Streamlined Sales Tax Mitigation
Advisory Committee Meeting Minutes
October 1, 2009

Attendees:
Lorrie Brown, Office of Financial Management
Sheila Gall, Association of Washington Cities
Shawn Hunstock, City of Tukwila
Karen Jester, City of Auburn
Jim Justin, Association of Washington Cities
Jim Katica, City of Woodinville
Danielle Larson, City of Tacoma
Doug Levy, Cities of Everett, Kent, Federal Way, Renton, and Puyallup
Lucy Liu, City of Bellevue
Scott Merriman, Washington State Association of Counties
Julie Murray, Office of Financial Management
Bob Nachlinger, City of Kent
Michael Olson, City of Kirkland
Rick Peterson, House Finance
Gary Prince, King County Department of Transportation

Department of Revenue Staff – Russ Brubaker, Matthew Bryan, Kim Davis, Joyce Fouts, Don Gutmann, Jim Harden, Tiffany Johnson, Diane Mielke, Kathy Oline, Janetta Taylor, Valerie Torres

PAST PAYMENT ADJUSTMENTS

Don Gutmann: Julie Murray from OFM is here to talk to us about the past payment adjustments.

Julie Murray: The issue of past payments has been bounced upstairs. The Department looked at all the payments for the past three quarters and there are about three dozen jurisdictions that were underpaid. There were also about a hundred jurisdictions that received overpayments. My recollection is that there was a policy decision made to look prospectively only. We recognized that there would be data problems. At that time the advice we received is, to the extent that we have information that people received an unauthorized payment of funds, we have an obligation to recoup those. It is a plus and a minus situation. When people have been overpaid, we get reimbursed and when people have been underpaid, we give them the money. I am very uncomfortable with the idea to simply ignore the information we have. What that would mean is we would pay those who have underpaid and we would receive collections from those who have overpaid. Why not use those funds to make everyone whole? Our feeling with that is we are probably about one billion dollars in the hole for the next session. Our ability to respond to that is very different than it was last year. We are going to be looking at large scale programs and be making very tough decisions.

I have to be really honest with folks that the two million dollars that have been overpaid – in all likelihood, we are going to ask for that money back. We can maybe take it from future allotments or work out a payment plan. For the budget process it is not just a search to look for new money, but we are also going to look for money that jurisdictions were not entitled to. We will try to soften the blow to jurisdictions, but we will need to have any repayments made by the end of the biennium which is by July of 2011.

Doug Levy: Can someone give an explanation of the variety of factors that led you to the numbers that you used to determine the amount of mitigation?

Don Gutmann: The number one cause for adjustments has been firms identified by a jurisdiction that has asked us to review that firm. We would contact the firm. The most common adjustment was to remove that firm from the calculation. Others we have talked about in the committee are annexations in 2008 and 2009. Businesses that close one account and open up another – we had to provide that link between 2008 and 2009. Others come out based on questions from the jurisdictions. Another adjustment was for firms that have always been destination-based before the change to the new sourcing rules, such as firms that do computer installations. If you have a firm that had a big contract in 2008, that would show as a loss in 2009. To avoid that wrong result from the calculation we removed that firm entirely. Computer installations, elevator installations, out-of-state firms. Auto dealers were a big one. They tend to have very large taxable retail sales for a jurisdiction.

Valerie Torres: The other big one is no deliveries. The calculation makes it look like there was a change, but the business doesn't actually do deliveries.

Don Gutmann: The whole trend was to reduce the amount that needed to be mitigated. The economy has also influenced that, but the general result of our adjustments has been to reduce the amount of mitigation.

Scott Merriman: Julie, thanks for the information you shared with us. The counties are asking for a recommendation of a letter from the Department of Revenue or OFM with an explanation of the situation. They appreciate the idea of trying to mitigate it over the biennium. That is very critical. They are right in the middle of their budget development. They appreciate that flexibility.

Julie Murray: There are jurisdictions that have mitigation payments forthcoming and those that don't, and if we can put together a payment plan, that would be helpful to those who were overpaid. We have to reconcile to the appropriation that was made in the budget. So the timeline is that the money would have to be repaid by July 2011. To allow for those overpayments would require something in the budget to say these payments are final and solid.

The other issue is that getting that payment where you have an annualized number and it is fixed in time is a benefit. We don't want that number to change year to year. That would make the people in my office feel more confident that the amount is the right amount and we can budget this more normally. We need to try to get it normal.

Scott Merriman: I know there are still jurisdictions that are asking questions about whether it is right. Also, now that people are buying things again, the jurisdictions are noticing that some large purchases are not being coded correctly. A group that you might want to look at is implement dealers. This is an example of the questions that are still being asked that help or hinder us from getting to the annual number.

Julie Murray: We need to get this down for the budgeting process, probably within the next couple of weeks. We want to know the amount that was overcommitted so we can put that into our decision-making process.

Bob Nachlinger: As a city that is owed money, when do you anticipate that the money will be paid?

Julie Murray: When we make the decision.

