

AMEND SECTION 38 & OPPOSE SECTION 39 OF REVISED GOVERNOR'S BUDGET IN THE JOINT
COMMITTEE ON WAYS & MEANS OF THE COMMONWEALTH OF MASSACHUSETTS

OCTOBER 21, 2020

The undersigned organizations appreciate the opportunity to provide comment on the provisions in the revised H.2 relative to the adoption of an early remittance or prepayment of certain taxes (Section 38) and the adoption of a daily remittance of tax by third-party payment processors (Section 39).

These two proposals are separate and distinct and should be viewed as such. Prepayment establishes a requirement for an earlier remittance of a portion of the tax due on a particular date, in advance of the existing and current schedule (the 20th of every month). The daily remittance proposal seeks to introduce an outside third party into the existing relationship between the trustee taxpayer and the government, creating a secondary system that, in theory, would run in addition to the existing sales tax remittance process. One is a timing change, the other is an unproven, untested scheme not in existence anywhere in the nation.

SUPPORT PREPAYMENT, BUT PROTECT SMALL BUSINESS

The undersigned can and will support the adoption of prepayment to require vendors to remit an initial payment of the sales tax, the local option meals excise, and the room occupancy tax, **provided** certain amendments are incorporated into the language.

As proposed, the Section impacts too many Massachusetts only, small retailers—only exempting very small vendors who collected \$150,000 or less of those taxes in the previous year. This threshold is too low, the equivalent of only \$2.4 million in annual taxable sales, and would add an unnecessary burden on small vendors. Vendors at this level are most likely single location operators. A gross sales figure tells us nothing about the current viability of these businesses, and in this economic climate it is particularly troubling that it would be used to set such a threshold. Many of the businesses at this level will be lucky to survive the global pandemic. We urge you to raise this threshold to \$1 million in annual sales tax liability in order to protect small, Massachusetts-based sellers.

Further, rather than leave the operational details to the DOR to decide by regulation, the Legislature should make the prepayment process clear and transparent in the statute. The Administration has described a scenario in which the early remittance would be made by the 20th of the month. The statute should reflect that date, as it currently does provide a date certain with the existing remittance process. The Retailers Association of Massachusetts (RAM) has proposed clear legislative language addressing this and other vital issues such as how payments are calculated and insuring credit for overpayments.

In a time where the Commonwealth is still phasing in reopening of the economy and battling the resurgence of COVID, it is urgent to protect small businesses facing these uncertainties.

REAL TIME SALES TAX: A BAD IDEA RETURNS

On behalf of the organizations represented below, we urge you to oppose Section 39 of HB 2. This provision would require third-party payment processors and issuers of private label retail credit cards to re-

ceive and remit sales tax from retail merchants daily from July 2024 — a task already proven unfeasible and cost ineffective which would impact millions of consumer credit or debit card payments or electronic funds transfers.

NCSL AND OTHER STATES HAVE CONSIDERED AND REJECTED REAL TIME REMITTANCE

The bipartisan National Conference of State Legislators' Executive Committee Task Force on State and Local Taxation carefully examined "real-time" remittance of sales taxes by parties other than the taxpayer and concluded "...*'real time' sales tax process is not a solution.*" Similar proposals were considered and rejected in Arizona, Connecticut, Nebraska, and New York. If enacted, the Commonwealth would be the **only** state to impose such a requirement.

IMPLEMENTATION WOULD BE COSTLY, OFFER NO REAL BENEFIT, AND HAVE POTENTIAL HIDDEN COSTS TO COMMONWEALTH

A study commissioned by the State Tax Research Institute concluded real time sales tax would "impose an estimated \$1.2 billion in nonrecurring costs" and "nearly \$28 million in annual, recurring costs on businesses operating in Massachusetts." This proposal will not raise any new revenue for the Commonwealth; it would merely try to change the cadence of remittance.

THIS ISSUE WAS CONSIDERED IN THE PREVIOUS SESSIONS

A related provision was included in previous governor's budgets. When considering the 2018 iteration, the legislature wisely chose to direct DOR to seek public comment as to the feasibility of such a daily remittance scheme. On November 1, 2017, the DOR concluded: "accelerated sales tax remittance cannot be implemented cost-effectively by June 2018 within acceptable risk parameters." ¹ This conclusion was informed by comments filed by 32 companies and trade associations ² —11 headquartered in the Commonwealth.³ All save one offered *strong* opposition. Companies are not required to do this in any other state, and their business operations are not structured to do so.

