



Massachusetts Taxpayers Foundation

September 22, 2017

Mr. Christopher Harding, Commissioner
Department of Revenue
100 Cambridge Street
Boston, MA 02114

RE: Sections 94 and 95 of Chapter 47 of the Acts of 2017

Dear Commissioner Harding:

On behalf of the Massachusetts Taxpayers Foundation, I am submitting comments with respect to the provisions of sections 94 and 95 of chapter 47 of the Acts of 2017. MTF is a non-partisan, nationally recognized, non-profit public policy research organization focusing on the state's fiscal and economic health. We have an established record of providing independent, high-quality analysis of important state fiscal issues and we have a longstanding reputation for credibility and objectivity. I write today to state clearly that the "accelerated sales tax" collection proposal put forward in this year's budget cannot be implemented in a cost-effective manner, and therefore, we respectfully ask that no further action be taken to implement the proposed policy change.

As you are aware, the "accelerated sales tax" proposal first surfaced as a provision in Governor Baker's FY 2018 budget without a prior public hearing on the merits of the proposal or an opportunity for impacted businesses to provide feedback on its provisions. When this language was first made public, credit card processors, financial institutions, retailers and other vendors made their serious concerns known to legislators. This pushback caused the legislature to make the proposed policy change contingent on a certification of cost-effectiveness. Had there been public input earlier in the process, we are confident that the numerous legal, technological, financial and administrative drawbacks inherent in the proposal would have prevented the policy from moving forward, as has been the case in every other jurisdiction in which it has been considered. The experience of the "tech tax" in 2013 shows how disastrous it can be to roll out complicated changes to the state's tax code without taking sufficient time to solicit feedback and fully understand the implications of making the policy change. It would be inexcusable to make the same mistake just a few years later on a proposal that will impact thousands of Massachusetts businesses.

Before considering how damaging this policy change would be for businesses, it is first important to note that the change would not be cost effective for the state. The policy change outlined in section 94 is lacking many vital details for how to implement this fundamental change to the sales tax remittance process. These details would need to be developed in a far more abbreviated time frame than is typical for the DOR regulation promulgation process in order for those regulations to be fully vetted and implemented by the statutory deadline.

The required changes to DOR's sales tax collection processes impose additional costs for the state. Currently, DOR works exclusively with retailers and other vendors to collect sales tax on a monthly basis. Under "sales tax acceleration", debit and credit card sales tax amounts would remit to DOR daily. Not only does this change the timing of a large proportion of sales tax remittances, it also introduces third party payment processors into the remittance chain without eliminating the original sellers' fiduciary responsibility to collect and remit the sales tax. Essentially, it will create two separate sales tax remittance processes: one for cash and check transactions and another one for credit and debit purchases. Each process will have different timing, collection and technological requirements and will require DOR to deploy new technology and dedicate additional staff and other resources to oversee them – no easy task for a department that has lost 20 percent of its workforce over the last three years. When all of the resources and staff time to implement this change are weighed against a policy change that is not estimated to increase total tax revenue, it is evident that this proposal change does not pass the cost-effectiveness test for the state.

The accelerated sales tax remittance proposals is even less cost effective for the Commonwealth's businesses. It would require fundamental changes to the operations of thousands of businesses involved in debit and credit card processing because these transactions are enabled by interconnected global technology platforms. The Foundation understands from its members in the retail, banking, technology and telecommunication sectors how difficult and complicated these changes would be. Each sector faces unique business challenges in complying with this proposal. For example, retailers will face significant cost in purchasing or developing new point-of-sales technology to properly account for which items are subject to tax and which are tax exempt so that third party processors can distinguish between the two in order to remit the proper amount of tax on each transaction. Retailers would bear these costs, and the necessary staff training, after having transitioned to "chip reading" technology very recently.

Banking and card-processing companies will incur significant costs related to developing unique technology for a Massachusetts-only change in the sales tax remittance procedure. This will involve renegotiating thousands of contracts with retailers and other vendors to reflect the new responsibilities for remitting sales tax. Insurance policies will also have to be revised to cover this new liability. These amended agreements will need to address a host of issues, most notably liability for unpaid tax obligations and how to reconcile returns, exchanges, gift cards and other ancillary issues stemming from these transactions. At present, it's not possible to quantify the full cost of making these changes because the proposal lacks sufficient details. However, it is clear that the contemplated change fails to meet any standard of cost effectiveness for impacted businesses.

The technological, legal and administrative complexities inherent in the proposed sales tax remittance policy make the proposed changes cost ineffective for affected businesses in the best of circumstances. The goal of implementing such a change in less than nine months (by June 1st of 2018) makes the change infeasible, if not impossible. Implementation cannot begin until the DOR completes its November 1st certification and then issues regulations, a process that will be made more difficult by the unprecedented nature of the proposed change and the lack of

guidance available from other jurisdictions. Only then can the task of developing new systems, testing their interoperability and integrating them begin, and this will almost certainly take years to complete if recent examples are any indication. For example, the process for improving credit and debit card security through the use of EMV chips has taken years and is still ongoing. Implementing a Massachusetts-only change of similar complexity over a period of several months is neither cost effective nor reasonable.

I thank you for the opportunity to offer comments. MTF supports reasonable efforts to modernize the state's sales tax system to enhance compliance and take advantage of improvements of technology. However, modernizing our existing system is a complicated undertaking that requires not just time, but also close collaboration with impacted stakeholders and a clear identification of the problem to do it correctly. Unfortunately, the process for the pending proposal provided none of these, and fails the feasibility and cost-effective tests as a result.

Sincerely,

A handwritten signature in cursive script that reads "Eileen McAnney".

Eileen McAnney
President