Scott Merriman: It just becomes an internal squabble among the family. We should have done the don't ask, don't tell, but now it is on the table.

Don Gutmann: This might be a good time to point at that document in your handouts. It is the draft of the annualization results. These are the numbers based on four quarters. This is preliminary because we haven't received any comments from jurisdictions.

Kim Davis: I would also like to stress that this does not include the voluntary offsets – those offsets would have to come out of this amount.

Karen Jester: We still have a list of questions from third quarter out there.

Kim Davis: The Department is working on them.

Doug Levy: The other part of the statute said there will be an oversight committee. How do you factor those things in the annualized option when you know there will continue to be questions about various firms?

Don Gutmann: We will talk about that later.

Bob Nachlinger: For adjustments that jurisdictions have identified and you are reviewing, those that occurred in the past, will they make an adjustment to this annualized payment amount?

Don Gutmann: It depends on when we annualize. Once we get the changes done and make the calculation, that amount will be set for the whole year.

Bob Nachlinger: So it would be good for us to get our questions to you as quickly as possible.

Don Gutmann: That's right.

Jim Justin: I appreciate Julie's demeanor and Julie's tone, but I think this decision has been made. The precedent has been made with the city-county assistance account. I don't think they have a choice. It is a gift of public funds and they are going to get it back. We can go to the Legislature and ask for that money. You are going to be asking legislators now at a time when we have a huge budget shortfall. That's going to be very, very difficult. It would be far easier for us to say we owe Kent $150,000. We owe it to them and the money is in the mitigation account. It is going to be much more difficult for us to get this money. I am not painting the best picture. I do believe we will be able to come to some agreement about how the overpayments will be paid back – it might come from future payments.

Julie Murray: What will help is getting the payment where these are annual and final. Continuing to refine the numbers is not always going to be in the positive end. From my perspective, knowing that the number that is in the account is a set number is a benefit to my office instead of changing the number from year to year. It makes it easier in the budget to ignore the number if it is a stable amount.

Jim Justin: Can we get one more chart that shows the difference for the four quarters?

Doug Levy: If I am looking at these annualized in the far column, aren't some of these an attempt to cover the overpayments by reducing from future payments?

Jim Justin: No – $78,839 is what Everett should have received, but they received $196,230.

Kim Davis: Remember that you have to divide 78 by 4.

Julie Murray: It would be two and a half years with no mitigation to recoup the overpayment.

ANNUALIZATION OPTIONS

Don Gutmann: There are two annualization schedule options. Option 1 is the proposal that we talked about last meeting. The difference is that we send you the detail data much earlier than we expected to. We tried to maximize the amount of time for the jurisdictions to review the data and get their information back to us. Our review involves TAA calling the firms and verifying the information. We would annualize with the December 31 payment and we would come up with the annual amount, divide by four, and subtract the voluntary compliance. So you would know what your payment would be for all of Calendar Year 2011.

The second option would give you until March 12, 2010, to review the businesses in your jurisdiction. The concern we heard at the last meeting was to give you as much time as possible to look at the detail and for us to review the information you send us. We will give you until March 12, 2010, to get issues to the Department. We have to talk about how we are going to do the December payment and the March payment. Based on Greg's reading of the statute about what we can do for the December 31 and March 31 payments, we will take that annual amount and apply a seasonality factor for the two payments.

Scott Merriman: A couple of questions that I have been thinking about – which option falls best within the state budget process, and which option falls best within the local budget process? What happens in November with the initiative? That affects the budget in a real big way. The IPD and population factor come out after the fact. You have to go back and revise once those real numbers are available. I can start to make a case for option 2, that it might give us more time to work through some of the uncertainties.

Don Gutmann: I handed out some numbers that we did. It is common sense – sales do not run equal for every quarter. Quarter 3 and Quarter 4 are pretty close, but Quarter 1 is much smaller. We would take 22.8 percent of the annual amount and that would be the average for the three years. We will look at the average for each jurisdiction.

Bob Nachlinger: I am trying to understand why you are trying to make it more complex than it really is.

Don Gutmann: If you are fine with dividing by four, we could do that. Provided Greg is okay with it. The idea of option 2 is to lengthen the amount of time for jurisdictions to look at their data and get back to us. We wouldn't annualize until June 2010. We don't want to compare 2010 against 2008, but if you don't feel we can annualize with the December payment, we want to give you more time.

Rick Peterson: If you delay annualization the statute says you need to be doing this quarter by quarter. We can't do it the way we have done before because now it is too long from the base period. The easiest way is to take the annual estimate, apply the seasonal factor which is making it into a quarterly payment, so you could have a straight-face claim that you did a quarterly calculation.

Kim Davis: Greg said we can't take the annual and divide it by four.

Don Gutmann: The numbers are a statewide average, but we will do the calculation for every jurisdiction.

Gary Prince: For the people that send in comments and ask questions, is this enough time for you folks?

Don Gutmann: From the last meeting I feel a gain of three more weeks would be enough time. Our preference would be to annualize in December.

