

# ACCELERATED SALES TAX FEASIBILITY: PUBLIC INPUT

Received and compiled by  
the Department of Revenue  
October 31, 2017



*October 31, 2017*

## Note

This document is a compilation of public input received by the Department of Revenue on the topic of Accelerated Sales Tax Remittance.

DOR has worked to gather all the relevant input on a best-effort basis in order to provide a convenient format for reading. If additional materials are identified as being eligible for inclusion, the document may be updated.



Via email: [rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us)

September 29, 2017

Commissioner Christopher Harding  
Attn: Rebecca Forter, Bureau Chief  
Rulings and Regulations  
Massachusetts Department of Revenue  
100 Cambridge Street  
Boston, MA 02114

**Re: AIM response to the Department of Revenue Request For Information regarding accelerated sales tax remittance**

Dear Commissioner Harding:

On behalf of the employer members of Associated Industries of Massachusetts (AIM), we wish to express our opposition to the implementation of accelerated sales tax remittance in the Commonwealth of Massachusetts. AIM believes that the sales tax policy described in section 94 of House bill 3800 is neither feasible nor cost effective for startups, or small or large businesses in the Commonwealth. This tax policy will impact directly financial institutions and merchants of all sizes and will have unknown cost implications for the Commonwealth's own compliance.

AIM urges the Department to determine and recommend to the Legislature by November 1 that such a methodology is neither feasible nor cost-effective based on the several examples and detailed compliance burdens enumerated herein.

First, the methodology of accelerated sales tax remittance violates several of the key principles of good tax practice as described by the American Institute of CPAs (AICPA):<sup>1</sup>

1. Convenience of payment
2. Effective tax administration
3. Simplicity
4. Economic growth and efficiency

The National Conference of State Legislature's Task Force on "real-time" remittance stated in a letter to legislators:

"...Based on that panel and previous staff level meetings it became clear to Task Force members and staff that while the goal of expedited sales tax remittance is admirable, the proprietary patented process being promoted as "real time" sales tax collection raises

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<sup>1</sup> <http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/tax-policy-concept-statement-no-1-global.pdf>

significant challenges, creates additional burdens for both retailers and state administrators, imposes new burdens on business not currently involved in the sales tax collection process, and thus is not a process that this Task Force could recommend to the states.”

Second, the one-time \$125M (one month only) of accelerated tax payments to the Commonwealth is not worth the significant economic costs to both the business community and the Commonwealth. Given the estimated cost for the business community to implement this proposal, compliance costs for the Massachusetts Department of Revenue and other state agencies and municipalities could dwarf the one-time benefit of \$125M.

AIM has received feedback from several members whose initial estimated cost of compliance, by June 1, would require tens of millions of dollars of investments. These estimates do not consider the annualized operational and compliance costs.

AIM is also concerned that, in the long-term, the Commonwealth will not realize a significant benefit or additional revenue from the implementation of this policy. We are concerned that the accelerated sales tax remittance policy is an example of a poor tax policy that directly impacts diverse industries – especially the banking and financial industries that support the transactions between businesses and customers in retail and direct business transactions.

Third, there are significant operational and technical hurdles making a June 1, 2018 not possible. Below are a few examples highlighting the cost and compliance burdens:

**Example #1: Retail with estimated cost of \$600,000 (plus additional costs)**

Based on high level estimates compliance requirements include:

- Point of Sale "POS" code development
- Certifications
- Payment switch development
- Internal labor (testing, deployment etc.)

Compliance would also require costs for making credit card processor system connections in addition to multiple backend reporting and reconciliation systems.

**Example #2: Financial institution with significant up front and ongoing costs**

Based on high level estimates compliance requirements include:

- Legal expenses to amend contracts with merchant acquirers and other third parties.
- Financial institutions would need to work with merchants of all sizes and would need to make sure their third party point of sale and other software providers are getting the technical changes done correctly.
- Financial institutions would bear a significant cost for compliance and would further require additional costs to build in processes to newly configured payments with the

Department of Revenue. Further state government, agencies, municipalities and others that conduct point of sale or online payments would further require additional programming and compliance cost. The Commonwealth and subsidiaries would require significant review of infrastructure and would require additional design and testing costs for implementation.

- The financial institutions will incur costs, but the greater burden will be on the larger merchant community in aggregate and the Commonwealth itself will have to incur significant costs.

**Example #3: Retail/Grocer \$840,000 up-front cost and \$84,000 annual compliance costs\***

**\*AIM has received two other grocery store examples that closely align with these costs for compliance and ongoing annual compliance.**

Based on high level estimates compliance would include the following:

- Hardware/Software Modifications: \$600,000
- Accounting Support: \$120,000 Includes Changing procedures for refunds and other transactions in addition to split-tender transactions, creating new sales audit reports and reconciling general ledger accounts.
- Sales Tax Support: \$120,000 Changing procedures for the MA sales tax return, create new download reports for sales tax change, reconciling reports for the tax returns and general ledger, create new audit detail report to substantiate sales tax have been remitted on credit card activity, prepare for audit defense on credit card activity for an additional full time employee with average salary and benefits.

Additional details regarding compliance for Example #3:

- Grocery stores are highly automated with complex software that records sales on an item basis; payments can be cash, EBT, and credit/debit card; and in some cases a combination of all categories. Significant changes to the preexisting software would be needed to capture the sales tax collected field for credit/debit card transactions, which is currently not broken out to the third party processor today.
- The Massachusetts statute of limitations is three years and vendors are required to store data transactions related to business activity. This storage requirement will increase due to the extra data transfers to third party payment processors.
- Retailers are always vulnerable to computer hackers. Grocery stores spend large sums of money to protect data and sending more data to third party payment processors increases the data privacy risk.
- Third party processors charge retailers a processing fee (generally 1%-3%) for processing each credit/debit card transaction. Since the sales tax collected will not be processed and returned to the retailers the processing fee will be reduced. In addition there is an interchange fee for credit/debit card transactions, but as of now, we are unable to determine what impact that would have on retailers.

- New procedures would have to be implemented to handle refunds on taxable products that have already been processed by the third party processor. Special modifications would be needed for split transactions that have credit/debit cards and cash and/or EBT tenders. Meals tax collected would have to be segregated and handled differently both by the retailers and third party processors. Again, more costly modifications to software and procedures would be necessary with this change.
- Additional professional accounting time will be needed by retailers in the back office (sales audit) to reconcile the credit/debit card transactions net of sales tax and for sales tax compliance reconciliations of sales tax charged, but transferred to a third party processor. The State of Massachusetts will also incur additional audit time verifying tax transfers which could have been spent investigating tax noncompliance.
- Currently, Chapter 64G states a return must be filed by the vendor. The vendor is responsible for remitting the sales tax. Would this proposed change, therefore, make the third party payment processor the vendor for sales tax purposes and would that “vendor” then inherit all the audit risk associated with being a vendor?
- This change will cost retailers and third party payment processors significant costs to implement as well as yearly costs to maintain this process. This change will only provide the State of Massachusetts a one-time cash flow increase yet not add any incremental revenue. This is very poor tax policy.

**Example #4: Goods and Services with multiple business units estimated cost of \$3.25M**

- Would require significant expense for the retailer and payment processing vendors.
- Would require significant changes to address complex organizational structures and subsidiaries.
- Would require several changes for each business unit that would be required to maintain books and records of transactions in addition to audits of separate units for purposes of internal reconciliation and for annual tax filing and auditing purposes.
- Would require 8-12 months of testing with financial institutions at an approximate cost of \$1,000,000 for one business unit.
- Would require additional hardware changes taking six months at a cost of \$100,000
- Would require additional testing and mapping for online sales taking 8-12 at a cost of \$1,000,000.
- Would require brick and mortar business unit to undergo two major efforts each taking approximately a year and costing a total of over \$1,000,000.
- Would require organizational investments for information technology taking six months and \$250,000.

**Example #5 Massachusetts Department of Revenue, state government, subsidiaries and municipalities**

Compliance: Unknown

Cost of Compliance: Unknown

Regarding specific feedback regarding additional cost, economic impacts, compliance issues, auditing issues and challenges for 3<sup>rd</sup> party processors, AIM offers the following observations regarding the impact of the proposed accelerated sales tax on business including small business.

**1. Economic Impact – Added Costs**

- a. Businesses will need to purchase costly new software to allow for real-time reporting;
  - i. Assuming this new software is not available with a mobile component, it may require businesses using mobile credit card acceptance devices (i.e. Square) to purchase new pin pads/hardware to directly connect to a computer terminal so it can connect directly with the new software
  - ii. Additional software may be needed to allow the new software to interface with any existing payment processing systems / software. For example, consider a business that accepts online orders by credit card and also accepts credit cards through a point of sale system in a brick and mortar store. The business may need to buy additional software and services to connect the systems before the data can then be imported into the new reporting software to prepare the reports to send to the credit card companies. If less frequent reporting was required, the business may have been able to manually reconcile the data from any other systems / software, rather than incurring the additional software cost.
  - iii. Even if these costs are born by the third-party payment processors, the third-party processors will have to pass on some of the costs onto businesses.
  - iv. These costs grow exponentially if companies have subsidiaries and with multiple third party processors each with their own systems and software.
- b. **Reduced economic growth/spending in MA** – because business will now have the added compliance burden of having to report more frequently, some businesses will decide not to accept payments from third-party processors (credits cards, etc) (and lose sales) just to avoid the compliance burden.

Could have major impact on each business and could conceivably curb economic growth in MA in the aggregate.

- c. **Hurts niche proprietors (for example, the flea market vendor) and drives niche marketplaces out of MA**
  - i. Consider a sole proprietor whose business is selling handmade crafts at flea markets, craft shows, etc. Assume this vendor accepts credit cards using Square or some other mobile processor mobile device that is unconnected to a computer. Requiring that vendor to accelerate the frequency with which they record each sale and prepare reports will add

- substantial compliance burdens. (having to immediately transfer information to the reporting software, generate the report, etc.).
- ii. Magnified for niche vendors travelling further distances to market and sell their products
- iii. May lead to niche proprietors choosing not to accept credit cards, or choosing to market outside of MA.

- d. **Discourages physical stores from accepting credit cards using mobile devices that are not connected to a computer.**
  - e. **Increased barrier to start-up activity**
    - i. Added costs of software and compliance may disproportionately affect start-ups with few employees.
    - ii. Hiring an accountant or in-house tax person to handle daily payments unrealistic for many Massachusetts businesses.
- 2. Compliance Burdens for Business**
- a. **Increased Record Keeping Burden** – Businesses would be required to keep more detailed records in addition to aggregated information.
  - b. **Compliance Issues**
    - i. Temporary systems issues / storms / natural disasters are more likely to interfere with reporting and remittance of tax if it must be done on a daily basis.
    - ii. Will more leeway / penalty relief be allowed for late filing and remittance when filing and remittance is more likely to be delayed or overlooked if it is a daily process.
    - iii. All payment processors would need to review all systems and compliance procedures and potentially change them, to allow them to separate and identify the tax on a real-time basis.
    - iv. Less time will be available to businesses to make sure coupons and exemptions are being properly applied to determine the tax base.
    - v. Currently businesses being audited by the state could be required to pull transaction level detail from a sales system software showing all transactions, with a field indicating tax collected from the customer. The sales tax accrual account is then increased weekly to match collections, and then that amount is debited when tax is remitted on the sales tax return.

These systems are often automated at great expense through contracting with third-party software providers to customize and modify software systems. Vendors would be required to revamp these systems at great expense to identify credit and debit card purchases, where sales tax would be recorded at the time of the sale but then not recorded in the sales tax account. Meanwhile, cash payments would be treated in the same manner as before. There are also issues with mixed tender types; credit card, cash,

EBT tender types could be included in one transaction and retailers would be required to handle these transactions seamlessly.

- vi. The proposed system would greatly increase the likelihood of duplicate tax payments. With two unrelated entities responsible for remitting tax on the same transaction, there would be twice the chance for a system (either the vendors or the credit-card processor) to misidentify a transaction resulting in both parties remitting tax on the same transaction.
- vii. Duplicate taxes are also more likely when the vendor does not have visibility at the time of the transaction as to whether the customer will pay via credit when ultimately billed. This will increase refund request with confusion as to who should request the refund.
- viii. Reconciliation will be very difficult if the third party processor doesn't remit the right amount of tax. The vendor will need to determine what transactions weren't properly remitted.
- ix. The report of total taxes paid provided to the vendors may not be provided before tax is due based on the transaction date. Also if the billing cycle differs from the date of the transaction may be additional reconciliation issues.

**3. Increased costs for third-party processors:** This system would require financial institutions to purchase and implement expensive software programs in order to (1) interface with vendors to obtain daily reports on Massachusetts tax charges; (2) to interface with the Department of Revenue to remit tax on a daily basis; (3) to create new sales tax remittance reports to track sales tax remitted each day; (4) implement new daily sales tax remittance procedures to ensure that tax is remitted each day (something that does not exist anywhere else in the United States and therefore would need to be created from scratch); (5) implement new systems to generate monthly tax remittance reports and returns to submit to Massachusetts; and (6) implement new systems and procedures to generate monthly tax remittance reports to provide to each customer—potentially encompassing tens of thousands of businesses each month for large processors. (7) There will be increased costs for the third-party processors to support sales tax audits which would require skilled expertise that the processor may not have on staff.

