It wouldn't happen until we have been contacted by the jurisdiction. The key is what the threshold is.

Jim Turpie: It wouldn't be running the data for every one, just for the few that are brought forward. And they should have an idea of the magnitude of the impact.

Lorrie Brown: What is the end of the true-up period?

Don Gutmann: That's the next question.

Lorrie Brown: Can we wait to make this decision until the end of the true-up period? Then we would know which ones are egregiously out of whack.

Don Gutmann: Does Kent want to wait that long?

Bob Nachlinger: Aren't we allowing adjustments even after the mitigation is set?

Don Gutmann: Adjustments will be allowed only moving forward.

Lorrie Brown: When this was brought up with Kent and Woodinville we said this is a little bit different than doing it in the future.

Jim Turpie: At one point at the very beginning of these discussions we talked about some sort of panel review. Instead of trying to make rules around these specific instances, why don't we have high-impact items come in as an appeal and treat them individually rather than trying to change all the rules and change them all broadly. Why can't we deal with that through an exception process?

Miki Gearhart: We have to set precedents for the others as well, so do we go ahead and make the change for Kent and Woodinville, and why does it make sense to do that and maybe not do it for someone else?

Jim Turpie: There could be something else that comes up in the fifth or sixth quarter where you need to go back and fix it.

Lorrie Brown: I was suggesting that any going backward would be for the first four quarters only. And if we could wait until after the true-up, then we can set some sort of limit that we can live with and then stick with it.

Don Gutmann: We are in agreement that we are only talking about the quarters before the annual payments are fixed.

Jim Turpie: What happens if a mistake was made, the same thing that happened to Bob? It is less likely to happen, but if an error is made in the annual true-up based on a certain set of data that you think is right, if the error is substantial, we still need to have the ability to fix that.

Don Gutmann: How far back?

Bob Nachlinger: I would think once mitigation is set, it is set.

Lorrie Brown: After mitigation is set, it is kind of an appeal process. So it is quite a more formal process.

Miki Gearhart: What if Matthew is analyzing all the data for a jurisdiction for the last year and he finds that, if the jurisdiction had analyzed its data and had asked the Department to look at some firms, its payment would have been different? The change that Matthew finds in that past data is the same type of change that we are doing now for Kent.

Jim Turpie: I understand you're saying these things would be brought to the annual meeting and be put in the database and the changes would be made going forward.

Lorrie Brown: Why are the adjustments for Kent and Woodinville different? I am saying they are different because they happened during the learning curve of the process. That is kind of what we concluded in the last discussion – these are things that are big and that are likely not to happen again and it is not fair for Kent and Woodinville to get caught in the learning curve.

Jim Turpie: If the cities can wait that long, we wait until we have the four quarters behind us and make the adjustments as part of the review process. There is a time issue.

Scott Merriman: We are trying to do something for the future. We need to do something more formalized.

Don Gutmann: We do not want to be seen as being arbitrary in this process.

Bob Nachlinger: To me, the big issue is do we follow the advice of the AG's office and make the adjustments, both positive and negative, or do we make the adjustments only on the positive side?

Jim Justin: I think in these cases I would like to see some kind of reimbursement by jurisdictions that got overpaid. I would like to see the reimbursement at a significant level. Maybe you could come back with a couple of proposals for us.

Lorrie Brown: In the future there may only be enough money to make adjustments. You might have to take money from someone. What do you do?

Rick Peterson: The decision is going to be made by the Executive office on whether there is going to be an adjustment to pay Kent its money. The discussion here ought to be what you want to recommend. The short term issue is we have identified a couple of adjustments and we want Executive to look into making the payment. You could make that recommendation today.

Jim Justin: My initial desire was only short term. Broadly my suggestion to the committee is that we do reimburse on these special situations.

Don Gutmann: With no recalculation going backwards?

Jim Justin: That's correct. It is not like it is a multiple error that will go on. It will be fixed.

Don Gutmann: It has already been fixed.

Jim Justin: The Legislature understands the burdens on the Department of Revenue. I think we do ourselves some damage if we don't fix this.

Rick Peterson: The purpose of the legislation was to buy off the cities and counties to go along with mitigation. In terms of the mitigation, the intent was to try to make the jurisdictions whole.

Don Gutmann: We will work on the threshold and at the next meeting will discuss what the threshold would be. We will make adjustments in the quarter that the jurisdiction identifies the issue – that quarter and going forward. We have discussed 30 days that the jurisdictions have to bring the information forward for the quarters before the annual amount is fixed. If the jurisdiction identifies an issue, we will correct the data.

Kim Davis: I understand that we are talking about the short term right now.

Don Gutmann: Bob, would making the adjustment to your December payment be okay? It would be December 15.

Bob Nachlinger: September would be better, but December would be okay.

Don Gutmann: I am not confident that we will have the answer for the September payment, but we will have it for December.

Kim Davis: We are going to look at the information that has come forward from all the jurisdictions.

Don Gutmann: No, we are only going to look at Kent and Woodinville.

Jim Turpie: What have we told the jurisdictions about an appeal process if they don't agree with that?

Don Gutmann: It hasn't come up.

Lucy Liu: Once we estimate the thresholds, one option could be that you look at what was brought forward and see if any of them fall into that threshold.

