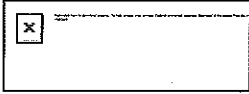


From:
Sent:
To:
Subject:

noreply=hubspot.com@emailer.hubspot.com on behalf of noreply@hubspot.com
Wednesday, April 01, 2015 8:05 AM
Brad MacDougall
Response to: Regulation (www.aimnet.org)



Contact reconversion on form:

Regulation

On landing page:

Regulatory Issue

First Name:

joe

Last Name:

lavallee

Company Name:

[REDACTED]

Job Title:

[REDACTED]

Phone Number:

[REDACTED]

Email:

[REDACTED]

What's your regulatory issue?:

Mass. has so much regulation and compliance on Manufacturers that we have been in such a poor competitive position against our competitors too long. NOW, add this to the cry for a much higher minimum wage and we will be out of business or must leave this State. Having been here for 3+ generations and 85 years, this will break our backs on top of all the regulations. We compete with businesses in other States that there is no "level playing field. This is where State reg's interfere with normal business competition. Mass. was the poster child of how to do it right for manufacturing..... now, we are all going to be "making it elsewhere" very soon unless our Leaders begin to educate people as to the importance of Manufacturing....

Contact:

joe lavallee

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Leadership is our business

Associated Industries of Massachusetts

One Beacon Street, 16th Floor

Boston, MA 02108

617.262.1180 | www.aimnet.org

January 26, 2012

Secretary Jay Gonzalez
Executive Office of Administration and Finance
One Ashburton Place
Boston, MA 02108

Re: Request for Notification of New Regulations & Business Impact Statements

Dear Secretary Gonzalez,

On behalf of Associated Industries of Massachusetts, (AIM) and the thousands of employer members AIM represents, I write to request that AIM be informed of any regulations and the corresponding business impact statements as proposed by state agencies. As stated in MGL Ch. 30A, AIM requests these notices as an interested party.¹

As you know, in 2010 the Legislature unanimously approved and the Governor signed into law an economic development bill (S.2582). One provision of the new law requires every agency to conduct small business impact statements relative to any proposed regulation as well as a mandatory review of each agencies current regulations.

S.2582 amends the administrative procedure act (M.G.L. 30A) to expand the "statement of considerations" currently required for the impact on small businesses and require that the statement be published concurrent with draft regulation. The legislation also mandates a review of existing regulations within four years of enactment for their impact on businesses, and a subsequent review at least every twelve years thereafter.

As always, we are available to assist you to continue work of improving the state's business climate. Thank you for taking our views into account and feel free to contact me if you have any questions or need any further information.

¹ Chapter 30A as amended including (Notice Provision: Sec. 2 & Sec.3)

<http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30A>

<http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30A/Section2>

<http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30A/Section3>

Sincerely,

A handwritten signature in black ink, reading "John R. Regan". The signature is fluid and cursive, with the first name "John" being larger and more prominent than the last name "Regan".

John R. Regan
Executive Vice President

ACTION LIST – DUA LEGISLATIVE CHANGES

- 1) DUA regulations are inconsistent on outside income coupled with benefits. There are no stated limits on income while receiving benefits. A better and more consistent system must be established. An individuals savings/holdings/assets should be considered, (as they would be if they were applying for any other form of assistance).

Case in point: a man known to me is granted, paid and then denied benefits because DUA determined that he was more likely than not devoting at least 20 hours per month in an activity that generated income, (even though he did not and the limited income he did derive was actually quite small, certainly not enough to sustain his household). This individual had no prior history of unemployment. In fact, he held a well-paying managerial position for years that was eliminated during a merger. To add insult to injury, he was ordered to pay back all that he was awarded and paid to date.

Case in point: a former employee of mine is terminated for excessive scrap and insubordination. He applies for and is granted benefits. I appeal and lose. He is granted continued benefits and still collects even though he owns and collects rent from more than 15 rental units. This small fact was not allowed to be discussed because it was not a reason for termination.

Case in point: An employee is terminated for a direct violation of an established and enforced rule, (he refused to perform a specific job that he was certainly capable of and qualified for). He applies for benefits and is granted them. I appealed. The employee's benefits are terminated following the hearing because he violated an established policy. But, he was self-employed before he worked with me AND still owned all the equipment. He was perfectly capable of returning to earning a living at any time just by turning this equipment back on but, discussion of this simple fact was not permitted or allowable during the hearing simply because the employer is initially permitted only 1 reason for termination and appeal.

- 2) DUA currently uses MA Attorney General for counsel at all appeals, hearings, etc. MA DUA has staff attorneys, they should be using them, (they're already on the payroll). Atty. Generals' office should be there to serve EVERYONE, (serving the public AND keeping government open and fair).

Note: I called MA Atty. Gen. Office in Springfield once in 2005 to get advice and / or assistance on a DUA case and they, (a man named Bruce), told me that they "cannot help me", that their labor office was there to serve the workers, [not the employer].

- 3) Initial claim by claimant is "a given" except in very extreme cases. Burden of proof for appeal currently falls on the employer. In every other form of public assistance, (and I think this qualifies as a form of it), it is the responsibility of the claimant to prove the need for the claim.

- 4) Benefits are paid without regard to current market conditions. Example: Every machine shop in Mass is looking for additional workers, there simply is not enough to fill the openings. Yet there are unemployed "machinists" collecting. Why? Collection of benefits should be tied to current economic conditions, (MA DUA already compiles this information). If people represent themselves as a certain profession, then the availability of benefits to them should be adjusted based on the economy in that particular region of the state.
- 5) Establish a questionnaire, (preferably electronic), for employers listing all applicants monthly or quarterly. Match these names to persons applying for or receiving benefits. If their name(s) do not appear on any list as having looked for work, they do not get benefits. Period. The current system is far too forgiving and assumes that the applicant is actually seeking employment, yet we all know that there is a certain segment that is habitually unemployed and always will be. These people should not benefit from a system that was never intended for them.
- 6) Amend the on-line reporting system required of employers when a claim is filed. It is too restrictive and does not permit the employer to fully relate the complete circumstances surrounding the separation.
- 7) Eliminate the current practice of the DUA calling the employer and asking questions regarding a separation when a claim is filed. I have had the following experiences with these calls:
 - a) The caller/interviewer identified himself and the purpose of the call. He informs me that the call may be recorded. I agree. He asks questions and I answer. On 2 occasions he "repeats back" my answer exactly opposite of what I said. He responded "right, so the claimant was terminated for no fault of his own". I answered that his paraphrasing of my response was incorrect. He again stated, "so the claimant was terminated for no fault of his own". I cautioned the person not to mis-represent what I was saying, yet it continued.