#### **4. Audit Issues**

- a. **Slower / More Difficult Audits** - Auditors will need to review more detailed documents/reports in lieu of aggregated reports, which will slow audits.
- b. **Auditors will not be able to rely on conclusions from prior audits regarding sufficiency of vendor collection and remittance procedures** – As part of a sales and use tax audit, the auditor must review all collection procedures, including procedures for cash and credit card collections and payment remittances. Assuming vendors will need to use new software and put new procedures in place to handle daily remittance, auditors will need to review all

of these new procedures to identify if errors are occurring. For repeat audits, this means that the auditor can't rely on conclusions reached in the prior audit regarding the systems and procedures of the taxpayer.

- c. **Increased burden on vendors at audit** – Currently, at audit, sales tax collections listed on a sales tax collection schedule are typically cross-referenced with tax remittances on the sales tax return to verify that tax was properly collected and remitted. This is already a time-consuming and laborious process for all vendors.

Adding a daily tax remittance system would make this process even more burdensome by creating additional verification steps at audit. A vendor's sales tax remittances would no longer match the sales tax on their sales tax report. They would be required each month to cross reference their total sales tax charged against the sales tax remittance reports provided by third-party processors each month. The vendor would be responsible for ensuring that every transaction listed on the third-party processors sales tax remittance report corresponds to the report submitted to the third-party processor. This would be time-consuming and manpower intensive for any company and would increase the cost of complying with Massachusetts tax laws significantly.

- d. There will be an **undeterminable opportunity cost** for the Massachusetts Department of Revenue because auditors will be spending a significant amount of time trying out compliance payments when they could be investigating tax noncompliance.
- e. **The rules don't account for financial institutions to report their remittances at the transaction-level detail required for vendors to maintain a proper audit trail.** There are reconciliation costs if record don't match. The financial institutions will need to ensure the right subsidiary identification number for each vendor they contract with.
- f. **What if the state errors in crediting the correct subsidiary account?** There are many places for errors, making audit trails much more complex.

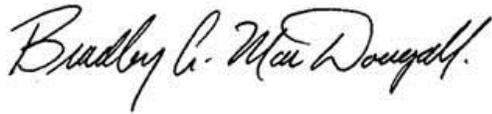
Massachusetts employers are experiencing some of the highest healthcare, energy, and unemployment costs in the country. This includes a new \$200M healthcare assessment to address the alarming and ongoing deficit in the state's MassHealth program. These Massachusetts-only costs of doing business make our Commonwealth uncompetitive compared to other states – especially when we are seeking to retain and attract employers to the Commonwealth.

This tax policy will have the immediate impact of diverting companies' limited resources away from wages, benefits, and job growth to non-wage activity. In the long-term, this proposal will have a negative impact on the Commonwealth's competitiveness and overall business climate. While Massachusetts' business confidence remains positive, employers are expressing their frustration and the experience of being "under siege" by these and other Massachusetts-only costs of doing business. (*See Appendix A: AIM Business Confidence Index*).

**AIM urges the Department of Revenue to determine that this policy is neither feasible nor cost-effective. AIM appreciates the Department of Revenue's consideration of this testimony and stands ready to provide further assistance.**

Should you have any questions, please feel free to contact me directly at 617-262-1180 or [bmacdougall@aimnet.org](mailto:bmacdougall@aimnet.org).

Sincerely,

A handwritten signature in black ink that reads "Bradley A. MacDougall". The signature is written in a cursive, flowing style.

Bradley A. MacDougall  
Vice President for Government Affairs  
Associated Industries of Massachusetts

## Appendix A



Employer Confidence Dips; Overall View Remains Optimistic  
*Sep 5, 2017 7:30:00 AM*

Massachusetts employer confidence edged lower for the second consecutive month during August, but remained comfortably in optimistic territory.



The Associated Industries of Massachusetts Business Confidence Index (BCI) shed 0.3 points to 61.2 last month, leaving it 7.1 points higher than a year ago. The Index has been essentially flat since April and now stands 0.2 points lower than at the beginning of 2017.

Last month's slip reflected offsetting trends in employer attitudes about conditions inside and outside their walls. Employers grew less bullish about their

own companies during the month, but showed growing optimism about the national economy and about prospects for manufacturers.

“Employer confidence continues to move in a narrow range defined by broad optimism about both the state and national economies,” said Raymond G. Torto, Chair of AIM's Board of Economic Advisors (BEA) and Lecturer, Harvard Graduate School of Design.

“The steady level of confidence readings above the 60 mark reflect a state economy that grew at a 4 percent annual rate during the second quarter while maintaining a steady level of employment growth.”

The AIM Index, based on a survey of Massachusetts employers, has appeared monthly since July 1991. It is calculated on a 100-point scale, with 50 as neutral; a reading above 50 is positive, while below 50 is negative. The Index reached its historic high of 68.5 on two occasions in 1997-98, and its all-time low of 33.3 in February 2009.

The Index has remained above 50 since October 2013.

The constituent indicators that make up the overall Business Confidence Index were mixed during August.

The Massachusetts Index, assessing business conditions within the commonwealth, remained unchanged at 63.2, still 6.3 points higher than in August 2016.

The U.S. Index of national business conditions rose 2.3 points to 60.2 amid strong signs of job expansion nationally. The US Index has risen 10.6 points during the past year, more than any other element of the overall Business Confidence Index.

Still, August marked the 89th consecutive month in which employers have been more optimistic about the Massachusetts economy than the national economy.

The Current Index, which assesses overall business conditions at the time of the survey, edged up 0.1 points to 61.3 while the Future Index, measuring expectations for six months out, dropped 0.6 points to 61.2. The Future Index ended the month 6.3 points higher than a year ago.

The Company Index, reflecting overall business conditions, lost 1.3 points to 60.9. The employment Index surged 2.3 points to 58.0 after losing ground during July.

Executives at manufacturing companies and those at non-manufacturing enterprises maintained almost identical confidence readings – 61.1 for manufacturers, 61.3 for non-manufacturers. The AIM Manufacturing Index has surged 9.9 points during the past year.

“Manufacturers in Massachusetts remain optimistic even though national economic signals for that sector remain mixed. The Institute for Supply Management manufacturing index was strong August, but the IHS Markit US Manufacturing PMI showed manufacturing expanding at its slowest pace since June 2016,” said Edward H. Pendergast, Managing Director of Dunn Rush & Co. in Boston and a BEA member.

Confidence was also remarkably consistent across all geographic regions of the commonwealth. Eastern Massachusetts companies posted a 61.3 reading during August versus 61.1 for companies in western Massachusetts.

**AIM President and CEO Richard C. Lord, a BEA member, noted that a significant number of employers who responded to the August survey expressed frustration with the new \$200 million health-insurance surcharge and the proliferation of complex and expensive employment laws.**

**“Amid a generally strong economy, employers feel under siege from a government and an electorate that seem willing to impose crushing financial burdens on job creators in the name of social progress,” Lord said.**

**“Employers are telling us that additional measures that may be headed to the statewide ballot – paid family leave, a \$15 minimum wage and a punitive surtax on incomes of more than \$1 million – may force them to relocate.”**

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Next submitted item begins on the following page

October 2, 2017

The Honorable Christopher C. Harding  
Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street  
P.O. Box 9550  
Boston, MA 02114

**Re: Methods to effectuate accelerated sales tax remittance by payment processors**

Filed at [rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us)

Dear Commissioner Harding:

This comment is filed on behalf of Alliance Data Card Services. Through our subsidiaries, we issue and service private label, co-brand, and business card products to many of the world's most recognizable brands across a multitude of channels. **Currently, we offer 150+ credit card programs for more than 145 brand partners.** Many of our brand partners do business in Massachusetts and/or service Massachusetts residents via on-line shopping. We have over **50 million cardholders.** Among our client brands are Massachusetts based Talbots, BJ's Wholesale Club, and J. Jill, as well as other national brands like Diamonds International, Arhaus, Overstock.com, and Wayfair.

We fully support comment letters submitted by the Card Coalition and Synchrony Bank explaining the negative impact the proposed legislation will cause for typical credit card issuers and payment processors. For the reasons explained herein, issuers of private label cards bear those negative impacts, and additional ones. In this letter, we describe our own situation, but it is applicable not only to us but also to other private label issuers.

#### **The Settlement Process of Private Label Credit Card Sales**

Our private label credit cards are retailer specific, meaning a particular card will only be accepted by the corresponding retailer brand associated with the subject card. This means that the card payment networks (e.g., Visa® and MasterCard®) are not engaged in the transaction, nor (usually) are the major payment processors.

The private label settlement process is as follows: the merchant submits a file of credit card sales, called a "settlement file" directly to us, and we pay the merchant directly for the sales. This settlement file may be submitted on a daily, semi-weekly, weekly, or other basis. While each sale is authorized real-time, until it arrives as part of a settlement file, there is no verification that it was consummated.

**NOTE:** This very same process is followed in many cases when one of our co-brand cards is used to make purchases at the corresponding retail brand associated with the card. For instance, if a cardholder uses her "Retailer branded" co-brand card to make a purchase at the Retailer, the private label settlement process is followed. In a co-branded credit card program, the retailer branded credit card is also a VISA or MasterCard (or American Express® or Discover®).

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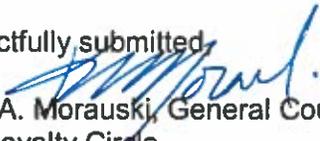
### Unique and Additional Negative Impact of Section 94 of H.B. 3800

Because of the settlement format described above, Section 94 of H.B. 3800 triggers for us (and others like us) not only all the problems that will be faced by the card payment networks and major payment processors, but also the following additional unique challenges and expenses:

- Significant Systems Development Expense. Our settlement systems are currently configured to settle 100% of transaction amounts with the private label brand retailer. Reconfiguring those systems to break out the sales tax amount and send it to Massachusetts would require significant and burdensome time and expense.
- The Impossibility of Timing. Real-time sales tax remittance is impossible, as we cannot know a transaction has taken place until we receive the settlement file. For clients with whom we settle on a weekly basis, that timeframe could be days after the sale. Even assuming that the sales tax remittance could happen when we received each settlement file, the sales tax information may or may not be contained in that file. Whether it is or not would depend on our merchant clients' point of sale systems. Those which do not separate the sales tax would have to be changed or reprogrammed at significant cost to the merchant. For national merchants, that cost might have to be incurred on a nationwide basis in order to satisfy the requirements of one state.
- Identifying the Sales Tax Portion of a Sale. With 145+ clients, Alliance Data Card Services receives 145+ settlement files, on a number of cadences. Therefore, we would be presented with the labor and expense of separating sales tax from each settlement file, and sending and reconciling an additional 145+ remittance transmissions to the Commonwealth of Massachusetts on whatever settlement cadence our clients are on. For each client that settles daily, that would be an additional 30 file operations per month, or as many as several thousand additional monthly file operations to account for all of our merchant clients. The additional work and expense that would be required would be significant. Further, if other states followed Massachusetts' lead, the additional monthly file operations could soar into the tens of thousands.
- Contractual Implications. Our settlement process is memorialized in our contracts with our clients. At a minimum, for every one of our clients that does business in Massachusetts, we would be required to amend the contract to provide for the change in settlement procedures. Each amendment would require time and effort on the part of business associates and attorneys for both parties. In most cases, this added, unanticipated cost would trigger other negotiations as to how the parties bear the cost associated with the technology changes.

Section 94 is not clear as to what parties need to be accounted for in the Department's "cost effectiveness" calculus. However, the proposal certainly is not cost effective for us and for other private label (and some cobranded) credit card issuers who settle directly with their retail clients. We urge the Department to so find.

Respectfully submitted,



Karen A. Morauski, General Counsel of Alliance Data Retail Card Services  
3075 Loyalty Circle  
Columbus, Ohio 43219

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Next submitted item begins on the following page



**American Express Company**  
801 Pennsylvania Avenue, N.W.  
Suite 650  
Washington, DC 20004

September 27, 2017

VIA OVERNIGHT

The Honorable Christopher Harding  
Office of the Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street  
Boston, Massachusetts 02114

Dear Commissioner Harding:

American Express respectfully submits these comments to the Department of Revenue pursuant to the Request for Information concerning Section 94 of HB 3800. That legislation authorizes the Commissioner to promulgate regulations concerning “methods to effectuate accelerated sales tax remittance” after first determining whether such methodology would be cost-effective to implement before June 1, 2018. We request the Commissioner to consider the following comments to determine that direct remittance would not be cost-effective to implement in the time allotted.

The proposed system of direct remittance would add cost and complexity to the tax system, without clear offsetting benefits. No efficiencies would result from replacing Massachusetts’ current system of sales tax remittance, which remains in place for cash and check. The state would likely incur substantial burdens to process, reconcile and allocate tax submissions among additional parties, yet no new sales or tax revenue would result from operating two entirely separate tax remittance systems. The proposal also presents unknown risks for businesses and consumers.

