

JOINT COMPANY & TRADE ASSOCIATION LETTER OPPOSING OUTSIDE SECTION 50 OF HB 2

March 2, 2020

The undersigned trade groups and businesses from the retail, financial services and telecommunications sectors urge Massachusetts policymakers to reject a proposal that would require remittance of the sales tax portion of sales transactions involving credit, debit and other electronic funds transactions to the Department of Revenue in real-time because it is costly, burdensome and doomed to failure.

The proposal outlined in Outside Section 50 of Massachusetts House Bill 2, would be unique in the United States in requiring third-party payment processors and possibly issuers of private label retail credit cards to capture and remit sales tax from retail merchants daily. If enacted, this provision has an effective date of July 1, 2023—preempting the role of a future legislative session in framing the tax policy.

Enactment would effectively penalize merchants for doing business in Massachusetts and impact millions of consumer credit and debit card payments or electronic funds transfers.

A similar version of the proposal was considered by the legislature last session and was rejected after strong opposition from Massachusetts businesses. The bipartisan National Conference of State Legislators has also 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 efforts in Arizona, California, and Connecticut have also been rejected.

THE PROPOSAL IS TECHNOLOGICALLY UNREALISTIC

Real-time sales tax collection does not exist. Even if future technology makes it possible, Massachusetts would require a complete overhaul of its payment ecosystem to capture detailed data about each sale to identify sales tax accurately — and then code, implement and test an as yet un-invented process at retailers’ point of sale terminals, payment processors, payment networks, the card-issuing financial institutions, and Massachusetts’ Department of Revenue (DOR) itself. 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, further increasing burden and expense. Such a system would also need a mechanism for re-crediting tax paid by a merchant in the event of the return of goods by a consumer.

COSTLY AND BURDENSOME TO THE COMMONWEALTH & BUSINESS ALIKE

The DOR has estimated an implementation cost of \$4 million—an overly optimistic estimate we believe is far too low. Additionally, the Commonwealth would need to maintain the existing sales tax collection system for cash and check transactions, further increasing the cost for merchants and the Commonwealth.

Such requirements would affect every single business that touches electronic payments in the Commonwealth, causing significant disruption, increased processing costs, delays due to testing and certification, and the expense of purchasing or upgrading new payment acceptance terminals. For some retailers, this would present challenges that threaten their ability to keep the doors open as these systems can cost many thousands of dollars. This burden, unique to Massachusetts, would act as another disincentive to do business in the state.

In 2017, a study by the nonpartisan State Tax Research Institute concluded that implementing a daily tax collection system would cost Massachusetts retailers about \$1.2 billion in one-time costs and an additional \$28 million in recurring costs.¹ This would be in addition to the millions the Commonwealth would incur for standing up and maintaining such a system that will not increase tax revenue for Massachusetts.

¹ See: [https://cost.org/globalassets/cost/stri/studies-and-reports/daily-sales-tax-collection-system-could-cost-massachusetts-businesses-\\$1.2-billion.pdf](https://cost.org/globalassets/cost/stri/studies-and-reports/daily-sales-tax-collection-system-could-cost-massachusetts-businesses-$1.2-billion.pdf)

NO CLEAR BENEFIT FOR THE COMMONWEALTH

Finally, there is no clear data to support the contention that Massachusetts currently foregoes revenue from failure to implement real-time sales tax collection. Analysis of detailed data from California demonstrates that a similar proposal, under the most optimistic scenario, would have increased sales tax collections by 0.19% to 0.29%.² A 0.2% increase in collections is insufficient justification when weighed against the tens of millions of dollars in new costs for retailers, payment processors, and state government.

For these reasons, we urge you to oppose this section.

Sincerely,

Associated Industries of Massachusetts
Greater Boston Chamber of Commerce
Massachusetts Bankers Association
Massachusetts Competitive Partnership
Massachusetts Restaurant Association
Nashoba Valley Chamber of Commerce
National Federation of Independent Business of Massachusetts
New England Cable & Telecommunications Association
New England Convenience Store & Energy Marketers Association
North Shore Chamber of Commerce
Retailers Association of Massachusetts
Springfield Regional Chamber
American Financial Services Association
Card Coalition
Council on State Taxation
Electronic Payments Coalition
Electronic Transactions Association
Internet Association
National Retail Federation
TechNet
Alliance Data
Bank of America
Blackhawk Network Holdings
Capital One
Discover Financial Services
JP Morgan Chase
Mastercard
Ocean State Job Lot
Synchrony
Target
T-Mobile
Verizon
Visa
Walmart Stores, Inc.
Worldpay

Signatories as of March 4, 2020

² Information obtained from various publications of the California State Board of Equalization, including, “Addressing the Tax Gap: Fiscal Years 2011-2012 through 2013-2014” and “Annual Report: 2010-2011.”