At the time of the hearing, sure enough, my responses as recorded on the employer statement exhibits were the exact opposite of what I said. Yet, these items were not allowed to be raised because the record was already established.

Not surprisingly, I lost the appeal. I immediately requested and received copies of the audio and documents from the hearing so I could take the case to the Board of Appeal. I did NOT receive as requested, a copy of the audio tape of the initial call by the interviewer. The reason: "those calls are NOT generally recorded, and if they are, the tapes are not retained". Calls are either recorded or they are not.

- 8) Any and all applicable documents and / or discussion points MUST be permitted and allowed during the appeal hearings. Without that, the hearings officer cannot possibly get a complete picture of the situation. AND, the burden of proof should fall on the claimant, not the employer.
- 9) Any documents, (employer statement, claimant statement, request for information Form 1062, etc.), that will be presented by DUA at a hearing should be sent to each party, (claimant and employer), prior to the hearing rather than at the time of. And, there should be the opportunity to correct the statements prior to the hearing. (These forms are filled out by DUA personnel based on telephone conversations, and are paraphrased, not actual transcriptions, therefore are most often than not incorrect). If a document is going to be used to represent MY position, then it should contain MY words, not those of someone else. I would suggest that the parties submit a written statement, signed and dated, perhaps even notarized if desired, of their position and recollection of the events that leads to the hearing.
- 10) The Board of Appeal process is conducted without the input of either the claimant or the employer. This process relies solely on the "record" of the prior proceedings. As stated earlier, this "record" is often incorrect and flawed, depending completely on what the interviewer permits during their hearing. It does not permit any new information or correction of flawed information as any other form of judicial review would. These procedures should be more open.
- 11) All DUA hearings and appeals should be video taped, not just audio. My reason: during an appeal hearing in Springfield in 2005, the claimant rambled on and went off on so many tangents, (the interviewer had little ability to control the direction of the meeting), that the hearing went on for 1-3/4 hours, (they usually are completed in 30 to 45 minutes), that when she finally asked me if I had anything to ask him, as the procedure does permit, and I answered in the affirmative, she actually rolled her eyes at me. That made me very uncomfortable and hesitated to take up any more time, although I was entitled to do so, for fear of hurting my case. Not surprisingly again, Rose Industries lost this case too. I appealed it to the Board of Review and they reaffirmed the initial finding.

My point is that her "eye gestures" would have appeared and have been evident on a video tape recording and have been more representative of what actually occurred at that hearing, more so than the audio tapes.

- 12) Any and all documents, records, recordings, notes, etc. connected to any DUA application, hearing, appeal, or any other process, must be public record and available for review. In a recent case, I requested copies of the documents related to the case including the notes of the examiner, (his decision certainly would in fact be determined at least in part based on these notes), but was denied. Their reason: the personal notes are the property of the examiner, "probably are not retained but are most likely destroyed, are are not a matter of public record". My argument: any work by an employee, public or private, performed while under employment or contracting

party is the property of said employer or contractor. (This has precedence in business and is widely recognized especially regarding intellectual property cases).

In the end, I never received these notes, and DUA dragged out compliance with my requests so often and so long that the 30 day period for appeal had expired.

- 13) The Commonwealth (DUA) should not be able to force an employer to accept an employee under fraudulent circumstances.

Case in point: I hired an applicant who answered an ad for an experienced machinist. He claimed he owned all his own tools, could perform setups, etc. In fact, he could do none of the above. At best, he was a machine operator and a poor one at that. In addition, he was lazy, took way too many breaks and I also had to frequently chase after him to remind him that breaks were long since over. I was not able to verify his credentials before he was hired because he had worked in only one place for 15 years and was still there. If I called there to check, they would have moved against him and he could have sued me. In short, his skills / talents were not even close to what he advertised himself as so I let him go for fraudulently representing himself during the application and interview process, (the job application itself states that incomplete, misleading or knowingly false information is grounds for termination). The hearings officer told me that the I did not have reason enough, (I guess fraud is no longer wrong), and therefore he was entitled to benefits. Again, I appealed and lost.



Associated Industries of Massachusetts

DRAFT FOR DISCUSSION

Reform Legislation for the Massachusetts Department of Revenue

Massachusetts has a historical problem in the area of tax policy that directly impact taxpayers, their desire to locate in Massachusetts and decisions to continue to invest and create jobs in Massachusetts.

The following proposals seek to improve the fairness and equity in the key components of the Massachusetts tax code:

- **DOR Legislative Proposals:** Ensure that all legislative proposals that address tax policy in Massachusetts have a public hearing and that all data regarding the analysis and impact of said tax policy are made public. Currently many legislative tax proposals are written by the Massachusetts Department of Revenue and appear in the Administration budget proposals that have significant impacts to state tax policy rates and administrative policies.
- **DOR Administration:** Ensure that the states department of revenue's policies for administering the tax code is fair and equitably applied for all taxpayers.
- **DOR Enforcement:** Currently, DOR auditors are required to collect at least a certain amount of revenue as proscribed as a line item in state's FY budget. DOR auditors and examiners should collect what is taxable and not be compelled to reach a quota. Currently, Massachusetts DOR auditors and examiners approach many tax reviews in widely subjective manner and are compelled more to determine that an item is taxable rather than not.
- **DOR Dispute Resolution:** Currently the DOR has launched an early mediation program, which would seek to a more expedited resolution of tax disputes between the taxpayer and the DOR. While we commend and support this process, AIM's legislation would advance this process.
- **DOR and the Appellate Tax Board (ATB):** Once a taxpayer and the DOR determine that they have exhausted their administrative tax liability discussions they can appeal the Appellate Tax Board. This is a very costly and time consuming process. For example, companies can have more than a few 100m dollars in disputed taxes (which if disputed better would go to the state or if not taxed, the company would have the opportunity to invest in Massachusetts. However, the judges for the appellate tax board are appointed by the Governor. The DOR Commissioner is also appointed by the Governor and in the state's organizational chart, the DOR Commissioner reports to the Executive Office of Administration and Finance, who reports directly to the Governor. This organizational



Associated Industries of Massachusetts

structure improperly tips fairness away from the taxpayer and places significant power in the hands of the Government that seeks to collect as much tax revenue as possible. The ATB process is also in need of significant review, given that the judicial process is inconsistent with both civil and criminal court proceedings and significantly alters the balance of power in favor of the Government.