Direct Remittance is Untested

Effectuating accelerated sales tax remittance in Massachusetts would require government and businesses to work together to invent and implement a new system unique to any state. Such system would require payment processors and merchants to make significant investments in technology, analytics and compliance at the expense of improving business processes or investing in innovation.

It is not clear which merchants or transactions would be in scope of the proposed new system. Regardless, affected merchants would have to provide more data to their payment processors

to enable the processors to remit tax as required by law. In many cases a merchant may utilize multiple payment processors, and those processors may or may not employ similar processes to meet their obligations to Massachusetts. Additionally, direct remittance may interfere with or prevent Massachusetts merchants from utilizing payment processing services that are available today, such as weekly or monthly account reconciliation. The burden placed on merchants to participate in the new system may be substantial.

### The Electronic Payment System is Not Designed to Remit Tax

Section 94 seeks to impose a duty on payment processors to collect and process transaction-level data from merchants so that the processor can remit tax payments to the state. Currently, in Massachusetts as in other states, the merchant need not share data with payment processors about the tax implications of sales transactions; in fact the merchant may be restrained from retaining or transmitting such information due to customer privacy concerns. For example, today the payment processor is generally unable to verify where a sales transaction took place, or whether that transaction is taxable in a particular state (this is especially the case for online commerce).

If Massachusetts imposes a system of direct remittance for card transactions, it will be necessary for merchants to capture this information and provide it to their processor, which in turn would have to create systems to validate the information. Processors will have to invest in data system upgrades and revise their merchant agreements. Merchants will have to satisfy these new requirements and certify compliance to the processor. All of this would create costs borne by the merchants and perhaps ultimately, by consumers.

Payment processors would also be responsible for remitting tax directly to Massachusetts on a frequent (daily?) basis. This task, unknown in the current tax system, poses various risks to the processor. Payments to the state would have to be reconciled in cases involving unfulfilled sales, merchandise returns, chargebacks or other post-transaction adjustments – or whenever there are errors or deficiencies in the data that the merchant reports to the processor. In such instances, the processor would be obligated to reimburse the card holder, yet the processor will have to determine and pursue a tax refund from the merchant and/or Massachusetts. If the state seeks to audit or investigate a tax payment, it is unclear whether that inquiry would be directed to the merchant, the processor, or to both.

In essence, Section 94 assumes greater functionality from the electronic payment system than the system currently provides, aspiring to a comprehensive billing management system rather than a payment provider for card-based merchant transactions.

### New Burdens around Tax Remittance and Processing

The system envisioned in Section 94 also may impose substantial new burdens on the state. Massachusetts would have to develop new systems and processes to handle exponentially more tax filings and payments every month. It would have to have a means of associating the large volume of processor payments, returns and chargebacks to individual vendors registered to collect sales or use tax, and a way to manage the proper application of payments and tax compliance among vendors and processors. Technical specifications of the new system would

have to be developed, disseminated and operationalized with all impacted vendors and processors. Audit and enforcement of two different sales tax systems would be required.

Merchants and payment processors also would assume costly new burdens. For merchants to file their monthly tax returns, they would have to split their sales into subcategories based on the customer's method of payment and (for card based transactions) the payment processor. Payment processors would have to develop and implement new systems to remit taxes, with functionality to handle reconciliation and resolve discrepancies. Processors would also be required to generate separate statements to Massachusetts and to each impacted merchant, documenting the amount of tax remitted by the processor to the state. The cost to processors of building these processes and generating statements may be significant.

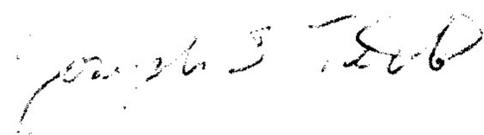
#### Chilling Impact on Commerce in Massachusetts

If implemented, the direct sales tax remittance system would disadvantage Massachusetts merchants and may discourage out-of-state merchants from doing business in the state; such system may also incent Massachusetts businesses to transact more business in cash, thereby hampering (rather than enhancing) efficient tax collection.

Bricks-and-mortar merchants in Massachusetts that accept credit cards in their stores would have to invest in new point-of-sale terminal equipment, along with tax accounting software and compliance systems, to enable daily remittance. Online merchants that sell or deliver goods or services into Massachusetts will face a daunting task to determine whether and how to comply with a uniquely burdensome mandate in a single state and as a result may avoid doing business with Massachusetts customers. Small merchants and consumers in Massachusetts stand to suffer most acutely from increased costs and less competition.

In closing, American Express respectfully urges the Commissioner to decline to promulgate regulations pursuant to Section 94. The changes being contemplated would add cost and complexity without certain gains. Massachusetts' tax system would become more expensive, convoluted and difficult to police with the involvement of additional parties. It appears unlikely that such regulations would be cost-effective to implement before June 1, 2018.

Sincerely,



Joseph S. Testa  
Vice President, Government Affairs

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Next submitted item begins on the following page



via email

**September 29, 2017**

Mr. Christopher Harding, Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street, 8<sup>th</sup> Floor  
Boston, MA 02114

**Re: Feedback related to Accelerated Sales Tax Remittance, MA House Bill 3800 Section 94**

**Dear Commissioner,**

BJ's Wholesale Club, Inc. ("BJ's") respectfully submits this correspondence in response to the Department of Revenue's ("Department") request for feedback regarding the proposed method to effectuate accelerated sales tax remittance pursuant to section 94 of House Bill 3800. We are strongly opposed to the proposed method. First and foremost, sales tax is a trustee tax, and no party other than the taxpayer can or should be made responsible for the accurate and timely remittance of such tax to the Commonwealth, unless the statute so provides. By requiring payment processors to remit such tax on behalf of their clients, without any contractual or statutory obligation for them to do so, the proposed method would force taxpayers to unduly rely on third parties to fulfill obligations for which only the officers of the taxpayer are personally liable.

Beyond the core trustee tax issue, we are further opposed to the proposed method because 1) it would impose excessive additional costs on BJ's, as well as other Massachusetts retailers, payment processors and presumably on the Department itself; and 2) it is unnecessarily complicated whereas other alternative methods could serve the Commonwealth's purpose without creating the complexity and cost of the proposed method.

#### **Excessive Additional Costs**

An evaluation of our current systems infrastructure and existing processes indicates that immediate and substantial expenses would need to be incurred to modify hardware and software in the areas of point-of-sale, e-commerce, system integration, ERP, and reporting to support this proposed change. The current interfaces with our payment processors do not contain separate data elements for tax and non-tax amounts, nor do they split such amounts for transactions that have multiple forms of tender, such as cash and credit. It is not known at this time whether these changes are even technologically feasible for us or our payment processors. Of particular concern is that these changes would need to be made for all transactions in our systems, not just the Massachusetts credit card transactions, which greatly adds to the cost. We have estimated the total cost to implement such modifications to our systems, if feasible, to be no less than \$500,000 to \$750,000, and more likely to be in excess of \$1,000,000.



Recurring monthly procedures would need to be implemented in multiple business units to ensure the accuracy of remittance due to the complexity introduced by the proposed method. Newly created monthly duties would be assigned to corporate personnel to review and reconcile all monthly reports received from payment processors; investigate and resolve any variances with BJ's data as identified (prior to the sales tax returns are filed on the 20<sup>th</sup>); and perform additional sales audits and reconciliations of tax liabilities and credit card receivables. Also, we anticipate that exception procedures around handling of bad debt and reconciliation of multiple tender transactions will be burdensome and require additional, unanticipated labor. More significantly, our third party payment processors would be required to perform additional tasks on behalf of our organization and, as a result, our fees will increase as payment processors seek to offset their own increased costs. We have estimated that these recurring processing and support expenses could result in cost increases of up to \$200,000 per year.

### **Unnecessarily Complicated**

We believe there are simple, cost-effective alternatives that could be adopted to achieve the stated objective of remittance acceleration. One such alternative, which we would strongly recommend, would be to simply require each taxpayer to remit an advanced payment for the following month with each month's return, based on the prior year's sales. This requirement, or one similar, is a fairly common practice already in place in several states in which we do business, including Pennsylvania, Florida, North Carolina, and Ohio. This advanced payment method is easy to compute, reconcile and track, requires no incremental costs other than the lost time value of money, and, most importantly, is 100% within the control of the taxpayer, as opposed to an unrelated, third party payment processor.

In conclusion, we strongly discourage implementing the proposed method as it would put a burden on taxpayers to unduly rely on unrelated parties for the accurate and timely remittance of taxes for which they are the sole trustees under the statute; it would have a significant negative financial impact and it would impose excessive additional costs on retailers, credit card processors, and presumably the Commonwealth itself; and it is unnecessarily complicated.

If it is necessary to effectuate accelerated sales tax remittance, we strongly urge the Department to simply institute an advanced payment method similar to that which is already an established practice in many states, and for which most taxpayers have already established processes within their existing organizations and systems.

Thank you for your time and consideration. Please contact me at 774-512-7468 with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristyn M. Sugrue".

**Kristyn M. Sugrue, CPA**  
**Senior Vice President, Treasurer**  
**BJ's Wholesale Club, Inc.**

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Next submitted item begins on the following page

September 26, 2017

The Honorable Christopher Harding  
Commissioner  
Massachusetts Department of Revenue  
Commonwealth of Massachusetts  
100 Cambridge Street  
Boston, MA 02114

Dear Commissioner Harding:

This letter responds to a request by the Massachusetts Department of Revenue (“Department”) for comments on Sections 94 and 95 of the Fiscal Year 2018 budget that requires the Department to promulgate regulations requiring third party payment processors to collect and remit “real-time” sales taxes from retailers. We welcome the opportunity to provide the Department with feedback on the technological and financial implications of this real-time remittance obligation. As discussed in further detail below, direct sales tax remittance on behalf of the bank’s retailer clients is incompatible with the current structure and processes of the payments system. Implementation of this requirement would result in a massive disruption for payment processors, retailers, and the Commonwealth of Massachusetts. Such changes are cost-prohibitive and technologically impractical. Additionally, the real-time remittance proposal fails to solve for the underreporting of cash transactions.

When the legislature enacted Sections 94 and 95 of the 2018 budget, they did not appropriately account for the significant implementation costs and technological obstacles that will be imposed on payment processors and the financial services industry. Currently, retailers are responsible for reporting sales taxes on a monthly basis. To report total sales, the retailer tracks all sales and returns made (by all accepted payment forms, including cash, check, ACH, credit card, debit card, and gift card). The retailer determines the sales tax based on the products/services sold. By contrast, payment processors are hired by retailers to process credit and debit card payments. In some instances, multiple processors may be hired by a retailer for specific parts of their business (based on payment type, store location, online vs. in-person sales, etc.). The payment processors’ role is to clear and settle the total amount due on credit and debit cards between the customer and the retailer. The processor rarely – if ever – knows the details of the product/service purchased by the customer or the amount of the sales tax for any particular transaction.

It is important to note that payment processors are hired by retailers to enable credit and debit card payments into the electronic payment systems of the retailer's choice. These systems process millions of transactions each second. The systems are not designed to differentiate how much of the transaction must be allocated between the product/service and the sales tax (if any). Moreover, the payment processor is unable to determine what product/service is purchased, whether the product/service is taxable, whether the product/service is taxed, and which tax rates apply (which varies by item, transaction, jurisdiction, and retailer technology). Similarly, the payment processor does not determine the tax or merchandise amounts to be refunded when a customer makes a return. The retailer hires other service providers to calculate the applicable taxes.

Modifying the electronic payments system would require a substantial investment that would have a detrimental financial impact on retailers, consumers, and the Commonwealth. Converting the current global interoperable transaction-based infrastructure for each debit and credit card network to integrate a Massachusetts-specific tax collecting, reporting, and financial settlement system would require an investment of tens of millions of dollars to construct and maintain. Massachusetts retailers would bear the financial costs to sustain the state-specific custom solution. Under the proposal, payment processors who support Massachusetts retailers would need to offer the state-specific custom version of each card network's authorization, clearance, and settlement systems. Retailers would need to devote additional resources to remit and reconcile sales taxes. The financial costs for these additional services would be borne by Massachusetts retailers.

Additionally, Massachusetts retailers would still be required to track and report all sales (net of adjustments and returns) not purchased using debit or credit cards (e.g., cash, check, ACH, gift cards, gift certificates). In other words, this would require Massachusetts retailers to repeatedly perform sales tax compliance work on different systems to reconcile what they will have paid on their behalf by a payment processor and the amount the retailer would need to remit based on sales paid by other payment forms. Similarly, the Department would need to increase staff and technology resources as the demand for support and reconciliation would significantly increase, and would need to overhaul its infrastructure to process sales tax remittances and reconciliation from both retailers and payment processors.

One concern expressed by the Department is the underreporting of transactions. However, the remittance requirement would not address this issue because the overwhelming majority of underreported transactions occurs in connection with cash sales. Payment processors report to the IRS the total credit and debit card payments made to retailers, which is accessible by the Department.