THE PAYMENT PROCESS IN A NUTSHELL

There are an estimated ten million merchant locations in the U.S., more than a dozen payment card networks, hundreds of payment processors, and over 8,000 card-issuing financial institutions. Many of those organizations are represented below because of the broad impact of these provisions. The infrastructure

¹ <http://www.mass.gov/dor/docs/dor/news/astr-certification-letter-11-1-17.pdf> Full Report at <http://www.mass.gov/dor/docs/dor/news/astr-report-to-commissioner-10-31-17.pdf>

² <http://www.mass.gov/dor/docs/dor/news/astr-public-input-10-31-17.pdf>

³ A diverse group of Massachusetts-based organizations filed comments in opposition: Associated Industries of Massachusetts, BJ's Wholesale Club, Inc., Dunkin' Brands Group, Inc., Greater Boston Chamber of Commerce; Massachusetts Food Association, Massachusetts Bankers Association, Massachusetts Taxpayers Foundation, New England Cable & Telecommunications Association, Retailers Association of Massachusetts, Staples, Inc., The TJX Companies, Inc.

that facilitates electronic payment transactions must transmit data between these retailers, payment networks, and card issuers, transmitting thousands of transactions per second every hour of every day.

Daily sales tax remittance would require payment processors to receive a separate tax amount for each debit or credit card transaction and then remit the sales tax to the state. This would be an operational nightmare for payment processors, payment networks, card-issuing financial institutions and merchants, and the Commonwealth alike.

Payment processors and payment networks send and receive these authorization messages as single units of code routing only the necessary information required to authorize a transaction. Because neither payment processors nor payment networks see details around the goods purchased, they have no ability to identify the appropriate sales tax to be applied to the transaction.

RETURNED MERCHANDISE AND CANCELED TRANSACTIONS

Even if future technology makes real time sales tax possible, the Commonwealth would face the challenge of returned merchandise. While many transactions are for consumables (e.g., fuel burned and meals eaten), in the sales of goods, returns are frequent and made over long time periods. National Retail Federation (NRF) data show eight percent of all purchases are returned with return rates of 30 percent or more for online purchases (clothing returns approach 40 percent).⁴ We assume the Commonwealth intends to return money back to consumers and merchants in real time when merchandise is returned. Or are merchants expected to front the money necessary to provide a refund, and then get reimbursed at some later date? This would be disastrous for small businesses, particularly for small merchants who sell small amounts of high-priced items and at times like the week following Christmas.

FUTURE TECH SOLUTIONS CANNOT BE SCHEDULED

This section presupposes that future technological advances will address the myriad challenges involved in daily tax remittances. Unfortunately, technology (and technological advances in particular) rarely, if ever, occur based on a predetermined schedule—much less a statutory mandate.

The provision presupposes merchants, processors, payment networks, and card issuers could readily change their entire payment ecosystem to capture detailed data about each sale to identify sales tax accurately — and then code, implement and test an as yet uninvented process at retailers' point of sale terminals, payment processors, payment networks and the card-issuing financial institutions. Further, since current contracts between merchants, processors, payment networks, and card issuers contemplate the settlement of whole transactions inclusive of sales tax, all of the tens of thousands of such contracts would have to be amended, increasing the burden and expense even further.

Even if this could be accomplished, the result will be a complex and burdensome system for the retailer, third-party processors, networks, card issuers, and the DOR.

⁴ See: A \$260 billion 'ticking time bomb': The costly business of retail returns, CNBC 16 December 2016 at <https://www.cnbc.com/2016/12/16/a-260-billion-ticking-time-bomb-the-costly-business-of-retail-returns.html>

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Please amend Section 38 and oppose Section 39.

Massachusetts Bankers Association
Massachusetts Restaurant Association
New England Cable & Telecommunications Association
New England Convenience Store & Energy Marketers Association
Retailers Association of Massachusetts
Bank of America
BJ's Wholesale Club
Capital One
Card Coalition
Discover Financial Services
Elavon
Electronic Payments Coalition
Electronic Transactions Association
Internet Association
JPMorgan Chase
Mastercard
Synchrony
T-Mobile
TechNet
Verizon
Worldpay

Signatories as of October 21, 2020