

JOINT COMPANY & TRADE ASSOCIATION LETTER
OPPOSING OUTSIDE SECTION 49 OF HB 2 IN THE JOINT COMMITTEE ON
WAYS & MEANS OF THE COMMONWEALTH OF MASSACHUSETTS

April 3, 2018

On behalf of the organizations represented below, we urge you to oppose Outside Section 49 of HB 2. This provision directs the Department of Revenue (DOR) to formulate rules and regulations by May 31, 2021 to require third-party payment processors to receive and remit sales tax from retail merchants on a daily basis — an undertaking proven unfeasible and cost-ineffective in the last session.

THIS ISSUE WAS CONSIDERED IN THE LAST SESSION

A related provision was included in the last governor’s budget — at that time with a June 2018 effective date — and was rejected by the General Court which, instead directed the DOR to conduct a study to determine if such an undertaking was workable. 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 associations² — 11 headquartered in the Commonwealth.³ All save one offered *strong* opposition.

THE PAYMENT PROCESS IN A NUTSHELL

In the U.S., there are an estimated ten million merchant locations, more than a dozen payment card networks, hundreds of payment processors, and over 8,000 card-issuing financial institutions. Their infrastructure transmits data between retailers, payment networks, and card issuers, transmitting thousands of transactions per second.

Payment processors and payment networks transmit 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 *cannot* identify the appropriate sales tax related to the transaction.

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.

Daily sales tax remittance will require payment processors to receive a separate tax amount for each debit or credit card transaction and then remit the sales tax to the Commonwealth. The sales tax remittance process across the country is a bilateral transaction between a retail merchant and the state. Deputizing processors or issuers as tax collectors makes this a costly multiparty transaction with no likelihood of any additional funds flowing to the Commonwealth.

RETURNED MERCHANDISE AND CANCELED TRANSACTIONS

Even if future technology makes real-time sales tax remittance possible, the Commonwealth will face the challenge of returned merchandise, since we assume the Commonwealth intends to return money to consumers and merchants in real time when merchandise is returned.

While many transactions are for consumables (*e.g.*, fuel burned or meals eaten), in the sales of goods, returns are frequent, made over long time periods and often across different tax jurisdictions or retail channels. National Retail Federation 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

NCSL CONSIDERED AND REJECTED REAL-TIME REMITTANCE

The bipartisan National Conference of State Legislatures' Executive Committee Task Force on State and Local Taxation carefully examined this issue and concluded “...*'real time' sales tax process is not a solution.*” A similar effort in Connecticut also failed after a study by the Department of Revenue.

FUTURE TECH ADVANCES CANNOT BE SCHEDULED

This provision presupposes, that by 2021, merchants, processors, payment networks and card issuers could 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, card-issuing financial institutions and importantly, the Department of Revenue.

Further, since current contracts between merchants, processors, payment networks, and card issuers contemplate the settlement of whole transactions inclusive of sales tax, tens of thousands of such contracts would have to be amended, further increasing expense.

Even if this could be accomplished, the result will be a complicated system for retailers, third-party processors, networks, card issuers and the Department of Revenue. A study commissioned by the State Tax Research Institute concluded real-time sales tax would “impose an estimated

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>

\$1.2 billion in nonrecurring costs” and “nearly \$28 million in annual, recurring costs on businesses operating in Massachusetts.”⁵

This proposal will not raise any additional revenue for the Commonwealth—even if technology should exist by 2021, it would merely advance payment remittance at substantial ongoing costs to DOR which will have to create costly compliance and operations processes to receive these payments.

Other less burdensome alternatives exist and Outside Section 49 will not raise any new revenue.

*

For those reasons, we urge you to strike or amend these sales tax collection provisions as recommended above.

Sincerely,

Massachusetts Bankers Association
Massachusetts Restaurant Association
New England Convenience Store & Energy Marketers Association
Retailers Association of Massachusetts
BJ's Wholesale Club, Inc.
Dunkin' Brands, Inc.

Alliance Data Systems
Blackhawk Network
Capital One Financial Corporation
Card Coalition
Council On State Taxation
Discover Financial Services
Electronic Payments Coalition
Electronic Transactions Association
First Data
JP Morgan Chase & Co.
Mastercard
Synchrony Financial
TechNet
TSYS
Visa, Inc.

Signatories as of April 3, 2018

⁵ <http://www.mass.gov/dor/docs/dor/news/astr-public-input-10-31-17.pdf> at page 131