The remittance requirements would also have consequences beyond Massachusetts. For example, retailers operating in an adjacent state would not be required to comply with these additional tax reconciliation obligations. Thus, Massachusetts retailers will be placed at an economic disadvantage by having to bear the costs of sustaining multiple reporting systems. Moreover, a retailer seeking to expand locations may choose to locate to a neighboring state

rather than expand in Massachusetts, particularly if their current payment processor does not support other Massachusetts retailers.

In conclusion, implementing the real-time sales tax remittance requirements in Sections 94 and 95 are neither technologically feasible nor cost-effective. It would impose substantial financial burdens on payment processors and credit and debit card networks to provide a custom, Massachusetts-specific solution, the costs of which will ultimately be borne by Massachusetts retailers and consumers.

Please let me know if you have any further questions or concerns.

Sincerely,



Brian P. Grip  
Senior Vice President  
State Government Affairs

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Next submitted item begins on the following page



September 15, 2017

The Honorable Christopher Harding  
Commissioner of Revenue  
Commonwealth of Massachusetts  
100 Cambridge Street  
Boston, MA 02114

Dear Commissioner Harding:

Thank you for the opportunity to provide feedback on the real-time remittance of sales tax proposal in Section 94 of HB3800. Capital One has 65,000 Small Business customers in Massachusetts. Given the impacts it would have on us and our customers, we wanted to share additional insights and concerns as you evaluate this proposal.

### **Technical Complexities**

Financial institutions and payment processors are not designed to be tax collectors. The process of calculating and remitting sales tax is a binary process between the retailer and the government. This process exists, and operates quite well, in states that impose sales tax. Retailers calculate and remit sales tax monthly, in a convenient manner, and face audits and penalties for non-compliance. If the Commonwealth moves to real time remittance, it would require payment processors and merchant acquirers to create a separate infrastructure and accounting process exclusively for Massachusetts. Contracts and merchant agreements would have to be renegotiated to account for this unique and unnecessary system. We discuss the minimal benefits of the proposed system further below.

We performed a high-level analysis to estimate the scope, complexity and costs Capital One would incur to comply with real time remittance in Massachusetts. Conservatively, we estimate compliance would take a 12-18 month project requiring 6 project teams. Each project team is a cross functional group of 8 highly skilled associates, including a scrum master, project manager, and developers. Cost estimates are between \$9MM - \$13MM, depending on the project length. Even if the investment of associate and financial resources are made, we would not be able to comply by the June 1, 2018 proposed deadline.

The costs and effort to comply are certainly not limited to card issuers. It would also require merchants and merchant processors to make major changes to provide the tax data. Card associations (Visa, MasterCard, American Express, Discover) would have to make appropriate changes to receive, store, and transmit the new data.

### **Changes to Requirements Expected as a Result**

- Payment terminals would need to change. Merchants accept payments using different methods including mobile apps/readers, payment terminals, unattended machines, and eCommerce sites. Given that the tax is defined at the point of sale, processors would need to ensure that either they or their vendors make software updates to each of these terminals to ensure that the end consumer is

charged the proper amount of sales tax, and the proper amount is recorded and remitted in the specified timeframe.

- The Card Associations would need to change their Clearing and Settlement transaction formats to account for the additional data for tax rates. All issuing processors would need to make changes to receive and store this new data.
- All issuing systems would need to store these new database fields for tax data, and build servicing capabilities, including screen and user interface displays, and application programming interfaces (API) to view the data, and pass the data into warehouses for storage and analytics.
- Create new financial processes and general ledger posting and reports for the tax data.
- Modify the disbursement process and build a new automated settlement process to calculate, set aside, and then remit payments to state bank accounts.
- Create and provide reconciliation reports to the Commonwealth to associate tax payments with the right merchants, and build error handling processes.
- Customer communication and reporting, and possibly add new data to customer statements to break out the tax information.
- New processes and technology to handle refunds and chargebacks.

### **Additional Burdens**

Merchants may be forced to buy new equipment to comply with real time remittance, in a time period when merchants are still seeking to upgrade to the current EMV chip reader equipment. Multiple system changes in a short period of time could have negative financial and process impacts on their businesses. In addition, for merchants operating in multiple states, they may need to implement different systems in Massachusetts based on whether their current provider can meet timelines the Commonwealth defines.

We also foresee a new burden on the Commonwealth as the volume of inbound transactions and remittances could increase by a factor of 100x, when taking into account the increased number of remitters. If a retailer is remitting monthly and then has to remit daily, that is a 30x increase in inbound transactions the Commonwealth has to process. The Commonwealth would incur a massive cost to handle the volume increase and maintain the proper records. Errors and omissions are likely to increase.

### **Minimal Benefits**

Real time remittance of sales tax by payment processors will not have a significant impact on revenue, fraud or compliance. Large retailers are consistently under tax audit and are not the types of retailers that collect sales tax and then fail to remit the tax to the state. Furthermore, credit card sales are the easiest to audit given the records from the financial institutions, even for small retailers. To the extent there are retailers collecting sales tax and not remitting to the Commonwealth, that is most likely to happen with small retailers on cash sales.

Real time remittance of sales tax will not further the objective of increasing compliance. Any such increase will be significantly outweighed by the costs imposed on retailers, issuers, payment processors and the Commonwealth. The best method to reduce the time between collecting and remitting sales tax is to require estimated prepayments of sales tax. This method is effectively used in several states, including CA, FL, IA, KS, MI, MN, MS, NC, OH, PA, TX, and VA. It has the least impact to both the remitter and receiver. It also achieves the goal of the real-time remittance of sales tax on credit card sales (i.e., eliminating the float).

The estimated prepayment method achieves the goal with respect to both credit sales and cash sales, which is a more accurate reflection of actual tax collections. The real-time proposal only affect credit card transactions, which renders it a partial solution at best. The largest retailers are already equipped to comply with estimated prepayments and have agreed to this provision. Estimated prepayments of sales tax by the largest retailers is the simplest and fastest way to capture the revenue the Commonwealth needs this fiscal year. It could easily generate \$125MM without the complexities of a new remittance process.

### **Conclusion**

There are significant costs to comply with this proposal which would initially be incurred by payment processors, financial institutions, and the Commonwealth. As with any regulatory mandate, the costs are borne by consumers in the form of higher prices, or they are absorbed by the businesses (in this case both merchant and financial institutions) in the form of wage or workforce reductions, or a shift in how the overall institution deploys and extends available capital.

Despite investigations as to its viability around the nation, the concept of real time remittance has been universally rejected. The bipartisan National Conference of State Legislatures (NCSL) examined real-time remittance of sales taxes by parties other than the taxpayer and concluded "real-time sales tax process is not a solution."

In conclusion, we reiterate that the costs and complexities associated with this proposal well exceed any benefits. Even if the hurdles around feasibility and timing are overcome, the proposal remains unnecessary, ineffective, and contrary to the Administration's agenda of enhancing the business climate in the Commonwealth.

Thank you for your consideration. If you require any additional information, please do not hesitate to contact me.

Sincerely,



Christopher T. Newkirk  
President, International & Small Business

cc: Governor Charlie Baker  
Secretary of Finance & Administration Michael Heffernan  
Kristen Lepore, Chief of Staff to Governor Baker

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Next submitted item begins on the following page



Card Coalition P.O. Box 802 Occoquan, VA 22125-0802 ☎ 703.910.5280

September 29, 2017

The Honorable Christopher C. Harding  
Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street  
P.O. Box 9550  
Boston, MA 02114

*Re: Methods to effectuate accelerated sales tax remittance by payment processors*

Filed at [rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us)

Dear Commissioner Harding:

The following comment letter is filed on behalf of the Card Coalition, a national trade association representing the payment card industry. <sup>1</sup>

Section 94 of House Bill 3800 directs the Department of Revenue to promulgate regulations to implement methods to effectuate accelerated sales tax remittance including, in relevant part, requiring third-party payment processors to directly pay sales tax on transactions using payment systems as well as imposing burdensome transactional reporting requirements relating to each vendor or operator with whom they conduct business. Fortunately, House Bill 3800 gives you the authority to seek other revenue enhancing alternatives should you determine that implementation of this proposal is not cost effective. We urge you to make such a determination.

Simply put, we believe you will find real-time sales tax collection to be ineffective and costly to retailers, payment processors, and your Department. Our member organizations are creating innovative offerings, revolutionizing the way commerce is conducted with safe, convenient, secure, and rewarding payment solutions. Requiring them to redesign their systems

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<sup>1</sup> The Card Coalition identifies, tracks and responds to state legislative and regulatory activities relating to the payment card industry to assist public officials in crafting sound policy on matters impacting payment card operations, consumer protection and other issues of concern. We are the only national organization devoted solely to the payment card industry and related legislative and regulatory activities in all 50 states. For more information, please visit [www.cardcoalition.org](http://www.cardcoalition.org).

to accommodate these suggested budget provisions will significantly hinder this primary mission.

In sum, it would be cost prohibitive and unduly burdensome to impose this type of a tax remittance system on third-party processors. In the U.S., there are an estimated ten million merchant locations, more than a dozen payment card networks, and over 8,000 card-issuing financial institutions.

The infrastructure that facilitates electronic payment transactions must transmit data between these retailers, payment networks, and card issuers, transmitting thousands of transactions per second every hour of every day.

### ***Electronic payment process in a nutshell***

To more fully understand the implications of the proposal, it is important to know the behind-the-scenes steps that occur in a typical three party payment card transaction. When a consumer proffers a payment card at a retailer to make a purchase, the transaction follows a specific transaction flow.<sup>2</sup>

Upon the card dip or swipe at the point of sale terminal, the data will be accessed by the merchant's third-party payments processor, routed by the processor to the payment network (such as Visa, MasterCard, STAR, etc.) and to the financial institution that issued the consumer's card (the card-issuing financial institution). This initial step in the payments process is called authorization. If the authorization request meets the card issuer's requirements, a reply is returned to the merchant indicating that the request has been approved. If the authorization request does not meet the card issuer's requirements, the merchant is informed that the requested transaction has been denied.

If the transaction is approved, the next step is "*clearing*." In this phase, the payments processor obtains essential transaction data from the merchant such as the amount, date and merchant ID number, and sends the information to the card issuer.

The final step is the "*settlement*" process in which funds are received in aggregate from the card issuer for all approved transactions occurring at merchants that received that card issuer's cards for payments. Funds are then transmitted to the merchant to reimburse the merchant for the goods or services purchased. Settlement may occur on an irregular (*i.e.*, not daily) basis, and the timing may differ from retailer to retailer.

### ***Compliance Challenges***

Compliance with Section 94 would require payment processors to identify the taxable amount for each debit or credit card transaction and then collect it from each retailer to remit the sales tax to the state. This reasonable interpretation of the language would be an operational

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<sup>2</sup> A chart showing the flow of a typical transaction is attached.

nightmare for payment processors, payment networks and card-issuing financial institutions alike.

Payment processors and payment networks send and receive these authorization messages as single units of code, typically routing only the card number and the total transaction amount (basically, only the necessary information required to authorize the transaction). Because neither payment processors nor payment networks see details around the goods purchased, they cannot identify the appropriate sales tax that should be applied to the transaction.

To elaborate, when a customer purchases a product or service at the point of sale, the merchant's cash register software scans the purchased items and computes the local and state sales taxes that are applicable. If the customer elects to use a payment card for the purchase, the total sales amount is sent from the cash register system to a separate point of sale device, known as the point of sale terminal, which accepts the payment card.

Payment processors and payment networks only transmit the data received from the point of sale terminal, *i.e.*, the total transaction amount and select data obtained from an embedded chip or the magnetic stripe on the back of the payment card that is swiped. Neither processors nor networks delineate between goods and services purchased at the point of sale.

To process thousands of payments per second quickly, safely and efficiently, it is critical to only capture the absolute minimum amount of data necessary to authorize, clear and settle the transaction. So, for example, if the transaction was completed at a grocery store, the dollar amount that would be routed from the point of sale terminal through the payments chain would not indicate food items versus cosmetics, nor any individual purchase item, nor the amount of a sales tax. Payment processors and payment networks only see an aggregate number for the total amount of the transaction.

To accomplish the intent of Section 34 significant programming changes would be required by retailers, processors, payment networks, and card issuers. Changes would be necessitated to capture data at the point of sale regarding the sale itself including the detail of the item(s) purchased, prices, coupons applied, terms of delivery, purchaser's tax status, *etc.*, to apply sales tax and report and remit accurately.

The enormity of these programming changes is further underscored by the fact that all of the systems that are linked in the payments chain must be interoperable. Thus, changes must be coded, implemented and tested at retailers' point of sale terminals, payment processors, payment networks and the card issuing financial institutions. Moreover, payment processors and payment networks would have to create systems to determine the taxability of thousands, if not millions, of different products throughout all types of industries, burdening the communications' system with many more lines of data and decisioning and logic models.

In sum, every component of the payment processing system touching a transaction will need to be updated and tested to ensure that it properly remits taxes while securely and safely completing the transaction in full compliance with payment system rules and banking law requirements.

