



The Retail Review

THE OFFICIAL NEWSLETTER OF THE
RETAILERS ASSOCIATION OF MASSACHUSETTS

January/February 2020 Edition

MARK YOUR CALENDAR:

Tuesday, May 19

Spring Board Meeting

Hampshire House, Boston

8:30 am - 12:00 pm

*2020 Holiday Calendar
now available to
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Gov. Baker Files \$44.6B State Budget: Proposes “Real Time” Sales Tax Collections & Lottery Sales on Debit Cards

On January 22nd, Gov. Charlie Baker filed his FY21 state budget proposal (H.2), a \$44.6 billion spending plan that marks the first step in a long budget process that will play out in the Legislature over the next several months.

As we expected and for the fourth year in a row, the Governor’s budget includes a sales tax modernization proposal, making changes to the state’s sales tax collection and remittance process. The proposal this year is a return to “Real Time” or daily remittance, requiring third party processors of credit/debit transactions to remit to the Commonwealth, on a daily basis, the portion of a sale that is attributable to sales tax, with an effective date of July 1, 2023. Any vendor subject to the collection of sales tax, sales tax on meals, or local option meals tax, that collected and remitted in excess of \$100,000 in sales tax the previous year, will be required to separately identify the tax and non-tax amounts for which payment is sought from a third party payment processor. The third-party payment processor will then directly pay the identified tax portion to the DOR on a daily basis. Because of the timing of this proposal, we can refer to it as “Phase Two.”

In advance of those changes by July 2023, the proposal also calls for a more immediate impact, “Phase One,” on the current remittance process, allowing the DOR by regulation to establish an early remittance tax filing by all filers over that same \$100,000 collection threshold. The current process, including the requirement to remit by the 20th of every month, is spelled out in statute, as adopted by the Legislature. The Governor’s language would take that decision-making process out of the Legislature’s hands and allow the DOR to set the deadline for remittance. This would be in addition to the proposed changes impacting credit/debit purchases in July 2023.

Phase Two continues to be widely opposed by the transaction and payment industry, from retailers to credit/debit card companies, to card processors, to banks. The opposition is united, as those changes would impact the entire payment system.

Phase One of the Governor’s proposal would only impact the vendor or seller of the product or services. All tax filers with more the \$100,000 in annual tax remittance would be subject to the change on the remittance of sales and use tax, sales tax on meals, local option meals tax, room occupancy taxes, and marijuana taxes.

A third component of Baker’s proposal seeks to increase the penalties and expand the reach of the law with regard to the use and promotion of sales tax suppression devices known as “zappers.” The budget proposes significant civil penalties on those who sell or install “zapper” software, which is software that falsifies the electronic records of electronic cash registers and other point-of-sale systems.

The language of the proposals from the Governor’s budget is here:

- Section 48. Sales Tax Modernization 1
- Section 49. Sales Tax Modernization 2
- Section 50. Sales Tax Modernization 3
- Section 51. Sales Tax Integrity (Zappers)

Phase Two, similar to proposals in the past, would require third party payment processors to collect and remit sales tax from retailers on a daily basis, on all third-party credit and debit card purchases. Today, when a consumer purchases

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Why sales tax revenues are soaring

By taxing internet sales, retail fairness becomes reality

By Jon Hurst (As run in *Commonwealth Magazine* Jan 22, 2020)

FOR OVER TWO DECADES no retail organization across the country has been more engaged in Main Street taxation fairness than the Retailers Association of Massachusetts. In fact, in 1997, the association was the first state or national retail association in the country to openly advocate for remote sales tax collections from internet sellers. Our concerns were based upon real life experiences of shifting consumer spending from our Massachusetts economy to north of the border due to the powerful incentive of sales tax avoidance. Indeed, we knew that untaxed internet sales would clearly represent two strikes against our Main Streets and our retail industry in the Commonwealth.

In 2020, New Hampshire is still there, still a strike against our local economy, and still a competitive problem with far higher per capita retail sales than Massachusetts due to the sales tax. Yet years of legislative, regulatory, and legal activity finally have fixed the online fairness issue.

The first step on the internet sales tax issue came in November 2013, when Amazon voluntarily began collecting the Massachusetts sales tax on its transactions. The next important fairness landmark came in October 2017, when the Department of Revenue implemented its "cookies tax" regulation designed to extend tax nexus status to more remote sellers. Then in June 2018, the US Supreme Court effectively overturned a 24-year-old prior case and ruled in South Dakota vs Wayfair that states had the authority to update collection requirements and make large remote sellers and those selling through internet marketplaces collect state sales taxes.