- **DOR & Tax Policy:** The DOR serves as is primary resource to the Governor, the Executive Office of Administration and Finance and legislators and non-governmental advocacy groups for legislative text, analysis and data regarding current taxes and proposed tax policies. As the administrator of the tax code, AIM believes that the DOR should not take policy positions and should reform how it engages in a transparent manner when it provides guidance to any external group. The DOR staff actively provided legislative text and proposals for the FY14 budgeted filed by the Governor and provided counsel to legislators and their staff. In past years, the “combined reporting” change highlights a significant effort by the DOR exert its ability to tax more, by lobbying the legislature to advance particular legislative language that was highly controversial, complex and opposed by affected taxpayers.
- **DOR and Legislative Analysis:** Must be more transparent and available on one state website. The analysis must included taxpayer impacts and must also consider the impact to local, state, federal and international tax policy. Massachusetts taxpayers are global and currently analysis is considered in a “static” fashion that considers state tax policy in a vacuum. Tax policy must be evaluated in a “dynamic” fashion that considers the significant ripple effect on other taxing authorities and the real economic ripple effect of any tax policy.

Changes to DOR’s overall administrative, enforcement and audit procedures:

1. Subject the DOR to the administrative procedures act 93a, business impact statements, and regulatory review process.
 2. Any regulatory or other guidance document must be posted to a one stop shop website. All legislative proposals that are offered by the DOR must be published on the A&F website dedicated to all tax related items. The A&F website shall be the one-stop shop for all tax policy analysis. Taxpayers shall have the ability to file comments and upload testimony directly to the site and viewable to the public.
- **S.1373 An Act Improving the Tax Administrative Laws of the Commonwealth – Senator Michael O. Moore** - Changes the administrative provisions of our tax laws and improves the tax code by:
 - encouraging settlement of cases instead of litigation;



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- allowing for an expeditious collection of revenues by providing a one month extension for combined filers;
- making the sham transaction doctrine equitable and more aligned with the Internal Revenue Code;
- restoring equal estimated quarterly payments of taxes; and
- establishing a broad tax amnesty program.

3. **S.1372 An Act Relative to Equalizing the Department of Revenue Interest Rates - Senator Michael O. Moore:** Equalizes the interest that the Massachusetts Department of Revenue (DOR) pays on reimbursements to taxpayers with the interest that taxpayers pay when they owe money to the DOR. Taxpayers who owe money currently pay the federal short-term interest rate plus four percentage points, compounded daily, for the period the tax is overdue. If a taxpayer has overpaid, and is due a refund, DOR reimburses the taxpayer at the federal short-term rate plus two percentage points, simple interest.

Changes to establish the DOR as tax administrator and not tax policy:

1. Place the department of revenue under the Treasury Secretary.
2. Public hearings on all tax law, DOR administrative tax policy changes and must include fiscal notes and business impact statements.
3. Affirmatively prohibit the DOR from lobbying the legislature. Prohibit the DOR from testifying in support or opposition to any legislation. Should A&F consult or have any data, input regarding any tax policies from the DOR, A&F, must disclose that the DOR provided guidance and provide further all DOR analysis (while protecting taxpayer confidentiality) during any public debate. All items must be posted to the state website.
4. Any legislation that the DOR has taken a position, communicated to the legislature, provided calculations, estimates or data must be noted in the legislation.
5. Make contingent auditors illegal and further eliminate the ability for any state budget to include a revenue "goal" for tax auditors.

Changes to Legislative Procedure:

1. Require that the legislature host separate public hearings for tax policy contained in any legislation including fiscal budget, supplemental budgets, omnibus legislation or any other legislative proposal. The hearing must explicitly focus solely on the tax policy being considered in proposed budget, supp budget or omnibus legislation, or any other legislative proposal
2. Require that any and all analysis provided to the legislature, government agency or non-governmental agency be a public document posted to the DOR website.

MASSACHUSETTS TAX ADMINISTRATION

The following need to be addressed legislatively or at the administrative level to improve the fairness and equity of the audit process in Massachusetts.

1. The ability of auditors to use, or threaten to use, jeopardy assessments on companies solely to keep the statute of limitations open
 - a. Jeopardy assessments are intended to address situations where there is risk that the taxpayer will leave the state or place property out of the reach of the state before the state can collect taxes that the taxpayer owes.
 - b. It should not be used by auditors to force taxpayers to keep audits open/extend statutes of limitations where there is no risk that the taxpayer will leave the state without paying any taxes that are due.
 - c. Other procedures can, and should be, developed to address situations where a taxpayer is not providing the Department with sufficient information to conduct the audit prior to the statute of limitations expiring.
2. Timely and complete end of audits
 - a. Auditors often draw audits out over long periods without issuing assessments even though taxpayers have submitted requested documentation.
 - b. This will generally mean that a taxpayer must deal with multiple requests for extension of waivers (and risk the threat of a jeopardy assessment, as discussed above, if they do not comply).
 - c. The scope of audit also should be reasonable (i.e., in sales tax cases, a materiality threshold for receipts and other proof should be instituted).
3. R&D Credit
 - a. Base period of 1982-84 that is currently used makes it difficult to find documents to establish proof because of the age of the sources.
 - b. If one member of a combined group cannot meet the data requirement, the Department will deny the credit to all members.
 - c. Adoption of the rolling base period used by IRS for federal tax purposes is more fair and easier to substantiate.
 - d. Should work to revive recent initiative to adopt rolling base period.
4. Protective Orders
 - a. Need to preserve confidentiality of documents which contain sensitive customer information and competitive information at Appellate Tax Board. There is currently no mechanism for getting a protective order for information submitted to ATB.
 - b. Same issue with auditors. Documents containing confidential information can still be exchanged by Department of Revenue with taxing authorities of other states that are party to tax information sharing agreements with Massachusetts.

