

**B&O and Licensing Task Force  
Meeting Notes  
Friday, September 30, 2016  
Department of Revenue – Tacoma Field Office**

**Attendees**

- Marcus Glasper, Chair, Department of Revenue (Department)
  - Andy Cherullo, City of Tacoma
  - Mark Johnson, Washington Retail Association (WRA)
  - Peter King, Association of Washington Cities (AWC)
  - Patrick Connor, National Federation of Independent Businesses (NFIB)
  - Glen Lee, FileLocal
  - Eric Lohnes, Association of Washington Business (AWB)
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- Patti Wilson, Department of Revenue (staff)
  - JoAnne Gordon, Department of Revenue (staff)

**Absent**

- Kim Krause, City of Burien
- Ron Bueing, Association of Washington Business (AWB)

**Welcome/agenda overview**

Marcus welcomed everyone and explained the day's agenda.

**Follow-up to June 30 meeting**

Marcus noted that the technical information meeting between the Department and FileLocal is scheduled for October 12<sup>th</sup> (9:30 – 10:30). An ATLAS demonstration for Jamie Carnell from FileLocal is scheduled for October 6<sup>th</sup>.

Peter asked to talk about the licensing proposal and the delay in holding a vote – he thought his suggestions for the proposal, as noted in his September 22nd email, were minor. He thought that businesses located in FileLocal cities, both current and future cities, would continue to go through FileLocal for local business licenses. He thought his changes were tweaks and that the group was close to finalizing the recommendation.

Marcus said he is concerned that there is a notion that information can go back and forth between ATLAS and FileLocal. Marcus isn't sure that can happen for a variety of reasons. He also noted that there is the question of whether current BLS cities, if they joined FileLocal for local B&O tax administration, would go through FileLocal for all licensing going forward. If so, that is a departure from his current understanding of the recommendation.

Andy said he agrees with Peter. If FileLocal cities join BLS, then there is no purpose to exchange information.

Marcus noted that redirecting businesses to a different site is different than exchanging information behind the scenes.

Andy noted that the revenue estimate appears to have a lot of room, but Marcus's email noted there may be a revenue issue without the larger cities. Marcus explained that the fiscal estimate assumed that renewals will fund the work. Completing the work in five years may not be possible without revenue from renewals from large cities, which is where most of the renewals would be. The alternative would be to approach the Legislature for an increase in the fees.

Patrick walked through how licensing works today as compared to how it would work if FileLocal cities were part of BLS versus not.

Glen explained that for all B&O cities the license is linked to the tax. Also, FileLocal is premised on exchanges of information between those cities that are part of FileLocal.

Patrick looked for where there is agreement/disagreement on the bullets comprised in the third draft proposal:

- **Bullet 1.** "Primary" versus "Exclusive" entry point for licensing. Needs revisiting after technical meeting occurs and a new revenue estimate is completed (using an assumption that the FileLocal cities will not join BLS).
- **Bullet 2.** Agreement.
- **Bullet 3.** Agreement.
- **Bullet 4.** Agreement
- **Bullets 5 & 6.** Patrick proposed combining bullets 5 & 6 to read as follows:  
Beginning not later than FY 19, Legislature appropriate sufficient funds from the MLS account for Revenue to onboard additional cities as outlined in the action plan. Funds may be used for: increased staffing for ATLAS programming; providing training or technical support to municipal staff; and grant-making to onboarding cities, demonstrating need, for temporary staff support, computer hardware or software, or related assistance.
- **Bullet 7.** Agreement.
- **Bullet 8.** Agreement.
- **Bullet 9.** Edit after technical meeting occurs.

### **Nexus Proposal Discussion**

Glen noted that for Seattle, the following activities do not establish nexus for local B&O tax purposes:

- Attending trade shows,
- Outside of jurisdiction and indirectly soliciting (telephone, Internet, delivery by common carrier)

Glen suggested using the Model Ordinance definition for licensing requirement and adding a de minimis threshold. Cities should still be able to regulate if a business doesn't meet the threshold but not license for revenue.

Where does the de minimis model go? Glen recommended adding to the Model Ordinance but qualified that the attorneys will need to consider. Peter positioned that incorporating in the Model Ordinance allows more flexibility than if it's included in state law. Glen notes that framework exists in the Model Ordinance for future changes.

Peter talked about his discussion with cities about de minimis:

- A few cities are willing to look at a threshold.
- A dollar threshold seems more preferable than a threshold based on the number of occurrences.
- Cities need to be able to react to outside disruptive businesses versus being able to regulate. It's not about money, it's about the ability to regulate.

Patrick asked about what regulatory concerns there are other than door to door sales and construction. Peter didn't have immediate examples.

Glen noted that Burien still requires businesses to file an affidavit even if they don't have tax liability.

Patrick asked Peter and Glen if they would have something ready to propose. Glen said they need to figure out the scope of the changes before establishing a timeline. Peter thinks they can have something in writing for the October 18<sup>th</sup> meeting and he will try to send out for review before the next meeting.

Joseph Cunha, City of Seattle, explained the conditions under which the model ordinance can be changed, which is spelled out in the statute that requires the Model Ordinance. AWC facilitates the process. Glen recommended maintaining the same governance structure for stability. The Model Ordinance was last changed during October 2012. The statute limits changes to once every four years, except for changes in state law that the Model Ordinance must incorporate.

### **Apportionment Brainstorm**

The group acknowledged that local B&O tax apportionment is difficult:

- The language is unusual and no one knows where it came from.
- Administration is difficult.
- Small changes may mean millions.
- No one has solutions.

The group discussed whether this is the right group and time to tackle apportionment. Marcus suggested waiting to discuss until the next meeting when Ron is present. Marcus also noted that the group could recommend further study by the appropriate individuals.

Joseph Cunha explained that a group of cities (Tacoma, Renton, Kent, Bellevue, and Bellingham) have formed a study group and has a list of apportionment issues and recordkeeping issues related to sourcing income out of the city. The group meets every other month. The goal is to provide guidelines on MSRC and AWC's websites to provide more clarity, stability for service taxable taxpayers in B&O tax cities under the Model Ordinance. Eric suggested that maybe Joseph could provide a 10-minute presentation about the work group at the next meeting.

## **Timeline/Topics Going Forward**

Priorities for remainder of meetings:

- Eric will touch base with Ron to see if there was anything he specifically wanted to talk about in areas noted that were not directed by EHB 2959.
- Patrick pointed out administration for B&O tax. Patrick confirmed with Marcus that the Department does not plan to propose that it perform collection functions for cities that impose a local B&O tax. Glen noted additional issues beyond the collection of data. Marcus noted that the new ATLAS system would be capable but there would be many challenging issues, such as uniformity issues across cities. Patrick noted that FileLocal has stepped up – Glen noted that is a data collection/system. Patrick asked what the group needs to do to help FileLocal bring on the other B&O tax cities. What can the task force do to drive more business to FileLocal? Glen said that Burien wants to join FileLocal. Patrick asked if it is worth it to have a discussion at the October 28<sup>th</sup> meeting. Peter says there's the interest but questioned whether there's the capacity. Glen will run past the FileLocal board.

## **Homework/Wrap-up**

- Peter & Glen to provide a licensing nexus model recommendation for October 18<sup>th</sup> meeting.
- More discussion about licensing, nexus for licensing, and apportionment