



RETAILERS ASSOCIATION
OF MASSACHUSETTS

June 8, 2017

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Hon. Brian S. Dempsey, Chair
House Ways and Means Committee
State House, Room 243
Boston, MA 02133

Hon. Karen E. Spilka, Chair
Senate Ways and Means Committee
State House, Room 212
Boston, MA 02133

Re: FY18 Budget Conference Items

Dear Chairman Dempsey and Chairwoman Spilka:

The Retailers Association of Massachusetts (RAM), established in 1918, is a statewide trade association of approximately 4,000 member companies. Our membership ranges from independent, "mom and pop" owned stores to larger, national chains operating in the general retail, restaurant and service sectors of the retail industry. The retail industry in the Commonwealth is the backbone of our local Main Streets, supporting over 928,000 jobs and operating in more than 73,000 brick-and-mortar establishments.

On behalf of RAM, I thank you for the opportunity to submit the following comments on the items of interest to our members currently pending before the FY18 Budget Conference Committee.

• **Accelerated Sales Tax Remittance / Sales Tax Prepayment**

We strongly object to the option of accelerated sales tax remittance, or "real time" sales tax collection, included in both the House and Senate budgets. We also do not support a prepayment requirement for a certain subset of vendors, those remitting more than \$750,000 in sales tax annually, a second option allowed for in Section 168 of the Senate budget. We would however not oppose the third option allowed for in the Senate language calling on the Comptroller to credit a certain amount of sales tax collections from FY19 as FY18 revenue.

Accelerated sales tax remittance would require third party payment processors to collect and remit sales tax from retailers in real time, on all third party credit and debit card purchases. Today, when a consumer purchases 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.

Currently, retailers collect and remit all sales tax to the state, and they are responsible for the accuracy, reconciliation and auditing of their payments and accounts. That process would continue under this proposal for all purchases made not using a third party credit or debit card, such as purchases made using cash, gift cards, checks, store brand cards, and split tender transactions. However, a second payment system would need to be built to accommodate the state's "real-time" collection and remittance process for transactions involving third party credit and debit cards. Retailers, credit card companies, processors and the DOR would incur millions of dollars in new expenses to build out and maintain a new system – costs that would be passed onto consumers and taxpayers – in a process that, if even possible at all, would take years to implement.

Consumers today enjoy the benefits of generous retail return policies, and they take full advantage of them. Return volumes are at record highs. This process would be further complicated by this proposal. Sales tax already having been remitted to the state in supposed real time would need to be refunded by the state back through the processor to the retailer and to the customer – thousands of times per day. The sheer volume of returns cannot be understated.

There undoubtedly would be costly fees that would be associated with the processing costs of this new network. Who will be expected to pay for these added processing costs? Retailers have served as the state's tax collectors since 1966 and they receive no compensation for providing that service. Meanwhile, 28 out of the 45 states that have a sales tax do compensate their sales tax collectors – retailers and restaurants – via some form of a vendor discount or collection allowance. We simply cannot ask our local sellers to fund the burden of maintaining two collection processes without compensation. Many retailers have recently paid to upgrade their systems and terminals to comply with the new Chip cards, adding Chip readers to the systems. Should this proposal pass, we understand that those new terminals would be obsolete, requiring new terminals to be purchased and wasting millions of dollars.

In the end, no "new" revenue would be generated. All that would be accomplished is that at the start, the sales tax would be remitted one month early, essentially squeezing 13 months of collections into 12 months. *It is very important to note that "real-time" sales tax collection does not exist in any form in any state.* The National Conference of State Legislatures' (NCSL) Executive Committee on State and Local Taxation reviewed this issue for a year (see attachment) and concluded that this was not a process to be recommended to the states and that "the purported "real time" sales tax process is not a solution." The Commissioner of the Revenue Department in Connecticut, Kevin Sullivan, testified last year that this was "a solution in search of a problem, or at least it's the wrong solution."

Retailers would jump at the chance to get out of the sales tax collection business, if we thought that was possible. However, this is a flawed and unproven proposal that has been rejected by multiple states, NCSL and all of the parties involved in the payment processing industry. We urge the Committee to abandon this proposal.