Massachusetts Tax Policy and Systemic Problems at the Department of Revenue (DOR)

Overview of Massachusetts

Massachusetts has a historical problem in the area of tax policy that directly impact taxpayers, their desire to locate in Massachusetts and decisions to continue to invest and create jobs in Massachusetts.

The Massachusetts Department of Revenue has a well established reputation for violating the major principles of a good tax policy regime as defined by the American Institute of Certified Public (AICP). Aside from the key tax policy established by the legislature for the Department to administer, taxpayers cannot rely on equity, fairness, certainty, simplicity, neutrality or an efficient cost effective way of paying taxes with the DOR. Using the AICP principles of a good tax policy regime, here are some grades for Massachusetts:

1. Equity and fairness - F
2. Certainty - D
3. Convenience of payment - F
4. Economy in collection - F
5. Simplicity - F
6. Neutrality -F
7. Economic growth and efficiency - D
8. Transparency and visibility - D
9. Minimum tax gap – Set by policy leaders
10. Appropriate government revenues – Set by policy leaders

The Department of Revenue administers and engages most directly in the development of tax policy and how every taxpayers (the “customer”) experiences tax policy established by policy leaders. Unlike any other state agency, the Department of Revenue has authority over every business and every resident of the Commonwealth in addition to any business or non-resident conducting business in the Commonwealth.

Massachusetts cannot effectively encourage broad based business expansion in the Commonwealth if policy leaders continue to allow the states’ Department of Revenue officials to abuse taxpayers with an unwritten strategy that includes an overly aggressive and hostile approach to taxpayers supported by expansive powers to not only administer, enforce and litigate the tax code, but also actively interject their knowledge as the chief lobbyist for increased tax revenues in the legislature.

In many instances, Massachusetts is rated in the middle of the pack for various “taxes rates”. However, policy leaders need to review the most customer facing aspect of tax policy – the administration, enforcement, dispute resolution and litigation of the tax code, which is often considered one of the worst and most complex in the country. The state’s tax rate is made to be the “worst” by the complexity of the authorizing law (separate from the rate) and further exacerbated by the steps taken by the Department of Revenue’s rules, regulations and other legal guidance documents that is promulgated by the state’s department of revenue.

The administration, enforcement, dispute resolution, litigation and state's DOR lobbying activities regarding tax policy developments are a real and significant impact to the state's economic development and business leaders charged with making investment decisions often live outside of the Commonwealth. Often, business leaders, especially tax managers and those making investment decisions live outside of the commonwealth.

This document provides critical concerns and opportunities regarding the department's people, process and technology in addition to possible policy or legislative reforms to address them.

DOR's PEOPLE

The DOR Commissioner direct "boss" is the AF secretary and ultimately the Governor. Depending on the administration, the taxpayer faces an inconsistent application of the tax code.

The DOR Commissioner oversees a department with 2,000 employees, interacts directly with 200 legislators and other state agencies and oversees all city and town collections on tax policy developments and issues.

The DOR also engages in audits, dispute resolution and litigation. When the Commissioner or senior DOR officials see fit they develop changes to tax policy law to tip the balance of power in favor of the DOR over the taxpayer with an eye towards collecting greater revenues.

The DOR's "customer" is the Governor and or elected officials seeking to advance tax policy issues. The taxpayer faces an agency with significant and unprecedented power – the power to enforce the tax code, the power to influence public policy and the power to actively lobby for tax code changes that are not favorable to the taxpayer. The greatest power the DOR Commissioner holds is that this person and agency as a whole is the only entity of real-time "truth". DOR officials regarding regular tax collections,

DOR's Commissioner Pitter

Since 2011 Commissioner Pitter has taken positive steps to improve the customer experience for taxpayers. Those reforms primarily took place through the Commissioner's own initiative through the creation of a "DOR360" campaign and a formalized DOR Advisory Council. These efforts have had a positive impact on the taxpayer/customer experience. Here are some of the key areas:

1. Early mediation and dispute resolution programs
2. Attempts to improve tax returns for large corporate taxpayers
3. Attempts to address IT contract failures and significantly outdated IT systems
4. Website improvements
5. Improved language notification and summaries for new regulations

While positive, these issues do not address the systemic department problems, driven by people. History has born truth that even when a Commissioner of Revenue is changed that the culture of hostility towards taxpayers persists within the culture of the remaining department staff at every level.

DOR's PROCESS

DOR's "Mission" Is More than Tax Enforcement according to the law, it's Revenue Generation.

The DOR mission and daily activities often violate the tenets of a good tax regime. Taxpayers will readily state – that the Massachusetts department of revenue compared the majority of other states is not fair, equitable and is often hostile.

Rather than fair application of the tax code, the DOR's purpose is to obtain the greatest amount of tax revenue at each and every possible opportunity.

This is the most critical element of what is wrong with state' Department of Revenue (DOR). This is a long-standing cultural norm that imbedded not only in the daily actions of every level of the department, but it is driven by this approach as dictated as a part of the department's strategic plan. See "Mission".

MISSION

Our core mission is to collect the revenues required to support the business of the Commonwealth, to make a difference in the lives of children by enforcing the financial responsibilities of parenthood, and to assist Massachusetts cities and towns in sound and efficient fiscal management.

Taxpayers Face Challenges at the Local Level

Taxpayers experience different treatment depending on which town or city they are located. Municipalities vary in how they adhere to the principles of a fair tax system especially as it relates to efficiency, equity and convenience of payment and at times overall hostility during tax enforcement.

DOR has a "bogie" in the FY Budget

The Department of Revenues for the past several years has had a built separate "bogie" as a structural part of the expected revenues for the past several fiscal budget.