The relationship between retailers and processors is governed by contracts which do not allow for or contemplate that processors will remit the state sales tax component of any card sale directly to state/local taxing authorities. To even permit tax remittances, the universal amending of merchant card transaction processing agreements will require substantial legal effort and cost for merchants and processors.

### ***Impact on Local Merchants***

Tax-abiding Massachusetts retailers would be penalized by this proposal in the form of additional administrative burdens and potentially even higher costs. Reconciliation of tax remitted by multiple parties, at different times, on behalf of each retailer, will create a complex and burdensome system for the retailer, third-party processors, networks, card issuers and the Department of Revenue.

The payment processor remitting the tax would need to inform each retailer of the specific transactions on which tax is remitted and the specific amount of tax remitted on each transaction. The retailer would then need to reconcile this tax remittance with its overall tax liability to ensure that it remits all tax that is properly due on a timely basis.

The high volume of transactions that occur at a retail location on a daily, weekly or monthly basis, coupled with the volume of merchandise returns, chargebacks, *etc.*, would make this challenging in the best of conditions.

While many transactions are for consumables (*e.g.*, fuel burned and meals eaten), in the sales of goods, returns are frequent and made over lengthy time periods. National Retail Federation (NRF) data show eight percent of all purchases are returned with return rates of 30 percent or more for online purchases (clothing returns approach 40 percent).<sup>3</sup>The impact of fraudulent returns on sales tax is also dramatic.<sup>4</sup>

Many national retailers including Anthropologie, Bath & Body Works, Bloomingdale's, Costco, Lands' End, L.L. Bean, Macy's, and Nordstrom have no time limit for full refunds. Other merchants like REI and Zappos allow returns for up to a full year. It is reasonable to expect that local merchants—who are likely to personally know the customer—are equally generous. Thus, a

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<sup>3</sup> See: A \$260 billion 'ticking time bomb': The costly business of retail returns, CNBC 16 December 2016 at <https://www.cnbc.com/2016/12/16/a-260-billion-ticking-time-bomb-the-costly-business-of-retail-returns.html>

<sup>4</sup> NRF data also show that Massachusetts loses as much as \$25MM in sales tax revenue from fraudulent returns. See: [https://nrf.com/sites/default/files/Images/Media%20Center/NRF%20Retail%20Return%20Fraud%20Final\\_o.pdf](https://nrf.com/sites/default/files/Images/Media%20Center/NRF%20Retail%20Return%20Fraud%20Final_o.pdf) at pp. 6-7

high percentage of revenue collected would simply be credited back to the purchaser and the transaction charged back.

### ***Impact on Other Taxing Jurisdictions***

Another complication to the remittance process is that payment processors and payment networks do not know the taxing jurisdiction of a transaction. It cannot be assumed that the sales tax is tied to the state where the transaction occurred. For example, merchandise may be purchased in Massachusetts but shipped to another state. The purchase would then be subject to the recipient's state's sales tax.

A retailer is the only participant in the purchasing process who has access to the purchase details in order to determine how much of the total charged is sales tax and to which state the remittance is due. These realities would add additional complexity to accurate tax reporting under the proposal in Section 94.

### ***Impact on the Department of Revenue***

Section 94 raises additional questions that would need to be examined and addressed before such a tax collection and remittance program could be implemented. For example, how would the Department of Revenue validate and reconcile the actual sales tax amount of every transaction? Other questions include:

- How would cash, gift card and split tender (a transaction that is partially paid for with a combination of a payment card and cash transactions) be handled?
- What would be the methods for tracking the claimed tax amount by the merchant and what documentation would be required?
- Who would bear the liability in the event of system or human error in discrepancies of the sales tax amount between the merchant and the payment processor?
- Who collects the appropriate documentation if the purchaser is claiming an exempt-status (non-profit, local government, *etc.*)?
- How would sales tax already remitted to the state be recovered in a fraudulent transaction, disputed charge, or, more likely, as discussed above, if an item is returned to the retailer?
- How quickly could the Commonwealth build an ACH system to receive the funds from each merchant?
- In the event errors occur with the remitted sales tax amount, how will the Commonwealth reimburse the processor?
- How will the Commonwealth effectively audit the program, given that the audit trail would be split among unrelated entities (which would appear to increase the risk of under-collecting tax revenue rather than improving collection actions by the state)?
- How would reconciliation of funds between processors and the Commonwealth be accomplished?
- When there are adjustments due to errors, and there will be, how will this process be managed for the processor to recover funds?

The Department is likely to take on a significant financial burden to address these issues and effectively manage such a complex tax collection and reimbursement regime of millions of transactions—all while ensuring that each retailer is properly credited for tax reimbursements that are legally due and reconciling the remittances with the tax the retailer remits on its returns.

### ***Real Time Sales Tax Collection Has Been Rejected In Other States***

The bipartisan National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation 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.” A similar effort in Connecticut also failed after review by that state’s Department of Revenue. Related legislation failed in Nebraska and Missouri.

### ***Remittance Architecture***

Some vendors claim to offer software systems that have been specifically created to allow payment processors to remit sales taxes, but we have seen **no** documentation that suggests that software products in the marketplace today have resolved the questions posed above.

No software remittance provider has answered the critical concerns of who would pay for the enormity of programming changes including the development, testing, implementation and maintenance of a pipeline to the state for accurate remittance of sales tax for each merchant account; who would bear the costs of the massive re-architecture required for the payment system to capture, store, and report the necessary data elements; who would determine the appropriate sales tax amounts on each transaction; and who would identify and match the data to each particular merchant account and communicate this data back to each merchant for accurate reconciliation and reporting of state tax returns.

Finally, it is worth noting that if Section 94 is implemented, Massachusetts would be the only state to impose such a system. To do so presupposes that all networks can reconfigure a parallel system of sales and use tax settlement unique to Massachusetts while the other states operate as today.

If payment processors and payment networks cannot readily reconfigure their systems with additional platforms and bandwidth while remaining interoperable, Massachusetts residents will not be able to have the convenience of engaging in electronic payments—a burden on consumers and retailers alike.

\*

For the foregoing reasons, the Card Coalition believes real time sales tax collection and remittance by payment processors is not cost effective. The Council on State Taxation (COST) put it best:

“As this process has no model anywhere in the world a sales tax exists, a tremendous amount of scarce public and private resources would need to be redirected to build the technology and address the multitude of complex issues raised by this new process. But even if government and business spent the time and money to build the system, what would be the benefit? While it would accelerate tax revenue, which only provides a one-time, one-month benefit, it would not generate additional revenue or solve any non-compliance problem. In fact, it only complicates the collection system for those already complying with the law, and it will potentially exacerbate the non-compliant, cash-only economy given the increased costs of building and using the system. There will be significant challenges for the government as well, attributed to multiple remittances from numerous sources for the same retailer, extensive reconciliation requirements, refund of sales tax on returns, and audits. Today’s single point of contact with the retailer will be replaced by a multitude of contacts, further complicating the compliance function for both government and retailers.”<sup>5</sup>

We agree. We appreciate the opportunity to share our views and would be pleased to discuss our specific concerns. Thank you for your consideration.

Sincerely,

*Toni A. Bellissimo*

Toni Bellissimo  
Executive Director  
[toni@cardcoalition.org](mailto:toni@cardcoalition.org)



Frank Salinger  
General Counsel  
[lawyer@franksalinger.com](mailto:lawyer@franksalinger.com)

Card Coalition P.O. Box 802 Occoquan, VA 22125-0802 ☎ 703.910.5280

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<sup>5</sup> Council on State Taxation: TIME SALES TAX COLLECTION: REALITY OR MYTH SUMMARY; Transmitted by the Co-Chairs of NCSL Executive Committee Task Force on State & Local Taxation, January 6, 2013



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Next submitted item begins on the following page



September 27, 2017

Mr. Christopher Harding, Commissioner  
Department of Revenue  
Commonwealth of Massachusetts  
100 Cambridge Street, 8<sup>th</sup> Floor  
Boston, MA 02114

Dear Commissioner Harding,

Charter Communications ("Charter") strongly recommends that the Department of Revenue ("Department") reject the adoption of the accelerated sales tax collection proposed in Section 94 of the 2017-18 state budget legislation ("Section 94") for the following reasons:

#### Customer Confidentiality

Under federal law, cable operators may not disclose any personally identifiable subscriber information without the express consent of the subscriber or pursuant to a court order. This federal law would inhibit our ability to provide the necessary transaction level details to third-party payment processors by subscriber. Gathering and maintaining the express consent of individual subscribers would be a costly and unwieldy process and there is no guarantee that Charter would even be able to obtain the appropriate consents.

#### Tax Return Preparation & Data Storage

Our tax systems currently aggregate our tax records at a macro level for use in tax return preparation. We do not gather the information at a customer level to prepare returns or remit sales tax we have collected on behalf of the state. We would have to implement costly processes and systems to gather the necessary customer level data to prepare the tax returns and remit the tax payments. Based on the volume of Charter's customers and transactions, storing the data necessary to prepare the returns and provide documentation upon audit would be cost prohibitive.

#### System Interface with Third-party Processors

Our current tax compliance system is not designed to interface with third-party payment processors or to gather the information they would need at a customer level. To develop systems to gather this detailed information and interface with the third-party processors would be extremely costly and it would be highly unlikely if not impossible to implement it in a timely manner.

\*\*\*\*\*

Implementation of Section 94 would be cost prohibitive based on the systems changes and additional employees that would be needed to implement and maintain the accelerated tax collection process. Therefore, Charter urges you to reject the adoption of Section 94.

We would be happy to answer any questions you may have or discuss this matter further if it would be helpful in your analysis. I can be reached directly at [jamie.fenwick@charter.com](mailto:jamie.fenwick@charter.com) or (704) 953-2841.

Kind Regards,

A handwritten signature in black ink that reads "Jamie S. Fenwick". The signature is written in a cursive, flowing style.

Jamie S. Fenwick  
Vice President, Strategic Tax

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Next submitted item begins on the following page



September 27, 2017

Christopher Harding, Commissioner  
Department of Revenue  
Commonwealth of Massachusetts  
100 Cambridge Street, 8<sup>th</sup> Floor  
Boston, MA 02114

Dear Commissioner Harding:

Comcast strongly urges the Department of Revenue (“Department”) to reject the adoption of the one-time “accelerated sales tax” collection as proposed in section 94 of the 2017-18 state budget legislation. As a major taxpayer in the Commonwealth, Section 94 would be disruptive to our current practices and the one-time, short term benefits to the Commonwealth do not merit the cost Comcast would incur to implement this one-time collection.

Comcast has many concerns, mainly related to the scope and size of our operations and consumer interaction processes in Massachusetts. Compliance with the one-time collection of sales taxes for the over one million customers served by Comcast would require major software and systems engineering at cost of millions of dollars in time and investment. We are also concerned that Section 94 would create conflicts with federal law regulating cable operators and customer confidentiality. In addition, reconciliation with tax payments already required as part of normal tax compliance will be extremely difficult.

Comcast would gladly meet with the Department to discuss the specific challenges with Section 94. Comcast consistently supports efforts to modernize the tax collection system but the accelerated sales tax collection in Section 94 of the state budget legislation would not simplify nor modernize this system. We respectfully urge the Department to reject Section 94 as too burdensome and costly to adopt.

Best Regards,



John Sutich  
Vice President, State Government Affairs  
[John\\_Sutich@comcast.com](mailto:John_Sutich@comcast.com)  
617-279-5659

Cc: Kevin Brown, General Counsel

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Next submitted item begins on the following page



September 28, 2017

The Honorable Christopher C. Harding  
Commissioner  
Massachusetts Department of Revenue  
*Sent via e-mail to rulesandregs@dor.state.ma.us*

**RE: Request for Information on H.B. 3800 Sales Tax Remittance Provision  
Submission by Discover Financial Services, Payment Network Operator**

Dear Commissioner Harding,

Thank you for the opportunity to submit information regarding Section 94 of H.B. 3800, Massachusetts' recently enacted FY18 budget, which may require payment network operators such as Discover Financial Services ("Discover") to accelerate sales tax remittance on behalf of Commonwealth merchants by June 2018. On behalf of Discover, I respectfully urge you to determine that the real-time sales tax remittance system proposed by the Commonwealth cannot be implemented in a cost-effective manner by June 2018. Our perspective on this matter aligns with comments submitted to your office by the Card Coalition, the Electronic Transactions Association, and the Council on State Taxation, three industry associations of which we are members.

Discover operates a direct bank, one of America's leading credit card issuers, with Discover Cards issued to tens of thousands of individuals across Massachusetts. Discover also operates leading payments networks that have direct processing relationships with government entities and thousands of merchants in the Commonwealth, ranging from small businesses to the largest retailers.

The accelerated sales tax remittance system proposed by the Commonwealth would impose unique and burdensome requirements on Discover and other participants in the payments system (including the Commonwealth). Implementation of these requirements would be enormously costly and disruptive. These requirements are not workable in practice and could not be operational by June 2018. Thus, it is highly improbable that the budget revenue projections of the Commonwealth could be achieved for the FY18 budget.