Prepayment for those collecting and remitting more than \$750,000 in sales taxes annually has been offered as an alternative to the problem created by the “real time” scheme. Essentially, retailers alone are now being asked to fill the budget hole created by a flawed proposal, submitting sales tax to the state on sales that they have not yet made. Prepayment does exist in a number of states, but in varying forms. Some states require prepayment only from previously delinquent taxpayers, and many states offer an incentive to prepay, either through a discount or collection allowance. According to the MA DOR, in 2014 there were 446 taxpayers who remitted more than \$1,000,000 in sales taxes for the year, collectively adding up to more than \$2.12 billion in revenue. In order to protect our local small to medium sized retailers and to keep as many MA only companies out of any prepayment system, if the state is to pursue prepayment, the threshold should be raised to \$1,000,000, or higher.

- **Employer Contribution Tax**

S.2076 offers the Secretary of Administration and Finance a choice in providing for a *temporary* employer contribution tax. One option would be a temporary increase in the Employer Medical Assistance Contribution (EMAC). The second option allows for a complicated employer assessment similar in structure to what was proposed in H.1. However, similar to the debate in years past regarding the MBTA, our membership feels strongly that we need to have reforms before new revenue and that the state needs to focus its efforts on reforming Medicaid.

Employers are being unjustly singled out to pay for the solution to a problem that they did not create. The Commonwealth made the proactive decision a number of years ago to expand Medicaid eligibility under the ACA. When you expand eligibility, the enrolled population will increase, and so will the costs to the system. When you eliminate the prohibition on employees accessing state subsidized coverage if they have been offered a plan by their employer, you cut the legs out from under employers who are trying to enroll employees in their health plan. Medicaid benefits and plans are too generous to compete with when compared to most private insurance offerings, and they are available at a lower cost. The Commonwealth has not delivered in its pursuit of lower health care costs over the past decade, and commercial health insurance premiums, particularly for small business plans, have become increasingly unaffordable. Employers have been left without a carrot – attractive lower cost plan options – or a stick – prohibition on access to subsidized plans – when it comes time to talk to their employees about health insurance.

The proposed tax will do nothing to address the ever rising costs in the MassHealth program or to abate the appetite of the provider community for more and more taxpayer and premium dollars. Until we actually are willing to tackle issues around Provider Price Variation and real Medicaid reform, we should not expect to see cost growth slow at all. The uncertainty of the future of the ACA and what if anything will change at the federal level has a tremendous impact on this debate. We should not act prematurely to reinstitute a bureaucratic, paper work intensive, burdensome requirement on employers such as the proposed employer contribution tax.

If absolutely necessary, the temporary EMAC increase is the preferred approach, but only if packaged with extensive and meaningful Medicaid reforms. With real reforms on the table, employers would be more apt to support such a plan, based on a shared responsibility.

- **Flavored Cigar Excise Tax / Prevention and Wellness Trust Fund**

The employer community has joined with the health insurance industry to support an end to the assessment on health plans and employers to fund the Prevention and Wellness Trust Fund. This one-time \$57 million assessment, on health plans and certain hospitals, was initially instituted in 2012 and was passed through to employers and consumers in the form of higher premiums and health care costs. The fund, now set to expire, should be allowed to do so, and should not be recapitalized in perpetuity through a new flavored cigar tax as proposed in the Senate budget. This test program was certainly costly and also difficult to measure in terms of its effectiveness. Many of the programs were redundant, duplicating efforts that the health insurers and the provider community were already engaged in. In a period of tight state budgets and tight consumer incomes, we must avoid wasting limited dollars on potentially redundant grant programs which certainly benefit the grant recipient organization, but may not be the most cost effective or efficient use of funds.

Small stores will be hurt as consumer prices increase and more customers are incited by the government to buy online from untaxed competitors. This is simply bad economic and tax policy. This new tax will shift more consumer dollars out of our local economy, to someone else's economy, as consumers will move more rapidly to buy these products online. The Commonwealth can no longer afford to fund programs of questionable effectiveness through poor tax and economic policies. RAM urges the Committee to reject the cigar tax imposed in Section 70 of the Senate budget.

On behalf of the membership of RAM, I thank you for the opportunity to comment on these very important issues and appreciate your consideration.

Sincerely,



Jon B. Hurst
President

cc: Hon. Robert E. DeLeo, Speaker, House of Representatives
Hon. Stanley C. Rosenberg, President, Senate
Hon. Stephen Kulik, Vice-Chair, House Ways and Means Committee
Hon. Sal DiDomenico, Vice-Chair, Senate Ways and Means Committee
Hon. Todd Smola, House Ways and Means Committee
Hon. Viriato deMacedo, Senate Ways and Means Committee