In reaction to that important decision, Gov. Charlie Baker and the Legislature last year passed legislation to finally put the tax collection requirements on online marketplaces such as eBay and Amazon to collect all sales taxes on behalf of their third-party sellers. The new law also requires sales tax collections by those selling into the Commonwealth through their own websites once their goods sold in Massachusetts total at least \$100,000. The law became effective on October 1, 2019.

These step-by-step reforms have been a long time coming, and are vital for small retailers and for retail employees in Massachusetts. It has also been important for state budget revenue growth. Consumers have dug deeper on their purchases due to updated sales tax collection requirements. The state's average monthly sales tax collections have risen 4.6 percent since the voluntary Amazon step in 2013; 5.5 percent since the Department of Revenue cookies regulation was put in place; 5.8 percent since the Wayfair decision came down; and 6.6 percent since the Massachusetts Marketplace law was implemented last October.

More than \$800 million in additional annual sales taxes (excluding meals & autos) are being collected today compared to 2013 when the first step of this reform was taken. Some of those additional sales tax collections are due to growth in consumer spending, and some are due to our local consumers paying the sales tax on purchases which not so long ago would have been tax free. Either way, consumers are indeed digging deeper and arguably doing their fair share for government spending.

As debates soon go forward on additional taxes, such as making it more expensive for our consumers to drive their cars, it is important to remember three important points:

1. Consumers are paying far more today in Massachusetts consumption taxes as compared to just a few years ago;
2. Despite the internet tax fairness problem being solved, New Hampshire is still there—annually benefiting from billions in Massachusetts consumer spending and economic investment in their state rather than our Main Streets and shopping districts; and
3. Consumption taxes in general are regressive in nature.

Perhaps these points should be considered in the upcoming transportation debate. If indeed it is good public policy for transportation and environmental reasons that our consumers must spend more to fill up their cars with gasoline, why not balance those new costs off for our taxpayers by taking the progressive step to lower the regressive and avoidable sales tax? The strong growth in sales tax certainly makes it possible, and tax fairness for our consumers certainly would make it good public policy to incent spending in the Massachusetts economy, not north of the border. ■

Hurst and Hudson Appointed By Governor Baker to Merged Market Advisory Council

Governor Charlie Baker in January appointed RAM President Jon Hurst and RAM Officer and member Wendy Hudson to the Merged Market Advisory Council. The 13 member Council is tasked to study and report back to the Governor by the end of April recommendations on what to do about unfair cross subsidies and other market disruptions affecting small business health insurance premiums. The Commissioner of Insurance Gary Anderson chairs the Council.

In 2006, under the “RomneyCare” health reform, Massachusetts became the first state to merge the “non-group” (individuals) risk pool together with the “small group” (50 and under employees) into one risk pool—the Merged Market. At the time the Merged Market legislation was considered, RAM and several other employer groups strongly opposed the proposal as anti-small business. Many in the insurance industry at the time—including the then CEO of Harvard Pilgrim, Charlie Baker—also opposed the concept.

In the years that followed, individuals saw significant premium cuts, while small businesses and their employees saw dramatic increases. This result was due to the typical experience that individuals have higher utilization and claims patterns than employees of small businesses, and may not be as good of consumers in looking at high value provider options.

In addition, with the passage of the ACA nationally, many individuals were given taxpayer assistance to achieve far lower premiums—in some cases free—through the state exchanges.

Fourteen years after the state law change, and 10 years after the passage of the ACA, only one other state—Vermont—followed the Massachusetts lead by merging individuals together with small businesses. Vermont’s step was part of their failed efforts to move to a “single payer” government run health insurance system.

The fact that small businesses are arguably paying more than their fair share raises clear concerns on marketplace discrimination created by government. Large businesses and large public employer purchasing groups do not have to cross subsidize the premiums of individuals. Why then must the employees of small businesses?

In short, it has been the policy of the Commonwealth of Massachusetts that small businesses with 50 or fewer employees must pay higher premiums in order for individuals to pay less.

The marketplace has begun to react by the creation of such vehicles such as Professional Employment Organizations (PEOs), and forms of self-insurance down to the smallest of employers. Such federally regulated options avoid the state Merged Market entrapment and arguably state regulation.