Lucy Liu: I am trying to gauge if the word is out on this. If the word isn't out, that would be too bad.

Don Gutmann: We are going to a meeting with the Local Government Partnership and one with the financial officers. That will give us two more opportunities to get the word out.

Scott Merriman: The Local Government Partnership meetings are not the right crowd to be discussing this with. I would suggest the finance officers or the county administrators.

Kim Davis: A letter went out to every jurisdiction with the information.

Janetta Taylor: Just to give you some perspective, the number of jurisdictions sending information is declining. We have about ten jurisdictions that are actively engaged.

Don Gutmann: We send the detail file to every city and every county.

Scott Merriman: I want the names so I can make sure that they are paying attention.

Bob Nachlinger: I am concerned about the November 6 deadline. That leaves less than a month for you to square up all of those. Once we set mitigation, once we annualize, if I have an issue out there that wasn't resolved, I will have to live with that for another year.

Don Gutmann: That's why we gave you and we gave us more time as well in option 2. To me that's the biggest pro for delaying annualization for two more quarters.

Sheila Gall: How does this fit in the grand scheme of over- and underpayments if we have these two quarters included?

Don Gutmann: It is more potential to find corrections to the data. You probably would want to ask Julie that question.

Rick Peterson: If you delay the annualization for a couple more months, you compress the recovery time down to about twelve months.

Don Gutmann: There is always the potential for adjustments at the annual meeting.

Rick Peterson: If OFM makes the decision that they are going to pay the people soon, then the estimate of what those numbers are would be based on what you have done to this payment. If you went with option 2 you still have to deal with this overpayment-underpayment issue, so are you going to use these numbers? Are people like Kent going to get their money by the end of this year or will it be the spring before they get it?

Scott Merriman: It is easier to reconcile the underpayment now. I can see the overpayment being trued up and we will start to recover the money over time. When I talked to King County they were comfortable with it occurring over time. As long as we are put on notice, do it on the installment plan. We will always true up the last couple of payments.

Janetta Taylor: Didn't you say that the adjustments would reduce mitigation? So it doesn't seem to be logical to continue this adjustment process. It keeps getting worse.

Rick Peterson: The adjustments in the future won't be used as a basis to see if there is another set of overpayments and underpayments. Does it close the door on the recovering of funds? These initial payments were estimates and there certainly was data cleanup that was necessary. It would seem odd to keep that up in the future.

Does choosing option 2 mean that those who were underpaid, payment is going to get delayed until the final annualization occurs? That would be in the spring. Or is it possible, as Julie suggested, when they decide what they are going to do, if the decision is made soon, can that process go forward independently from the annualization process?

Scott Merriman: I don't know why you couldn't start the recovery process over six quarters.

Bob Nachlinger: If I am owed money, I want my money now, and if I owe you money, I will pay it back over time. It seems to me that option 1 is a simpler alternative.

Lucy Liu: If you could send a reminder to jurisdictions about the need to review their data.

Scott Merriman: I would argue for clear, simple, plain English saying here is what you have to do and here is why.

Don Gutmann: We will get a reminder out by next week.

Bob Nachlinger: If you could stress the sooner you get the data back to DOR, the better, so DOR would have more time to review your data.

Don Gutmann: The other point is the payments will be fixed for that year, so if we don't process everything, you will have to live with it for a year. But the payments after that year will be more accurate.

If we annualize in December we will have a meeting in July. Another adjustment we will have is for the annual taxpayers. That will be incorporated into the data, and any issues that we didn't have time to process will be included plus any new issues that are brought up.

So -- is everyone comfortable with option 1?

Scott Merriman: As long as there is something blunt sent to the jurisdictions.

Shawn Hunstock: Can you tell who hasn't accessed the detail information?

Kim Davis: Matt was working with our I.S. person and he can tell us who got in, but it won't tell us what documents they accessed.

Scott Merriman: If you send something out and we send something out, that's as far as we can push them.

Don Gutmann: We will be annualizing with the December payment. We were thinking June or July would be a good time for the annual meeting.

PUBLIC FACILITIES DISTRICTS

Don Gutmann: The handout in your packet explains that public facilities districts can impose a local sales tax that is credited against the state sales tax. The tax cannot exceed 0.033 percent. PFDs do not get mitigation payments for their net losses. Instead, if their net loss due to destination-based sales tax is at least 0.5 percent, they can increase their tax rate. The rules are that the total rate cannot exceed 0.037 percent, the rate must be adjusted in increments of 0.001 percent, and the increase must be the least amount necessary to mitigate the net loss.

The table, "Preliminary Impact of SST on Regional Centers," shows that there are three PFDs that had net losses of at least 0.5 percent – Kent, Pasco, and South Snohomish. So Kent is going to be able to raise its rate.

Bob Nachlinger: So since the rate adjustment is equivalent to 12.1 percent, it looks like I can go to 0.037 percent and get about half of what I lost.

Kim Davis: The earliest your rate increase could take place is December 1.

Minutes submitted by Diane Mielke