The last several fiscal years have also provided the DOR with "enhanced software" to leverage the department's big data to focus their audits. More often than not, these targeted audits attack large taxpayers. Many large corporate taxpayers will regularly say that they are constantly under Massachusetts DOR audit for a variety of corporate taxes. Once the DOR is conducts the audit, the department often leverages this system to draw out considerable time and resources from the taxpayer in an effort to push the taxpayer to settle at the highest amount – just to get the audit over with.

Reporting Structure Prevents Independence

The DOR Commissioner identifies the Secretary of Administration and Finance as "Boss". In such a reporting structure, the DOR's independence for fair enforcement of the tax code and impartial stance during public or private policy discussions is challenged. The A&F Secretariat engages in statewide policy making, while the DOR is supposed to enforce the tax code as is.

Rather, what occurs is a collaboration between A&F and DOR to identify changes to the tax code. The DOR is “on call” to deliver A&F with legislative proposals that achieve greater tax revenues.

DOR is the only source of “Truth”:

The administration, the legislature, the business community and the general public only have one source of truth can analyze a proposed tax and accurately say how it will impact revenues based on the specific Massachusetts taxpayers.

DOR TECHNOLOGY

The DOR’s IT systems are in need of a full overhaul. The Department is currently in the process of implementing a new IT system. Taxpayers, tax practitioners note that Massachusetts is among if not the worst place in the nation to electronically file and process their tax returns. The reason for this is the complexity of the authorizing tax statute and the DOR’s system that requires far more resource for taxpayers to process their taxes each year.

“Massachusetts is the worst and most complex state for annual tax returns, they are so complex that I would prefer to have someone else in my department do it or if I have to, I do it last” Director of State and Local tax for a multistate business responsible for completing regular filings in different states.

This is not an exhaustive list or ordered in priority.

SOLUTIONS

Reform State Tax Policy

1. Ensure that taxpayer returns remain confidentially held by the DOR
2. Allow FAS109 Deduction – Fulfill the promise negotiated by Governor Patrick and the legislature under combined reporting.
3. Ban the use of all state contingent auditors
4. Reform the state’s net worth tax law
5. Require a fiscal impact statement for any tax proposal before the legislature
6. Equalization of Interest Rates – Prevent the DOR from being able to collect more interest than taxpayers.
7. Equalize quarterly payment of taxes - Allow taxpayers to pay taxes at an even schedule rather than the shock of 60% in the first quarter.
8. EDIP – Reforms to programs recapture rate
9. Exempt from the sales tax purchases by businesses that are for the purposes of meeting workplace safety or environmental regulations
10. Reform the estate tax “death tax”, which is complex and challenging for family owned businesses.
11. Create a state version of the Congressional Budget Office to provide independent analysis on tax policy.
12. Lower annual filing fees for LP/LLP/LLC etc.

Reform of the Massachusetts Department of Revenue

The following proposals seek to improve the fairness and equity in the key components of tax administration and enforcement of the state's tax code:

1. **DOR IT System:** Assess and closely monitor the new IT system implementation.
2. **DOR 360:** Continue to engage taxpayers to improve the customer experience and system issues at the department. A key improvement is the state's e-file system especially the 355U return. Continue to monitor DOR regulatory promulgation. Reform the annual filing for Manufacturer designation and property tax exemption with new IT system.
3. **DOR Legislative Proposals:** Ensure that all legislative proposals that address tax policy in Massachusetts have a public hearing and that all data regarding the analysis and impact of said tax policy are made public. Currently many legislative tax proposals are written by the Massachusetts Department of Revenue and appear in the Administration budget proposals that have significant impacts to state tax policy rates and administrative policies.
4. **DOR Administration:** Ensure that the state's department of revenue's policies for administering the tax code is fair and equitably applied for all taxpayers.
5. **DOR Strategic Plan:** In response to legislation requiring all state agencies to establish strategic plan, the DOR has published a strategic plan for 2013-2015. This document reflects a DOR initiative to use a balanced scorecard approach to evaluating and managing reforms. This practice should be continued, expanded and made public on the DOR website.
6. **DOR Enforcement:** Currently, DOR auditors are required to collect at least a certain amount of revenue as proscribed as a line item in state's FY budget. DOR auditors and examiners should collect what is taxable and not be compelled to reach a quota. Currently, Massachusetts DOR auditors and examiners approach many tax reviews in widely subjective manner and are compelled more to determine that an item is taxable rather than not.
7. **DOR Dispute Resolution:** Currently the DOR has launched an early mediation program, which would seek to a more expedited resolution of tax disputes between the taxpayer and the DOR. While we commend and support this process, AIM's legislation would advance this process.
8. **Evaluation of Tax Collectors:** The DOR's strategic plan identifies that tax collectors are evaluated, in part, by the amount of tax revenue collected by hour. This should not be part of any tax collector's evaluation since it negates the overriding imperative that tax collectors apply the tax code fairly, consistently. This current policy should also be

evaluated for possible violation of state law, which requires that tax collectors are not evaluated in such a manner.

9. **Evaluation of Regulations Division:** Often the regulatory promulgation by DOR is conducted in a manner that is outside the regulatory promulgation process followed by other state agencies. Further, in many instances, rules, regulations and legal documents go beyond the authorizing statute and often exceed what other states and the federal tax code require under various tax codes. The Department should be required to do a full review of all rules, regulation and legal documents to see what can be eliminated, revised and should be a priority to eye various forms and regulations to streamline tax requirements that align with the federal tax code.
10. **DOR and the Appellate Tax Board (ATB):** Once a taxpayer and the DOR determine that they have exhausted their administrative tax liability discussions they can appeal the Appellate Tax Board. This is a very costly and time consuming process. For example, companies can have more than a few 100m dollars in disputed taxes (which if disputed better would go to the state or if not taxed, the company would have the opportunity to invest in Massachusetts. However, the judges for the appellate tax board are appointed by the Governor. The DOR Commissioner is also appointed by the Governor and in the state's organizational chart, the DOR Commissioner reports to the Executive Office of Administration and Finance, who reports directly to the Governor. This organizational structure improperly tips fairness away from the taxpayer and places significant power in the hands of the Government that seeks to collect as much tax revenue as possible. The ATB process is also in need of significant review, given that the judicial process is inconsistent with both civil and criminal court proceedings and significantly alters the balance of power in favor of the Government.
11. **DOR & Tax Policy:** The DOR serves as is primary resource to the Governor, the Executive Office of Administration and Finance and legislators and non-governmental advocacy groups for legislative text, analysis and data regarding current taxes and proposed tax policies. As the administrator of the tax code, the DOR should not take policy positions and should reform how it engages in a transparent manner when it provides guidance to any external group. The DOR staff actively provided legislative text and proposals for the FY14 budgeted filed by the Governor and provided counsel to legislators and their staff. In past years, the "combined reporting" change highlights a significant effort by the DOR exert its ability to tax more, by lobbying the legislature to advance particular legislative language that was highly controversial, complex and opposed by affected taxpayers. Any communications required by statute, requests for information should be made public on the DOR website.
12. **DOR and Legislative Analysis:** Must be more transparent and available on one state website. The analysis must include taxpayer impacts and must also consider the impact