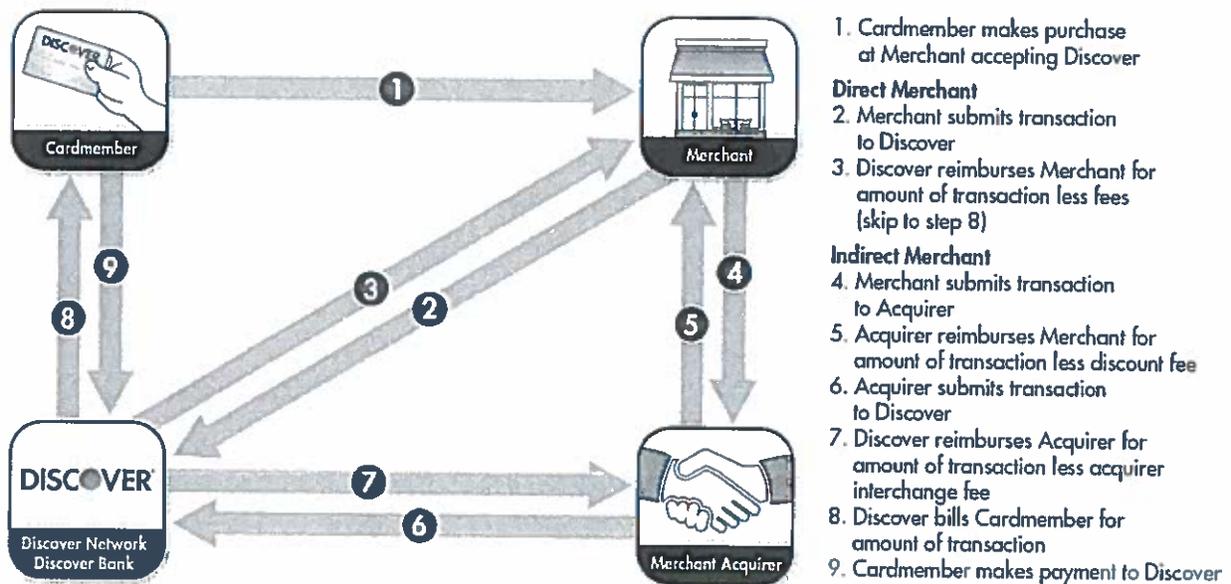
***Discover's Role in the Payments System***

Discover ("we, our, and "us") provides direct banking products and services and payment services through its subsidiaries. We offer our customers credit card loans, private student loans, personal loans, home equity loans and deposit products. We also operate the Discover Network, the PULSE network ("PULSE") and Diners Club International ("Diners Club"). The Discover Network processes transactions for Discover-branded credit cards and provides payment transaction processing and settlement services. PULSE operates an electronic funds transfer network, providing financial institutions issuing debit cards on the PULSE network with access to ATMs domestically and internationally, as well as point-of-sale ("POS") terminals at retail locations throughout the U.S. for debit card transactions. Diners Club is a global payments network of licensees (which are generally financial institutions) that issue Diners Club-branded charge cards and/or provide card acceptance services.

***Credit Cards***

We currently offer credit cards issued to consumers.

- **Discover Network:** Our credit card customers' transactions in the United States are processed over the Discover Network. The following chart shows the Discover Card transaction cycle as processed on the Discover Network.

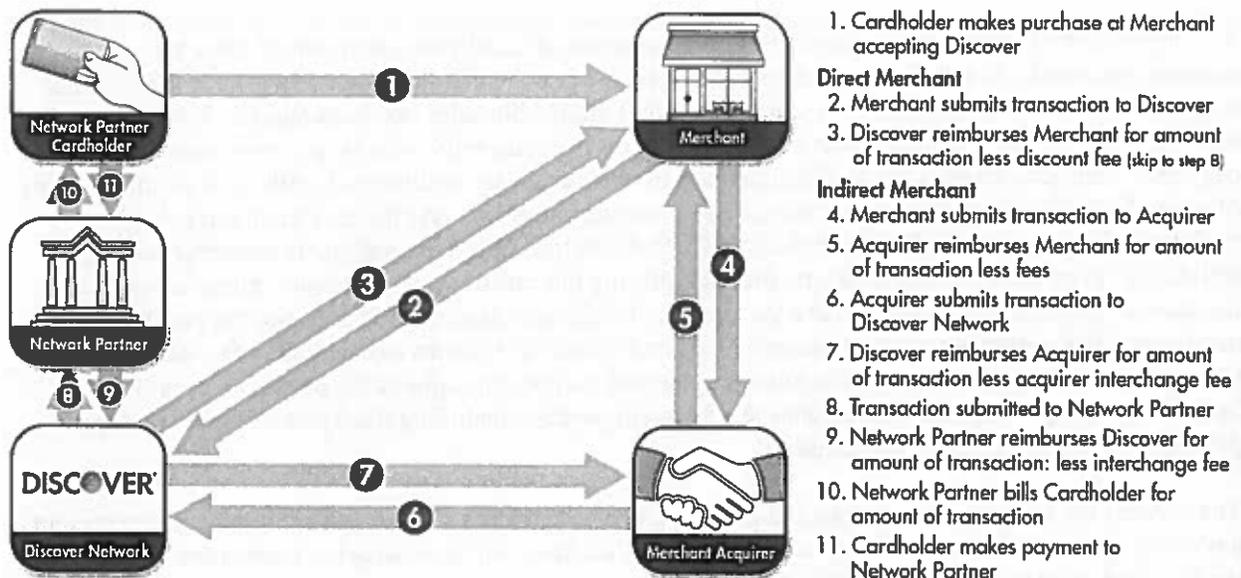


\*This is a simplified illustration of a typical credit card transaction. It does not reflect certain operations and assessment fees, cash or balance transfer transactions, authorizations, disputes or other specifics.

### Payment Services

- **PULSE:** Our PULSE Network is one of the nation's leading debit/ATM networks. PULSE links cardholders served by approximately 4,600 financial institutions to ATMs and POS terminals located throughout the United States. This includes more than 3,300 financial institutions with which PULSE has direct relationships and approximately 1,300 additional financial institutions through agreements PULSE has with other debit networks (known as "network-to-network agreements"). PULSE also offers a variety of optional products and services, including signature debit transaction processing, debit card fraud detection and risk mitigation services, and connections to other regional and national electronic funds transfer networks.
- **Diners Club:** Our Diners Club business maintains an acceptance network in 185 countries and territories through its relationships with over 90 licensees, which are generally financial institutions. We do not directly issue Diners Club cards to consumers, but grant our licensees the right to issue Diners Club-branded cards and/or provide card acceptance services. We also provide various support services to our Diners Club licensees, including processing and settlement of cross-border transactions, as well as a centralized service center and Internet services to our licensees. When Diners Club cardholders use their cards outside the host country or territory of the issuing licensee, transactions are routed and settled over the Diners Club network through its centralized service center.
- **Network Partners Business:** We have agreements with a number of financial institutions, networks and commercial service providers for issuance of products or processing of payments on Discover networks. We refer to these financial institutions, networks and commercial service

providers as “Network Partners.” The following chart shows an example of a Network Partners transaction cycle:



\*This is a simplified illustration of a typical credit card transaction. It does not reflect certain operations and assessment fees, cash or balance transfer transactions, authorizations, disputes or other specifics.

### Discover Network Operations

We support our merchants through a merchant acquiring model that includes direct relationships with large merchants in the U.S. and arrangements with merchant acquirers generally for small- and mid-size merchants.

We maintain direct relationships with most of our large merchant accounts. The terms of our direct merchant relationships are governed by merchant services agreements. Those agreements are also accompanied by additional program documents that further define our network functionality and requirements, including operating regulations, technical specifications, and dispute rules.

Discover Network services the majority of its small- and mid-size merchant portfolios through third-party merchant acquirers to allow such acquirers to offer a comprehensive payments processing package to such merchants. Merchants also can apply to our merchant acquirer partners directly to accept Discover Network cards through the acquirers’ integrated payments solutions. Merchant acquirers provide merchants with consolidated servicing for Discover, Visa and MasterCard transactions.

### Overview: Challenges of Accelerated Sales Tax Remittance

Sections 94 and 95 of the Commonwealth’s FY18 budget direct the Commissioner of Revenue to effectuate either (i) accelerated sales tax remittance for vendors or operators (if cost-effective to do so by **June 2018**), or (ii) a sales tax prepayment system for a subset of vendors or operators. Discover has substantial concerns about the accelerated sales tax remittance option for reasons that include established industry practices, technological feasibility, financial impacts on businesses and consumers and the fiscal impact on the Commonwealth.

Accelerated sales tax remittance by payment networks on behalf of merchants represents a sea change in the current payments ecosystem. Credit and debit cards are issued by thousands of financial institutions and transactions are processed by hundreds of payment processors over dozens of payment networks.

Section 94 seeks to disrupt the current payments ecosystem with the requirement that payments networks calculate and remit sales tax on behalf of merchants at the time of settlement of payments transactions. This proposal faces numerous barriers, some of which are explained below.

As a preliminary matter, a basic barrier to implementation of accelerated payment of sales tax by payments networks on behalf of merchants is that payment networks do not currently have the systems support or information required to calculate and remit applicable sales tax on purchases. Tax withholding information is not transmitted as part of the clearing process currently used by payment networks to settle payments transactions: only the minimal amount of data necessary to clear and settle each of the millions of individual sales transactions is exchanged by payments networks and the entities that receive settlement for transactions. The information received and transmitted by payments networks with settlement is typically limited to information identifying the cardholder, card issuer, merchant and total transaction amount; it does not include the specific item(s) purchased, whether or not the purchase was taxable and the applicable rate of taxation. The development of systems to calculate sales tax would require extensive systems changes involving numerous entities throughout the payments ecosystem, a huge burden on participants throughout the settlement process, including third parties that may offer payments card acceptance to merchants.

The process for authorizing, clearing and settling (ACS) transactions is also quite complex in the current payments system, without the added complications of shifting real-time sales tax remittance responsibilities to payment processors and networks.

#### *Typical Scenario*

Following receipt of an authorization approval, a merchant concludes a cardholder purchase at 1 PM on Monday. The merchant batches out ("closes") that cash register later that evening, around 9 PM. That data is then transmitted from the merchant to the acquirer (or its processor). The processor then formats the data into the network-defined layout and sends the data to Discover. Once the data is received at Discover, the Settlement System logs, edits, and processes the transaction. The data must be received at Discover before 6 AM on Tuesday for those transactions to be paid to the acquirer on Tuesday. If the transaction data comes into DFS later than 6 AM on Tuesday, the acquirer will be paid for those transactions on Wednesday.

Mandating that detailed tax information and payments be collected from and transmitted by merchants to payment networks, and then stored, recorded and processed at the time of settlement by processors and payments networks, and later reported by payment networks to the Commonwealth, would require massive changes to the payments system infrastructure. This would impact payments networks and merchants, along with third-party acquirers and processors throughout the entire payments ecosystem. These changes may not even be technologically feasible, but would be required to accommodate the enormous expansion of the data that would have to be transmitted, stored and recorded to fulfill the rule's requirements. In some cases, the installation of new sales terminals and network equipment capable of itemizing and transmitting the required information may be necessary. This would ultimately impact millions of transactions monthly. Discover and other participants in the payments system would be required to create and maintain an entirely new settlement payments system unique to Massachusetts, a costly mandate that could ultimately increase costs to consumers and particularly small independent merchants, and not just in the Commonwealth.

#### *Impacts on the Payments Ecosystem & Its Participants*

Discover and Discover's payment network participants would be impacted by the proposal in two ways: as a processor of payment transactions acquired by the locations of designated major national merchants

operating in the Commonwealth, known as “retained merchants,” and as a network processing transactions acquired by third-party processors for merchants located in the Commonwealth.

#### *Merchant Processor*

As a processor, Discover contracts with thousands of retained merchants, many operating in Massachusetts, to provide support for electronic payments through physical and online infrastructure and for funds settlement from card issuers. Under the potential regulations, Discover would need to develop an entirely new infrastructure to report, collect and pay sales tax on behalf of those merchants, in addition to helping them address the costly and complex challenges associated with upgrades to their point-of-sale terminals, processing software and related processes.

In the current payments environment, it is the responsibility of the merchant to pay all applicable taxes as required by local jurisdictions, while the processor provides merchants with settlement services only for the total transaction amount of submitted transactions. The budget provision would require development of a separate sales tax tracking and handling solution specific to the Commonwealth of Massachusetts.

#### *Network*

While acquirers and their processors (collectively, “processors”), not the network, would be responsible for paying the sales tax amounts generated by the Massachusetts merchants to whom payments services are offered, Discover would be required to facilitate the collection, remittance and reporting of sales tax, as explained in greater detail below.

Extensive network systems changes would be required to support the collection, remittance and reporting of sales tax by acquirers. Operating rules, and potentially processor agreements, would require development and implementation. Discover would also need to create and implement new compliance and audit programs and fraud monitoring, detection and mitigation programs to manage risk. Such a program would almost certainly require the network to re-evaluate and potentially modify existing pricing structures to accommodate the significant costs associated with the required infrastructure, particularly for small, independent merchants in the Commonwealth – which would have downstream impacts on individual consumers.