Further, state efforts to help small businesses through Small Business Cooperatives (like RAM’s own RAMHIC) have been somewhat held back in delivering the right amount of value due to the intersection of state and federal (ACA) laws. National versions of cooperatives (AHPs or Association Health Plans) designed to give small employers marketplace equality with big employers have not been given the green light to operate in Massachusetts.

All of these issues will be looked at in the Council. In RAM’s opinion, you would be hard pressed to find a more anti-small business law in Massachusetts or any state, than the one which forced the creation of the Merged Market, and therefore the destruction of the Small Group risk pool. And now is the time to seek real fairness under the law and in the market, and to eliminate government-imposed discrimination for Main Street Massachusetts.



The Advisory Council wants to hear from business owners like yourself regarding challenges accessing affordable health insurance. Members are urged to attend one of the Council’s public listening sessions. For dates and times, please visit www.retailersma.org. Members may also submit written comments to the Council at mergedmarket@mass.gov.



Once threatened by the ACA, the RAM Health Insurance Cooperative is NOW thriving – and growing – in 2020!

As of January 1, 2020, for all new and renewing small groups in the retail, restaurant, and service sector related SIC codes, RAMHIC includes:

- RESTORED 3% DISCOUNT FOR EVERY SMALL GROUP MEMBER
- EVERY SMALL GROUP PLAN OFFERED BY BCBSMA (YES WE DID SAY EVERY!) AND ALMOST ALL SMALL GROUP PLANS OFFERED BY FALLON HEALTH
- DEFINED CONTRIBUTION OPTIONS TO ADDRESS THE NEEDS OF BOTH EMPLOYER AND EMPLOYEE

And, depending upon choice of carrier, additional value-added options, including:

- A FREE \$10,000 LIFE INSURANCE POLICY FOR ALL SUBSCRIBERS
- A FREE SUPPLEMENTAL HOSPITALIZATION POLICY FOR ALL SUBSCRIBERS, WHICH COVERS \$750 FOR A HOSPITAL ADMISSION
- WELLNESS PROGRAMS WITH POTNETNAIL EMPLOYEE INCENTIVES OF UP TO \$300 AND A CHANCE TO EARN 7.5% BACK END EMPLOYER REBATES

RAMHIC is a service of the Retailers Association of Massachusetts. RAM is the leading voice for more choice and fairer premiums for small businesses and their employees in the MA Merged Market risk pool. RAMHIC is an important example of our efforts to deliver economic equality for Main Street.

Visit www.retailersma.org or call us at (617) 523-1900 to learn more!

In November, Massachusetts Gov. Charlie Baker signed a law designed to curb distracted driving in the Commonwealth by prohibiting the use of hand-held electronic devices while operating a motor vehicle. Members with employees whose positions require travel and mobile communications to conduct business should familiarize themselves and their employees with the law. A violation could have a significant impact your business and your employees.

Prohibited Activity

The law creates three prohibitions which are applied broadly to all “mobile electronic devices” that a driver could use in a vehicle, including but not limited to smartphones, GPS, tablets, and laptops. The prohibitions state that no operator of a motor vehicle shall

- HOLD a mobile electronic device;
- USE a mobile electronic device UNLESS the device is being used in hands-free mode;
- READ or VIEW text, images or video display.

Hands-free Use

The law allows for the hands-free use of a mobile electronic device, defining “hands-free mode” as the operation of a mobile electronic device by which a user engages in a voice communication or receives audio without touching or holding the device. However, the mobile electronic device may require a single tap or swipe to activate, deactivate or initiate the hands-free mode feature.

GPS Use

The law also specifically allows an operator to view a map generated by a navigation system or application on a mobile electronic device that is mounted on or affixed to a vehicle’s windshield, dashboard or center console in a manner that does not impede the operation of the motor vehicle.

Exemptions

- Stationary Vehicle: use of a mobile electronic device is allowed in a vehicle if the vehicle is stationary and not located in a part of the public way intended for travel by a motor vehicle or bicycle.
- Emergency Exemption: use of mobile electronic device in response to emergency is allowed if (1) the vehicle is disabled, (2) medical attention or assistance is required, (3) police intervention, fire department or other emergency services are necessary for personal or public safety, or (4) a disabled vehicle or an accident is present on a roadway.

Penalties

A violation of this law is punishable by

- A fine of \$100 (1st offense), \$250 (2nd offense) and \$500 (3rd or subsequent offense);
- The completion of a remedial driver’s education program (2nd or subsequent offense);
- A surcharge against the driver’s insurance (3rd or subsequent offense.)