to local, state, federal and international tax policy. Massachusetts taxpayers are global and currently analysis is considered in a “static” fashion that considers state tax policy in a vacuum. Tax policy must be evaluated in a “dynamic” fashion that considers the significant ripple effect on other taxing authorities and the real economic ripple effect of any tax policy.

Reform to DOR’s overall administrative, enforcement and audit procedures:

1. Subject the DOR to the administrative procedures act 93a, business impact statements, and regulatory review process in addition to fiscal statements that provide static and dynamic analysis.
2. Any regulatory or other guidance document must be posted to a one stop shop website. All legislative proposals that are offered by the DOR must be published on the A&F website dedicated to all tax related items. The A&F website shall be the one-stop shop for all tax policy analysis. Taxpayers shall have the ability to file comments and upload testimony directly to the site and viewable to the public.
3. S.1373 An Act Improving the Tax Administrative Laws of the Commonwealth – Senator Michael O. Moore - Changes the administrative provisions of our tax laws and improves the tax code by:
 - encouraging settlement of cases instead of litigation;
 - allowing for an expeditious collection of revenues by providing a one month extension for combined filers;
 - making the sham transaction doctrine equitable and more aligned with the Internal Revenue Code;
 - restoring equal estimated quarterly payments of taxes; and
 - Establishing a broad tax amnesty program.
4. S.1372 An Act Relative to Equalizing the Department of Revenue Interest Rates - Senator Michael O. Moore: Equalizes the interest that the Massachusetts Department of Revenue (DOR) pays on reimbursements to taxpayers with the interest that taxpayers pay when they owe money to the DOR. Taxpayers who owe money currently pay the federal short-term interest rate plus four percentage points, compounded daily, for the period the tax is overdue. If a taxpayer has overpaid, and is due a refund, DOR reimburses the taxpayer at the federal short-term rate plus two percentage points, simple interest.

Reforms to reestablish the DOR as tax administrator and not tax public policy activist:

1. Public hearings on all tax law, DOR administrative tax policy changes and must include fiscal notes and business impact statements.
2. Affirmatively prohibit the DOR from lobbying the legislature. Prohibit the DOR from testifying in support or opposition to any legislation. Should A&F consult or have any

data, input regarding any tax policies from the DOR, A&F, must disclose that the DOR provided guidance and provide further all DOR analysis (while protecting taxpayer confidentiality) during any public debate. All items must be posted to the state website.

3. Any legislation that the DOR has taken a position, communicated to the legislature, provided calculations, estimates or data must be noted in the legislation.
4. Make contingent auditors illegal and further eliminate the ability for any state budget to include a revenue "goal" for tax auditors.

Reform of the Legislative Procedure:

1. Require that the legislature host separate public hearings for tax policy contained in any legislation including fiscal budget, supplemental budgets, omnibus legislation or any other legislative proposal. The hearing must explicitly focus solely on the tax policy being considered in proposed budget, supplemental budget or omnibus legislation, or any other legislative proposal
2. Require that any and all analysis provided to the legislature, government agency or non-governmental agency be a public document posted to the DOR website.



Leadership is our business

Associated Industries of Massachusetts

222 Berkeley Street | P.O. Box 763

Boston, MA 02117-0763

www.aimnet.org | 617.262.1180 | fx 617.536.6785

To: Rick Lord

Cc: John Regan

Date: January 13, 2011

From: Brad MacDougall

Re: Suggestions for the Office of State Auditor relative to Mandatory Small Business Impact Statements

Overview:

On September 13, 2010 AIM sent a letter to all cabinet secretaries regarding the new statute regarding small business impact statements. The letter is attached to this memo and it highlights the specific provisions from the economic development bill (S.2582). AIM's letter also made a formal request that every agency notify AIM regarding any new proposed regulations.

The Office of State Auditor can support and enhance this government function in the following ways:

1. Provide greater understanding of the Massachusetts regulatory system
2. Monitoring the rate of compliance for state agencies
3. Help share best practices for drafting business impact statements
4. Encourage greater efficiencies and streamlining among agencies regarding the promulgation of regulations.
5. Encourage good-government engagement by those developing regulations with those entities subject to the regulations

Statutory Provisions:

The key provision of the new law requires every agency to conduct a small business impact statement relative to any proposed regulation. The legislation also mandates a review of existing regulations within four years of enactment for their impact on businesses, and a subsequent review at least every twelve years thereafter.