The following subsections detail the process, system and service impacts of compliance, which we estimate would take a significant number of years to achieve and amount to millions of dollars, at a minimum, for baseline compliance.

#### **Network Operating Rules**

Under Discover’s operating rules for processors and merchants, payment network participants are solely responsible for remitting applicable taxes and duties to any federal, state or local tax authority with jurisdiction. Under the regulations proposed by the Commonwealth, Discover would be responsible for revising existing program rules governing the operational obligations, liabilities and detailed technical requirements applicable to all payment network participants for each of our three networks – Discover, Diners Club International and PULSE. The three networks each maintain independent operating regulations and technical specifications, and each would be forced to revise, publish and maintain special processing rules for a relatively small subset of merchants covered by the rules pertinent only to a specific jurisdiction.

The creation and distribution of modified operating regulations is a lengthy process which includes a contractual six-month notification time period before the effective date. Given the complexity of the development, publication and network implementation processes, the ability of the ecosystem to comply with the Commonwealth's June 2018 implementation date is questionable at best. Additional rules could be required for commercial payment suppliers, which leverage the Discover network to facilitate electronic business-to-business payment processing services operating on the network.

### **Settlement and Reporting Systems**

The proposed regulations would involve significant infrastructure modifications throughout the payments ecosystem, beginning at the merchant's point-of-sale device or terminal. Merchants and processors would have to accurately and consistently segregate and submit sales tax amounts from and applicable to each payment transaction amount for processor and payment network system use. The identification and documentation of each component of required systems changes supporting the calculation and remittance of sales tax on payments transactions, records supporting the calculation and remittance of sales tax along with the technology development, testing and install cycles and the creation of supporting processes and control structures are sizable tasks.

Discover's systems, our processing vendor systems supporting retained merchant relationships, and our acquirer settlement system would each require significant recoding systems changes to support the collection and remittance of sales tax. Discover's processing vendor for retained merchants would have to significantly recode its settlement system to receive sales data records of payment transactions in a new format that could separately identify line items for sales tax amounts in addition to the payment transaction amount, then identify transactions in Massachusetts subject to the proposal through an exception process. (Otherwise, passing multiple values for each transaction would slow down processing systems and settlement throughout Discover's entire payment network.) Daily and monthly processor and merchant reports would need to be modified to itemize sales tax amounts, and new reports for all parties, including Massachusetts, would be needed. The size of the proposed report, given the total number of merchants that would be included in the reporting, would result in a massive daily data upload to processors, merchants and Massachusetts, which would require seamless and secure integration by all participants in the payments ecosystem. Massachusetts would need to create and support procedures to receive, process, reconcile and safeguard data uploads and the funds received, and modify existing systems that currently manage merchant-submitted reporting and remittances. Introducing further complexity into this system will also introduce added vulnerabilities that must be secured at each stage of the process. Altogether, this will be a resource- and time-intensive process that will likely negate or significantly erode anticipated revenue benefits accruing to the Commonwealth.

Online merchants operating in the Commonwealth could pose an additional challenge – since settlement records may not have a physical address for purchase location, additional customer management records may need to be developed and populated.

### **Sales Tax Collection and Remittance Systems**

In order to support the accelerated sales tax remittance proposal, Discover, working with our processing vendor, would need to develop, test, implement and support entirely new sales tax collection and remittance systems, which would likely take years to accomplish. Discover's processor would have to develop and operate two ACH processes: the existing system to pay the transaction amount minus the sales tax amount to the merchant, plus a new system to remit the sales tax amount to the Commonwealth. Discover does not currently receive the sales tax data required to determine the applicable sales tax rate on settlement payments, making it very difficult (perhaps impossible) for Discover to calculate, remit and report to merchants and the Commonwealth the amount of tax that should be withheld on behalf of the

merchant, as required by Section 94. The proposal is entirely reliant on the development of the processes described above, which could not be implemented in order to address FY18 budget requirements.

Additional post-settlement complications would emerge, particularly related to resolving partial transaction amounts wherein sales tax amounts would be uncertain without detailed sales receipt information:

- **Returned goods and services:** As Discover does not currently receive the applicable sales tax data, making it very difficult (perhaps impossible) for Discover to ascertain the amount of tax that should be withheld, another mechanism would need to be developed by Discover to calculate, reconcile, remit and report sales tax refunds necessitated by returns of purchases.
- **Disputed transactions:** The proposal would also necessitate modifications to our Disputes infrastructure to accommodate the portion of the transaction represented by the sales tax amount. Processing related to a partial dispute requires the ability to match the actual tax amount to the disputed portion of the transaction.
- **Tax-exempt transactions:** The network would need to modify systems to allow merchants to identify tax-exempt transactions to avoid over-withholding in the case of, for example, purchases for a school or church.

#### **Error Processing and Fraud Resolution for Sales Tax Withholding**

Each processor – or more likely the payment network on behalf of processors – would need to establish new policies, processes and systems to handle disagreements between merchants and the Commonwealth in situations where one party has made an error in sales tax reporting, withholding, payment or adjustment, or has been victimized by a security breach or fraud. The existing system for resolving inter-party disputes is already enormously complex and iterating a brand-new system would require substantive time, expense and resource allocations by the payment networks, acquirers and their processors, merchants and the Commonwealth. The cumulative costs are likely to outweigh the anticipated benefits.

#### **Compliance and Audit Programs**

Laws and regulations that place the payment network and processors in the position of acting as tax collectors greatly increase those entities' business risk. To manage these risks, Discover would need to implement entirely new and robust systematic controls, compliance monitoring programs and fee schedules for non-compliance, in addition to performing regular self-tests and audits. Such controls, which would be necessary for ongoing operations in the Commonwealth but would not be related to Discover's core business, would further drive up costs for area merchants and consumers.

#### **Shifting the Enforcement Role**

By requiring payment networks and processors to collect and remit sales tax on behalf of merchants, Massachusetts indirectly increases the responsibilities of those entities to collect, utilize and share sales tax information for processing purposes. The payment networks and processors would be required to establish and enforce rules for merchant submission of sales tax information, establishing new compliance monitoring processes and warning/fee structures for non-compliance. Active enforcement of detailed sales tax record submission for each transaction is unlikely to achieve a 100 percent compliance rate and raises important questions:

- Would the payment network or processor be required to reject the merchant's submitted transaction at settlement if the sales tax information is missing?

- Who would ultimately bear responsibility for sales tax inaccuracies, particularly when payment networks and processors are not in the position of calculating the appropriate sales tax rates nor verifying that sales tax amounts were properly calculated or reported?
- In cases of fraudulent activity, who would be legally culpable and who would be responsible for compensation claims?

Additional risk or ambiguity inherent in the final remittance system could further adversely impact pricing structures or ongoing provision of services in the Commonwealth.

Placing payment networks and processors in this enforcement position also has the potential to adversely impact merchant sales and cash flow, the consumer shopping experience and interparty relationships. This is primarily attributable to the addition of processing steps and increasing transaction processing complexities required. These factors could create processing and payment delays, potentially causing acquirers and processors to discontinue card transaction acceptance and processing, and could ultimately compel a merchant to do the same. This potentially has the impact to discourage commerce in the Commonwealth.

### **System Integration**

The proposed regulations will also impose a significant burden on the Commonwealth, which would be required to set up a new banking system for the submission and reporting of sales tax payments and communicate to payment networks and processors the security standards and other requirements applicable to connectivity, file data, timing and other specifications for the secure transmission of data and funds. Payment networks and processors would be required to build and configure systems accordingly and seamlessly, and maintain data links and integration. This would, in effect, establish a technical dependency between all payment networks and processors in the payments ecosystem with the Commonwealth and its banking services.

The payments system cannot function without technical interoperability amongst all participants. Any disruption due to integration challenges, on the part of any participant, could adversely affect the ability of the payments ecosystem to process consumer transactions in a timely and accurate manner and ultimately result in degraded payment capabilities for consumers and merchants.

It is also worth noting that no sales tax remittance software capable of complying with the proposed requirements is currently in use anywhere, and to our knowledge, no such software exists. Thus, it is highly unlikely that the proposed changes could be implemented in the near or medium term. This has been recognized by the National Conference of State Legislatures and by other states that have considered similar proposals.

### **Faster Payments**

Following publication of its Strategies for Improving the U.S. Payments System paper, the Federal Reserve created a Faster Payments Task Force charged with identifying approaches for implementing a faster payments capability in the United States. In outlining the criteria to be used for assessing alternative payment approaches, the Federal Reserve notes that contextual data capability is key – meaning the solution must support the transfer of relevant information required by end users, such as taxpayer information, and be easily integrated with interfacing business systems, such as tax reporting software.

The Task Force’s recently released report recognizes that government end users will benefit as much as business end users from a faster payments system. However, the report also clearly underscores that achieving this improved efficiency requires “seamlessly integrating data-rich contextual information

throughout the entire payment flow – from initiation through reconciliation” so end users can realize efficiencies in cash-flow management and back-office processes. In turn, this will speed modernization of other payment and accounting systems.

As a Task Force participant, Discover believes sales tax modernization efforts should be viewed against the backdrop of ongoing, cross-industry, public-private efforts to advance faster payments in the U.S. Because the payments system is so highly interconnected, changes such as the ones contemplated in the proposed regulations are exceedingly complex to operationalize and integrate even on a national level. To do so on a piecemeal, state-by-state basis would threaten the seamlessness and efficiency of the system. As such, we urge policymakers in Massachusetts working on this modernization initiative to pursue avenues of engagement through the Federal Reserve and its Task Force. By tapping into and influencing this process, the Commonwealth may be able to address desired improvements to the sales tax remittance system as part and parcel of ongoing national efforts to modernize the payments system writ large.

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As described above, the proposed regulations would significantly disrupt the payments ecosystem in Massachusetts, to the ultimate detriment of the Commonwealth’s merchants and consumers. Additionally, it is highly unlikely that the major changes that would be required to be undertaken and implemented by Discover and all other participants in the payments ecosystem could be in place by June 2018, or even in the years to come. For this reason, we urge you to make a determination under Section 94 that such a system is not cost-effective to implement.

Thank you for your consideration. If you have any questions, please contact me or Discover’s Vice President of Government Relations, Richard Santoro ([richardsantoro@discover.com](mailto:richardsantoro@discover.com)).

Sincerely,



Scott DeBoard  
Vice President, Operations  
DFS Services LLC operating as Discover Network  
[scottdeboard@discover.com](mailto:scottdeboard@discover.com)

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Next submitted item begins on the following page

September 29, 2017

The Massachusetts Commissioner of Revenue  
rulesandregs@dor.state.ma.us

Re: Amendment #866 to FY 18 Budget H. 3600  
Real time sales remittance

Dear Commissioner Christopher Harding:

We are writing to express our opposition to the provision in the FY 2018 budget requiring real time sales tax payment on credit and debit purchases, instead of the one month delay built into the current system. This impractical measure would cause a myriad of problems, including an undue administrative burden on the retailer, the third party processors and the MA sales tax bureau. Below are a few of the challenges we foresee with this provision:

- Retailers close their books on a monthly basis and generally have until the 20th of the month to file their sales tax returns. The filing of sales tax returns is a labor intensive process with a tight turnaround. Retailers usually have a number of employees solely devoted to sales tax filings.
- Credit card companies do not determine which state's sales tax to collect and how much. Since sales tax laws vary state to state (and in some instances by local jurisdiction), the point of sale devices are programmed to assess applicable sales tax. In some instances a person may purchase something in MA but have it shipped to another state. In that case, MA tax would not apply. To our knowledge, the total amount of a sale is communicated to the credit card company and sales tax is not called out separately. If this is the case, how would the credit card company know how much should be sent to MA?
- The provision mentions having the amount of the sales tax separately transmitted to the credit card company. This would require massive reprogramming of computer systems across the board.
- Sales tax payments for a single company could come from multiple sources since retailers accept multiple cards. How will MA identify which company's sales tax has been sent to them by each credit card company? Under this proposal, instead of getting one check per month from a company, MA could receive countless checks or transmissions depending on the interval determined by the commissioner and the number of credit card companies used by the company. Does MA have the systems and people to make sure transmissions of sales tax are properly credited to each company?

- When a company files its sales tax returns, it reports the taxable sales and the amount of tax collected. The company will now have to identify how much of the sales tax collected was remitted by several unrelated third parties. How will that work? What if the credit card company has transmission issues or sends in money late? Who will be assessed late fees? If it is through no fault of the company how will the late fees work?
- When a sales tax audit is commenced, MA sends an auditor to the individual company to audit the sales data. How will this work if the sales tax is not actually being remitted by the company? How will the company be able to prove that the correct tax was remitted?
- Finally, while this may seem like it accelerates collection, it is really a onetime bump in collections as the amount collected early in month one would get credited in month two. I question whether that is worth redefining an entire industry?

Thank you for your attention to this matter and please feel free to call with any questions.