While the law becomes effective February 23, 2020, enforcement of these penalties will be delayed until March 31, 2020 to allow drivers to become used to the law with violations prior to that date receiving warnings.

Members with questions may contact RAM General Counsel Ryan Kearney at rkearney@retailersma.org.

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an item with a credit card and the total transaction cost is \$106.25, the credit card processor does not know if any of that amount is attributable to sales tax. The item might be a dress, fully priced at \$106.25, and not subject to the sales tax. The item might be a \$100 lamp, plus \$6.25 in sales tax. The processing network, the credit card company, and the card issuing bank do not know any of this. They know the credit card number; expiration date and security code and they know the total. They receive the information they need to know to process a payment transaction and to do it quickly, as the network processes millions of transactions every day.

Retailers, card companies, processors and the DOR would incur over a billion dollars in new expenses to build out and reprogram a new system – costs that would be passed onto consumers and taxpayers – in a process that, if even possible at all, would take many years to implement. “Real Time” collection is an untested theory, a collection idea that does not exist in practice in any form, in any state or municipality in the country. No “new” revenue will be generated. Only the remittance timing will change on sales tax that would have been collected and remitted anyway. At the start of the process, in the first month of implementation, the sales tax collected will be remitted a month early, along with the tax collected the previous month, essentially squeezing thirteen months of collections into twelve months.

This does not increase sales resulting in increased revenue. There is no new money to be found. This would simply provide a one-time increase during the initial month of implementation, a one-time revenue boost of money that the state was going to get anyway. The DOR also would be deciding who the early remittance applies to. If they choose to go to the \$100,000 annual threshold as allowed for in the language, that would mean all retailers and restaurants with more than \$1.6 million in taxable sales would be impacted. Those are small businesses. This proposal is anti-small business and would negatively impact our local, family owned, independent sellers who are already struggling under the burdens of soaring rents, high health insurance costs, the EMAC tax, the increasing minimum wage and the forthcoming mandatory paid family and medical leave program. And to add to that burden, retailers and restaurants in the Commonwealth bear the burden of the cost of collection, more so than competitors in others states, the majority of which have some form of a vendor’s collection allowance to mitigate that cost to collect. We expect a significant fight in the Legislature on this proposal and RAM will continue to lead on this issue and work with our coalition partners to oppose it.

H.2 also includes a proposal to allow for the purchase of lottery products using a debit card. The prohibition on the use of credit cards to buy lottery products would remain in effect. Unfortunately, the proposed language does not include any changes to the lottery agent commission structure to mitigate the loss in revenue that would result from debit card swipe fees. Unless the Legislature addresses this issue to protect our lottery agents from increased swipe fees, RAM will strongly oppose the advancement of this provision.

The Governor’s budget now goes to the House, which will release and debate its own budget proposal in mid to late April.

Legislative Reporting Deadline Arrives

Under the joint rules of the Legislature, all Joint Committees are required to issue a final report on all the legislation pending before them by the first Wednesday of February, in the second year of the two-year session. With the arrival of that date, we expect to see significant activity on bills of interest to the retail industry. ■



How much loss in your business is caused by your own employees? Can you afford to lose hundreds or thousands each month to employee theft and fraud? While never pleasant to talk about, it is a reality in the United States that over 5 percent of all employees stole from their employers in 2019.

According to the Jack L. Hayes International 30th Annual Retail Theft Survey, more than 200,000 dishonest employees were apprehended in 2019 in the United States. Are you aware that as part of your RAM membership you have a resource available that can provide you options to drive profitability and minimize theft and fraud in your business, and that this resource – NELPAG is easily available through email or via phone?

How can you best deter employee theft and fraud?

1. Start by training and educating your employees, and offer them options to report issues.
2. Ensure they know the consequences of theft and fraud.
3. Call NELPAG or go to www.nelpag.com and schedule a free consultation.

If you feel like you need further support or have any questions on how to create a streamlined business process, please reach out to us at info@nelpag.com.

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Cohasset

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Dalton

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Fari's Diner
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Feng's Asian Cuisine
Wakefield

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Groton

continued >>>>



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{ *New Members Continued*

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Adams

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North Amherst

Pastaio Via Corta
Gloucester

Peabody Motor Sports
Peabody

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Plymouth

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The Fairfield Group
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The Green Lady
Nantucket

Tony's Sutton Pizza
Sutton

Trudel's Auction Gallery
Bellingham

Turner Steel Company
West Bridgewater

West Falmouth Market
Falmouth

Weston Automotive
Weston

Yiddish Book Center
Amherst