Other key provisions contained within S.2582 include:

- Add the definitions of "proposed regulation" and "small business" in §1 of Chp.30A
- Requires that small business impact statements be provided with new regulations in §2, 3, and 5 of Chp.30A

- Requires that each agency shall review its rule and regulations within 4 years of the effective date of this act
- Requires that the state secretary shall notify all agencies required to file any rules or regulations that they must now assess the impact of said rules and regs on small businesses

Suggestions the Office of the Auditor:

The Office of the Auditor can have collaborative role with agencies, provide valuable information for the business community and the legislature. The Massachusetts regulatory process is complex and compounded by the multiple volumes of regulations that businesses are subject. As published by the Secretary of State, *"When auditing a department, agency, or Authority, the OSA identifies and makes recommendations to remedy operational, administrative, and programmatic issues that are in need of correction. The OSA also looks for auditee compliance with laws and regulations, checks efficiency and economy in agency operations, and monitors auditee effectiveness in achieving mandated goals."*

Audit Proposal:

The Office of State Auditor could consider conducting a comprehensive audit of the Massachusetts regulatory process, the agencies involved and compliance with the mandated law regarding small business impact statements. The Office of State Auditor may consider the following key areas to focus:

- Identify the entire universe of state government agencies that issue regulations
- Itemize the universe of total regulations currently effective for each state agency
- Monitor rate of compliance for each agency regarding small business impacts statements
- Itemize rate of compliance for business impact statements in accordance with sunset provisions, rate of non compliance and rationale and corrective steps
- Identify each state agency's key contact responsible for the small business impact statement
- Highlight state agency best practices for:
 - Developing small business impact statements (metrics and resources for analysis)
 - Streamlining the process by which state agencies promulgate regulations.
 - Identify technologies and website tools that help leverage public engagement in the rule making process



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September 13, 2010

Mr. Jay Gonzalez

Secretary

Executive Office of Administration and Finance

One Ashburton Place

Boston, MA 02108

Re: Mandatory Business Impact statements and regulatory reform

Dear Secretary Gonzalez,

Near the end of the formal legislative session, the Massachusetts House and Senate unanimously approved and the Governor signed into law an economic development bill (S.2582). One provision of the new law requires every agency to conduct small business impact statements relative to any proposed regulation as well as a mandatory review of each agencies current regulations.

AIM hereby requests that we be informed of any new, pending regulations proposed by your agencies and that we are informed of any corresponding business impact statements developed as a result of this new statutory requirement.

S.2582 amends the administrative procedure act (M.G.L. 30A) to expand the "statement of considerations" currently required for the impact on small businesses and require that the statement be published concurrent with draft regulation. The legislation also mandates a review of existing regulations within four years of enactment for their impact on businesses, and a subsequent review at least every twelve years thereafter. AIM urges your agency to follow the new statutory requirements for business impact statements and review of regulations.

AIM wishes to highlight the following provisions contained within S.2582:

SECTION 65 & 66: Add the definitions of "proposed regulation" and "small business" in §1 of Chp.30A:

SECTION 65. Section 1 of chapter 30A of the General Laws, as so appearing, is hereby amended by inserting after paragraph (4) the following paragraph:-

(4A) "Proposed regulation", a proposal by an agency to adopt, amend or repeal an existing regulation.

SECTION 66. *Said section 1 of said chapter 30A of the General Laws, as appearing in the 2008 Official Edition, is hereby further amended by inserting after paragraph (5) the following paragraph:-*

(5A) "Small business", a business entity or agriculture operation, including its affiliates, that: (i) is independently owned and operated; (ii) has a principal place of business in the commonwealth; and (iii) would be defined as a "small business" under applicable federal law, as established in the United States Code and promulgated from time to time by the United States Small Business Administration.

SECTION 67 -70: Requires that small business impact statements be provided with new regulations in §2, 3, and 5 of Chp.30A:

SECTION 67. *Section 2 of said chapter 30A, as so appearing, is hereby amended by inserting after the third paragraph the following 2 paragraphs:-*

The notice shall also include a small business impact statement considering the impact of the proposed regulation on small business with the state secretary. Notwithstanding the provisions of section 6, the state secretary shall include the statement of small business consideration on the electronic website of the state secretary; provided, however, that the full text of the small business impact statement may be inspected and copied in the office of the state secretary during business hours.

That small business impact statement shall include, but not be limited to, the following:

- (1)an estimate of the number of small businesses subject to the proposed regulation;*
- (2)projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;*
- (3)the appropriateness of performance standards versus design standards;*
- (4)an identification of regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation; and*
- (5)an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth;*

SECTION 68. *Section 3 of said chapter 30A, as so appearing, is hereby amended by inserting after the third paragraph the following 2 paragraphs:-*

The notice shall also include a small business impact statement considering the impact of the proposed action on small businesses with the state secretary.

Notwithstanding the provisions of section 6, the state secretary shall include the small business impact statement on the electronic website of the state secretary; provided, however, that the full text of the small business impact statement may be inspected and copied in the office of the state secretary during business hours.

That small business impact statement shall include, but not be limited to, the following:

- (1)an estimate of the number of small businesses subject to the proposed regulation;*
- (2)projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;*
- (3)the appropriateness of performance standards versus design standards;*
- (4)an identification of regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation; and*
- (5)an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth;*

SECTION 69.*The second paragraph of section 5 of said chapter 30A, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:- The requirements to file small business impact statements under this section and sections 2, 3 and 5A shall be enforceable by a civil action for mandamus relief, but the sufficiency of the statement filed shall not be grounds for invalidating or staying the effect of the regulation.*

SECTION 70.*Said section 5 of said chapter 30A, as so appearing, is hereby further amended by inserting after the second paragraph the following paragraph:-*

Prior to the adoption of a proposed regulation, an agency shall file an amended small business impact statement, which considers, without limitation, whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

- (1)establishing less stringent compliance or reporting requirements for small businesses;*
- (2)establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;*

(3)consolidating or simplifying compliance or reporting requirements for small businesses;

(4)establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation;

(5)an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth; and

(6)minimizing adverse impact on small businesses by using alternative regulatory methods.

SECTION 167: Requires that each agency shall review its rule and regulations within 4 years of the effective date of this act:

SECTION 167. Notwithstanding any general or special law to the contrary, within 4 years of the effective date of this act, each agency shall review the agency's rules and regulations currently existing to determine whether such rules and regulations should be continued without change or should be amended or rescinded to minimize economic impact of those rules and regulations on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date the agency shall publish a statement certifying that determination. The agency may extend the completion date by 1 year at a time for a total of not more than 5 years.

