COST
Council On State Taxation

Patrick J. Reynolds
Senior Tax Counsel
(202) 484-5218
preynolds@cost.org

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VIA EMAIL

Karen E. Spilka, Chair, Joint Committee on Ways and Means
Jeffrey Sánchez, Chair, Joint Committee on Ways and Means

Re: Accelerated Sales Tax Remittance Provisions of H.B. 2 (Secs. 49 & 60)

Dear Chair Spilka, Chair Sánchez, and Members of the Joint Committee on Ways and Means:

On behalf of the Council On State Taxation (COST), I am writing to express concern with the accelerated sales tax remittance provisions (Sections 49 and 60) of H.B. 2. If passed, these provisions are estimated to cost businesses, under the pretext of "modernization," a staggering $1.2 billion in up-front costs and $28 million in annual recurring expenses to build and maintain new compliance systems (see attached study).

In exchange for this huge expense, the Commonwealth would receive no new revenue, but would achieve a $125 million revenue shift from a future fiscal year into the current fiscal year. That same revenue shift can be accomplished, without all the unnecessary costs, by simply requiring retailers to make an estimated sales tax prepayment.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 550 major corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Businesses Would Incur Huge, Unnecessary Expenses

No state currently requires daily sales tax remittance by payment processors. Because this would be a novel compliance requirement, new systems would need to be developed and implemented to accommodate the increased information flow between retailers, payment processors, and banks. Payment processors do not currently collect information on the amount of tax due on each transaction; they only know the total charge for each transaction. At a minimum, payment processors would need to gather additional information on the tax amount of each Massachusetts sale and the retailer's taxpayer ID. Not all current card processing hardware can handle the increased information flow, and new hardware would be required. To the extent current hardware can handle the increased information flow, new software upgrades would still be required.

Moreover, each retailer doing business in Massachusetts, large and small, would need to implement new systems to track and reconcile all these payments. Hundreds of payment processors operate in the market today, and a single retailer may use multiple payment processors. Currently, a retailer need only track the single monthly payment it makes to the DOR; under the proposed system, each retailer would need to reconcile potentially thousands of payments made on its behalf by payment processors. Many of the increased hardware, software, and personnel costs would be recurring costs for both payment processors and retailers.

I have attached a report commissioned by the COST-affiliated State Tax Research Institute (STRI) estimating the expenses that would be incurred by the business community to build the necessary new systems. STRI collected information from over twenty businesses on the costs to design, implement, test and operationalize an accelerated sales tax collection system. Respondents included retailers operating in Massachusetts, payment processors, and financial institutions. Based on these responses and on publicly available data on the number and size of retailers and payment processors operating in Massachusetts, the attached STRI report concluded that the proposed accelerated sales tax remittance program could cost businesses operating in Massachusetts as much as $1.22 billion in up-front costs and an additional $28 million in annual recurring costs. While these are very high-level estimates based on the best data available in a short timeframe, they nonetheless indicate that an accelerated sales tax remittance system would impose a significant financial burden on businesses operating in Massachusetts.

The Commonwealth Would Receive No Real Benefit

The Commonwealth would receive no new revenue from the proposal. In last year's budget, the legislature estimated that the proposed accelerated sales tax remittance system would result in a one-time, $125 million revenue shift that results from accelerating thirteen months of revenue into a twelve-month fiscal period. In this year's budget, the acceleration is sought to merely maintain twelve months of revenue in a twelve-month period.

Other purported benefits include "fraud prevention" by providing prepayment by retailers that otherwise might fail to remit the tax collected. Sales tax remittance by payment processors, however, has no impact on the cash economy (other than potentially driving noncompliant taxpayers to the cash economy), and accordingly no fiscal estimate was provided for this supposed benefit.

Acceleration of Revenue Can Be Achieved Without Huge Infrastructure Changes

All of the alleged "benefits" can be achieved much more cheaply and efficiently through other means such as a monthly estimated tax payment. Twenty other states require some sort of estimated prepayment, and the business community does not have to build new systems to do it. To be clear, COST does not advocate for an estimated prepayment. But at least it would not require the business community to needlessly build costly new systems to comply.

The Only Party Pushing This Idea is One That Seeks to Profit, at the Expense of the Commonwealth, from Additional Complexities

During the Commissioner of Revenue's study of this issue last fall, he solicited input from the interested parties, which was overwhelmingly in opposition to daily sales tax remittance by payment processors. The only party that supported the idea was STAC Media, LLC, a company that claims to have patented the concept of "real time" sales tax collection on debit and credit card purchases. The company does not purport to offer any software for sale, so it will likely seek to profit in Massachusetts by claiming a royalty. When it was pushing the idea in Connecticut, it sought a royalty fee of .25% of sales tax collected. If successfully claimed in Massachusetts, this would amount to an additional $15 million in annual expense to the Commonwealth.

Conclusion

For the reasons outlined above, COST urges you to remove Sections 49 and 60 from the budget. To the extent that creates any budget gap, COST urges you to fill that gap by simply requiring an estimated sales tax prepayment as is done in twenty other states. If you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Patrick J. Reynolds
Senior Tax Counsel

CC: COST Board of Directors
Douglas Lindholm, COST President & Executive Director