Don Gutmann: The problem is not only the jurisdictions that have contacted us; it is all of the other adjustments that have been done.

Lucy Liu: You know the information that was brought up by the other jurisdictions. Do those issues come up to the threshold level?

Jim Turpie: I would use a term like material and have the jurisdiction go through an appeal process and explain why these adjustments are material to its mitigation payment. Have the jurisdiction go through some hoops to appeal it. It will be a lot more work for the Department.

Kim Davis: We did have some jurisdictions come forward and say we have a new store and we have a large gain. From an equity standpoint, if we told other jurisdictions this is only going forward, is that fair? Or do we need to notify them that we are changing our process going forward?

Lorrie Brown: There is some negativity with it, but on the other hand, does it make it any fairer if we ignore these big problems? We are not just giving the adjustment to Kent and Woodinville; we are setting some very high thresholds.

Jim Justin: Part of the homework is to look at the thresholds. Jim, I understand about the appeal process, but there has to be some consistency on how the agency addresses these issues.

Jim Turpie: Moving these to the appeal process significantly limits it because they have to put together an argument. It is not an exact science. If we advertise what the appeal process is and put a time limit on it, we tell them there is an appeal process available and you have to put together your case. If they have to come to some effort to show their case, that it is material to their mitigation payment, isn't that exact enough if you're talking about a few exceptions?

Jim Justin: Who do you appeal to?

Jim Turpie: I think we said the committee or some subset of the committee.

Miki Gearhart: There is the annual adjustment, but there is no actual appeal process.

Jim Turpie: Another option would be to write up an appeal process and publish it. Then everyone would know how to do it.

Lorrie Brown: I wonder if the smaller jurisdictions have the ability to pull things together to make a case.

Miki Gearhart: They may not have the knowledge of mitigation to do it.

Jim Turpie: If it is worth doing, they will learn about it.

Jim Justin: I would like to see what kind of thresholds they could come up with.

Lorrie Brown: Have you had cases where there are a whole handful of firms that you have made adjustments to?

Valerie Torres: Yes. But whether that adjustment is material to any one jurisdiction, we haven't looked at that.

Miki Gearhart: Clearly we think these two instances are material and it makes sense to go back and make them whole because of the adjustments that need to be made. If we acknowledge that we did it and if others have similar adjustments and they would like to be heard like Kent and Woodinville, they could use the appeal process to make their case that it is material to their mitigation payment. If they have trouble knowing how it works, we could help them or someone could analyze their information.

Don Gutmann: Are you saying that we need to send out the information to those that contact us or to everybody?

Miki Gearhart: We can send the information to the listserv.

Jim Turpie: I would suggest, if you are going to do that, just say what the appeal process is and leave it at that and let them use it. Don't bring attention to those past issues.

Lorrie Brown: So my question was, is it difficult to go back and look at the adjustments that were made and aggregate them? I would feel uncomfortable putting something out, especially if we are ignoring the information our AGs gave us.

Miki Gearhart: It is a piece of information that we have to use; it is not going against the AG opinion.

Don Gutmann: It could be a lot of work.

Kathy Oline: I think Executive would want that.

Don Gutmann: We will look into it and see what we can do and have it for the next meeting. The problem is we are looking into some adjustments that had plusses and minuses for jurisdictions all over the state.

Lorrie Brown: Can you look at the net of adjustments? If you have a before and after and look at every jurisdiction after you have made all the adjustments.

Don Gutmann: Again, we will have to look back at what we have and we will do the best we can for the next meeting.

Bob Nachlinger: How about five percent of the lost monthly sales tax payment or $10,000, whichever is less?

Don Gutmann: That's a pretty low threshold.

Lorrie Brown: If you're talking material, it is a whole different level. Yours was not material, it was egregious because it was 20 percent.

Don Gutmann: We will discuss this at the next meeting. The September payment marks a significant event. It is the last calculation we are doing that compared 2009 to 2008 – before and after the change to sourcing. When we do the December payment, what two quarters are we going to compare? Are we going to compare the first quarter of fiscal year 2010 against the first quarter of 2008?

Jim Turpie: I thought our proposal envisioned making adjustments to the annual payments in the fifth quarter. In the fifth and sixth quarters we weren't going to fix the amount and we were going to an annual basis. I didn't think we were going to do the quarters.

Don Gutmann: We are all fine with that prospect. The only qualification is that we can not make the adjustments – we can only do the adjustments once a year. So once we do that annual payment, it is fixed for the year.

December 15 is when we will be able to do the first annual impacts. We will have all four quarters of 2009 and 2008 and we can do the first impacts of the annual estimates. We are proposing that we make all the fixes, do the annual numbers, and send the information to the jurisdictions. After the session we will continue the review process, and when we get the reviews back from the cities, we will capture those and that will be for the next four quarters. We will discuss this in full at the next meeting in September.

These activities are on the timeline and in the issue paper. Review them, and if you have any questions, call Kim or me. We will discuss this in full at the next meeting.

We are going to have the corrections in place, we will calculate the annual impact, and that will be your payment for the next year starting with the September payment.

Next Meeting

Don Gutmann: The next meeting will be in September. We are talking about the week after Labor Day – probably around September 9. We will meet from 10 a.m. to 2 p.m. with a working lunch.

Minutes submitted by Diane Mielke