SECTION 168: Requires that the state secretary shall notify all agencies required to file any rules or regulations that they must now assess the impact of said rules and regs on small businesses:

SECTION 168. The state secretary shall immediately notify all agencies required to file rules or regulations under section 5 of chapter 30A of the General Laws of the new requirements regarding small business impact statements.

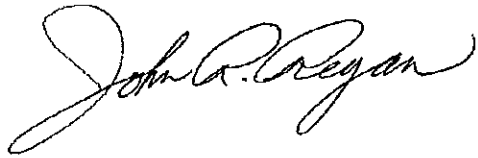
SECTION 194- 206: Effective dates of certain provision within this Act. Section 206 applies to Sections 167 and 168 as described above:

SECTION 194. Sections 65 to 70, inclusive shall only apply to regulations proposed after the effective date of this act.

SECTION 206. Except as otherwise provided, this act shall take effect on August 1, 2010

As always, we are available to assist you to continue work of improving the state's business climate. Thank you for taking our views into account and feel free to contact me if you have any questions or need any further information.

Sincerely,

A handwritten signature in black ink, reading "John R. Regan". The signature is fluid and cursive, with the first name "John" being the most prominent part.

John R. Regan
Executive Vice President

[REDACTED]

From: [REDACTED]
Sent: Tuesday, March 31, 2015 3:06 PM
To: Brad MacDougall
Subject: RE: FW: Response to: Regulation (www.aimnet.org)

Many thanks. So rare to see the words "due process" and "MCAD" in the same sentence.

-- Peter

Peter Vickery, Esq.



This email message from Attorney Peter Vickery is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and delete all copies of the original message.

----- Original Message -----
Subject: FW: Response to: Regulation (www.aimnet.org)
From: Brad MacDougall [REDACTED]
Date: Tue, March 31, 2015 2:53 pm
To: [REDACTED]

Thanks for the suggestion. Will add to the list. We have an MCAD reform proposed legislation too. See the legislative priorities document below.

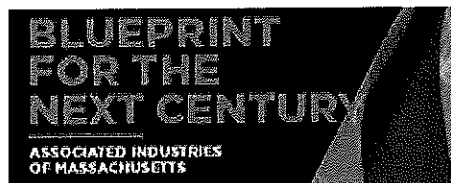


Brad MacDougall
[REDACTED]
[REDACTED]
[REDACTED]

Associated Industries of Massachusetts, Inc.
One Beacon Street, 16th Floor, Boston MA
02108



Associated Industries of Massachusetts (AIM) engages in public policy issues to be better informed and to make better informed decisions. We are pleased to be part of the legislative process and to work with the state government and its agencies to ensure the vitality of our commonwealth. We are currently working on a number of bills that will improve the business regulatory system in the state.



aimblog

From: [REDACTED] On Behalf Of [REDACTED]

Sent: Tuesday, March 31, 2015 2:49 PM

To: Brad MacDougall

Subject: Response to: Regulation (www.aimnet.org)



New submission on form:

Regulation

On landing page:

Regulatory Issue

First Name:

Peter

Last Name:

Vickery

Company Name:

[REDACTED]

Job Title:

[REDACTED]

Phone Number:

[REDACTED]

Email:

[REDACTED]

What's your regulatory issue?:

I recommend revising 804 CMR 1.00, so that the Massachusetts Commission Against Discrimination (MCAD) would have to hold a prompt hearing on a respondent's motion to dismiss and suspend any and all investigative activities until the Commission has decided the motion.

Contact:

Peter Vickery

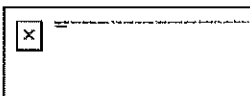
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From:
Sent:
To:
Subject:

Wednesday, April 01, 2015 9:57 AM
Brad MacDougall
Response to: Regulation (www.aimnet.org)



Contact reconversion on form:

Regulation

On landing page:

Regulatory Issue

First Name:

Robert

Last Name:

Arenburg

Company Name:

[REDACTED]

Job Title:

[REDACTED]

Phone Number:

[REDACTED]

Email:

[REDACTED]

What's your regulatory issue?:

Retro fitting buildings with sprinkler systems. We are a small manufacturing business that would like to expand our 12,000 sq ft. building. The building is a one floor, constructed with steel and cinder block. We do not use or store flammable materials. Under present regulations, to add a 1,000 sq ft addition we would have to have to whole building retrofitted with a sprinkler system at a cost of \$140,000.00. Now, a 30,000. addition is going to cost \$170,000 ! This is an anti growth regulation. Sprinkler decisions should be left up to the local fire officials.

Contact:

Robert Arenburg

[View contact in HubSpot](#)

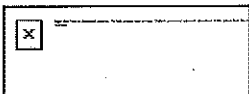
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From:
Sent:
To:
Subject:

[REDACTED]
Thursday, April 02, 2015 7:34 AM
Brad MacDougall
Response to: Regulation (www.aimnet.org)



Contact reconversion on form:

Regulation

On landing page:

Regulatory Issue

First Name:

Daniel

Last Name:

Gilbreath

Company Name:

[REDACTED]

Job Title:

[REDACTED]

Phone Number:

[REDACTED]

Email:

[REDACTED]

What's your regulatory issue?:

520 CMR 6.00 Hoisting Machinery has unreasonable requirements for non-construction businesses. Particularly, those that have minimal exposure to the general public since this regulation is promulgated by the Dept. of Public Safety.

Contact:

Daniel Gilbreath

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From:
Sent:
To:
Subject:

[REDACTED]
Monday, April 06, 2015 8:45 AM
Brad MacDougall
Response to: Regulation (www.aimnet.org)



New submission on form:

Regulation

On landing page:

Regulatory Issue

First Name:

Jim

Last Name:

Flanagan

Company Name:

[REDACTED]

Job Title:

[REDACTED]

Phone Number:

[REDACTED]

Email:

[REDACTED]

What's your regulatory issue?:

Why do we have to file 1. a 355Q and 2. a certification of business and 3. an annual report EVERY YEAR? Three filings annually with much redundant information that could be collected when we have to... yes, ANOTHER filing, file our taxes. This is insane. It is an burden on small businesses and wasteful use of the commonwealth's resources.

Contact:

Jim Flanagan

[View contact in HubSpot](#)

[View contact in Salesforce](#)

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