Sincerely,

Maryanne Knott  
Vice President of Tax  
Dunkin' Brands, Inc.  
781.737.3599  
[maryanne.knott@dunkinbrands.com](mailto:maryanne.knott@dunkinbrands.com)

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Next submitted item begins on the following page



September 29<sup>th</sup>, 2017

The Honorable Christopher C. Harding  
Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street  
P.O. Box 9550  
Boston, MA 02114

Dear Commissioner Harding:

Elavon hereby submits our comments in response to the Massachusetts Department of Revenue (Department) request for information (RFI) regarding the cost effectiveness of accelerated sales tax remittance by payment processors. Elavon appreciates the opportunity to provide information about the proposal and hopes that the Department will agree that the proposal is not workable or cost-effective.

Elavon is wholly owned by U.S. Bank, the fifth-largest bank in the United States, and provides end-to-end payment processing solutions and services to more than 1.3 million customers in the United States, Europe, Canada, Mexico and Puerto Rico. As the #1 provider for airlines and a top five provider for hospitality, healthcare, retail, and public sector/education, Elavon's innovative payment solutions are designed to solve pain points for businesses from small to enterprise-sized.

The RFI asks for estimates for costs of implementation. Given the very short timeline, we have not been able to fully assess the **known** impacts to our internal and external processes and to our customers – merchants doing business in Massachusetts.

We anticipate that the proposal will require significant system changes, including the addition of sales tax information to batch processing, development of new funding processes, creation of a new interface to remit sales tax to the Commonwealth, development of daily and monthly reporting and audit procedures, changes to month-end merchant statements, and many more. Our initial estimates suggest that those processes alone represent tens of thousands of employee work hours to complete.

Massachusetts merchants will be impacted as well. Merchants use point of sale terminals to process transactions. In many cases, the software in these terminals cannot be updated remotely, requiring merchants to contact their processor for assistance or schedule in-person technical support. In some cases, merchants may be required to purchase new terminals in order to comply. Further, merchants will need to modify their own accounting systems in order to complete their daily and monthly reconciliation process.



There are also significant **unknown** impacts, for which we have not had adequate time or lack sufficient information to assess. In the short period of time we have had to digest the proposal and respond to the RFI, here are some of the additional complexities that we have been able to identify:

- Inability to identify exempt merchants. The proposal exempts merchants with less than 50 employees. We have no system in place to determine if merchants meet this threshold or if their status changes over time. It is also unclear if some or all non-profits are exempt.
- Reliance on merchants to correctly report liability within each transaction with no ability to verify.
- Complexity of determining sales tax liability within settlement transaction. Different rates and exemptions may apply, further complicating settlement and compliance.
- Inability to identify with certainty which merchants are subject to Massachusetts sales tax. There are a number of situations in which it is unclear if shipping address is an adequate qualifier.
- Increased cost of collecting and protecting merchant sales tax identification numbers. This information is not currently collected, requiring a new application process and materials.
- Significant employee resources (technical, operational, legal, accounting, compliance) would be expended to assess and develop a compliance strategy.

None of these individual impacts take into account how the system would work across the payments industry. The proposal calls for thousands of participants in the system - merchant processors, merchants and others to design a new tax remittance system with parties that do not have the experience or the existing systems to do so.

In conclusion, our assessment of this proposal for real time sales tax collection and remittance by payment processors is that it is not cost effective for Elavon or the Commonwealth of Massachusetts. As referenced in other trade association responses, even if the payments industry were able to implement this at an astronomical operational and financial cost, the proposal ultimately will not raise any additional revenue or increase efficiency for the Commonwealth.

If you have any questions or would like to discuss this further, please contact me or Dave Swartley, Managing Director, State Government Relations at [david.swartley@usbank.com](mailto:david.swartley@usbank.com).

Thank you for your consideration,

Jamie Walker  
Chief Executive Officer, Elavon

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Next submitted item begins on the following page

September 29, 2017

Commissioner Christopher C. Harding  
Massachusetts Department of Revenue  
100 Cambridge Street  
P.O. Box 9550  
Boston, MA 02114

**Re: Request for information regarding the cost effectiveness of accelerated sales tax remittance by payment processors.**

Dear Commissioner Harding:

The Electronic Transactions Association (“ETA”) submits these comments in response to the Massachusetts Department of Revenue (“DOR” or “Department”) request for information (“RFI”) regarding the cost effectiveness of accelerated sales tax remittance by payment processors. ETA appreciates the opportunity to provide comment on behalf of the payments industry and hopes these comments will help the Department evaluate this proposal. **The payments industry strongly recommends that the Commissioner certify by November 1, 2017 that implementation of the proposal is not cost-effective.**

ETA is the leading trade association for the payments industry, representing more than 500 companies that offer electronic transaction processing products and services. ETA’s members include all parts of the electronic payments ecosystem including financial institutions, acquiring banks, merchant service providers and processors, and payment card networks. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, secure, and rewarding payment solutions.

**Executive Summary**

- **Accelerated sales tax remittance by payment processors is not a cost-effective proposal. A recent State Tax Research Institute study estimates this proposal will cost \$1.22 billion in up-front costs and \$28 million annually. The industry would certainly not meet the June 1, 2018 target effective date.**
- **This sales tax collection scheme has been rejected by every state where it has been considered, and has been dismissed by the National Conference of State Legislatures as “not a solution.”**
- **The payments ecosystem has been developed over the last 50 years to quickly, safely and accurately process and settle transactions. This proposal will require building a duplicative system to run parallel with a well-established complex system of interrelated companies, here in the U.S. as well as globally.**
- **The Commonwealth would have to create, thoroughly test and implement a new remittance channel to receive payments on a daily basis that seamlessly integrates with multiple payment processors servicing Massachusetts merchants.**
- **The proposed change would not affect sales tax on purchases made with cash and checks, so the Commonwealth would have to run two parallel collection systems. In addition, it would require reconciliation of daily reports for each Massachusetts retailer collecting and remitting sales tax, along with the monthly retail reports aggregating the cash and check transactions.**

## **Background and Recommendation**

Sections 94 and 95 of the Massachusetts budget requires the Revenue Commissioner to promulgate rules to provide for daily sales tax collection by third-party payment processors unless the Commissioner determines that it is not cost-effective to implement such regulations before June 1, 2018. The Department of Revenue has requested information from the public related to established industry practices, the technological feasibility of implementation, and potential financial impact on consumers and businesses.

## **Compressed Timelines**

The request for information issued by the Department of Revenue asks for estimates of costs of implementation in a compressed timeframe to help the Commissioner determine if this proposal is cost effective. Given the short timeframe, ETA is not able to provide a specific dollar amount for implementation on an industry-wide level because the scale of this task is so enormous. For even the most sophisticated companies, attempting to assess the possible costs of compliance and impact on operations of implementing the accelerated sales tax remittance is, itself, a very heavy lift in terms of resources and the ability to quantify.

This proposal exists in concept only and has not been implemented in any state. Sections 94 and 95 of the budget provide only a very high-level proposal and do not provide detailed instructions for how the payments industry and merchants should go about implementing such a large-scale project, nor any guidance on how to go about estimating the costs of implementation in terms of the money, time, manpower, and opportunity costs of building an unnecessary and redundant system.

## **Accelerated Sales Tax Collection By Payment Processors Has Been Previously Studied**

This issue has been studied and rejected as not cost-effective by every state in which it has been considered, and it was dismissed by the National Conference of State Legislatures.

### Connecticut

In Connecticut, The Department of Revenue Commissioner studied the cost effectiveness of implementing a similar proposal and determined that daily sales tax collection and remittance by payment processors is not cost effective. In fact, Commissioner Kevin Sullivan called it **“a solution in search of a problem or at least it’s the wrong solution.”** In his testimony on March 22, 2016 to the Connecticut Finance Committee, he stated that “Unfortunately, what this proposal will do is add significant cost to credit card processors, retailers, and -ultimately- taxpayers. It will also add significant costs at [the Connecticut Department of Revenue]. Those who will overwhelmingly bear this cost in added fees and expenses are retailers who already meet their state sales tax obligations in full and on time.”

### The National Conference of State Legislatures

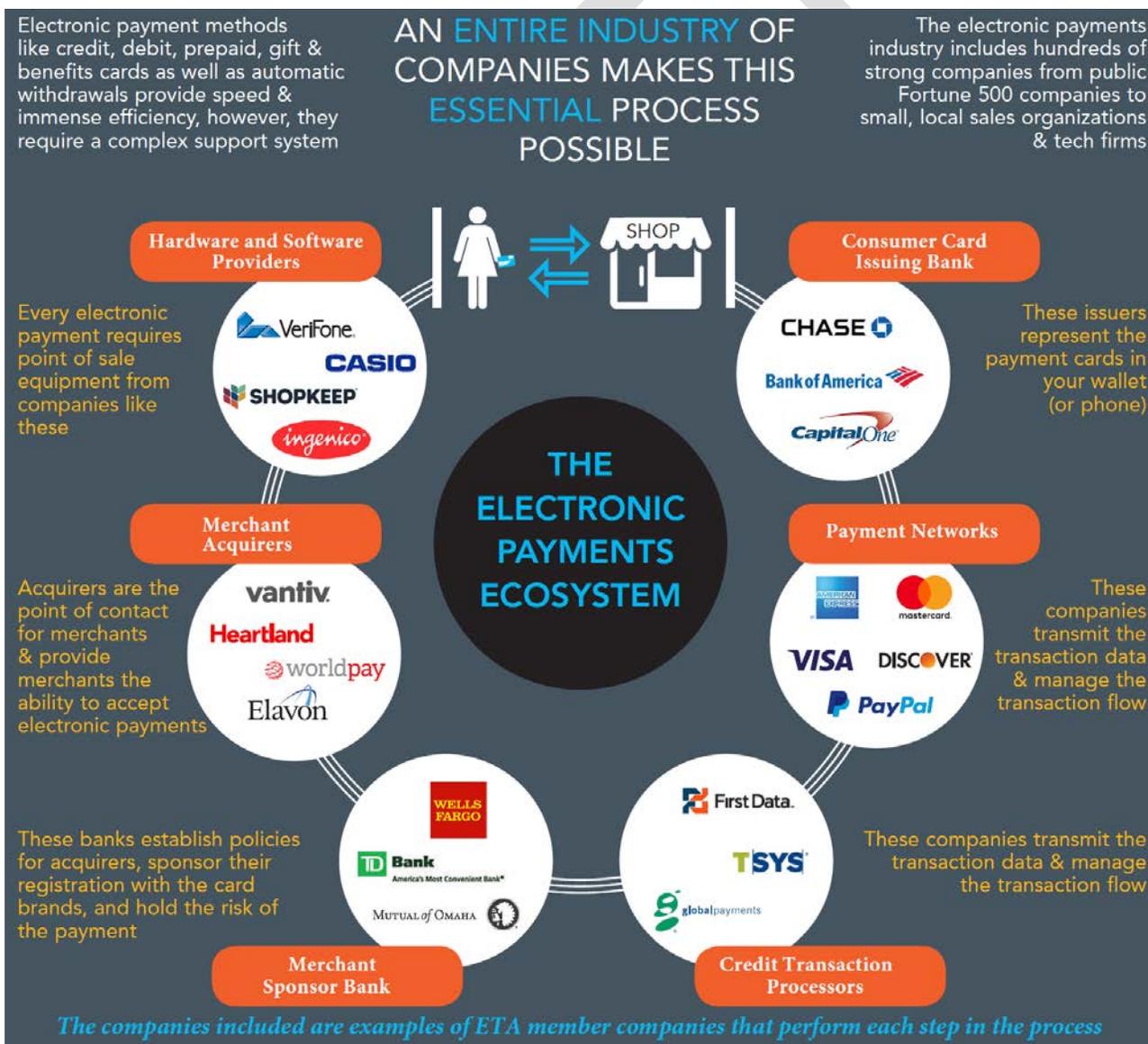
The bipartisan National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation carefully examined “real-time” remittance of sales taxes by parties other than the taxpayer, such as a payment processor, and concluded that “...’real time’ sales tax process is not a solution.”

## Enormous Scale

To understand how the proposal would affect the payments ecosystem, it is important to understand what is currently in place and consider a list of possible compliance challenges that would need to be overcome to implement what the proposal would require. Given the vagueness of the proposal, there are more questions than answers for how to implement what is proposed and there is certainly no consensus from the thousands of market participants as to how to go about implementing something like this. What is clear is that this proposal is not cost effective.

## Current System

The payments ecosystem has been developed over the last 50 years for quickly, safely and accurately processing and settling transactions. The electronic payments industry includes thousands of companies ranging in size from public Fortune 500 companies to small, local sales organization and tech firms.



As you can see, the current payments ecosystem does not contemplate calculating and remitting sales taxes owed by merchants to the Commonwealth or any other parties.

### **The Proposal**

The proposal is not cost effective and would require thousands of interconnected parties to build a new system to compute and remit sales tax on top of the current system. Those interconnected parties have spent decades building and delivering a secure global payment services network for merchants and consumers.

- The proposal will require redesigning a complex, long-established system of interrelated companies, here in the U.S., as well as globally.
- Every Commonwealth merchant, including the Commonwealth itself, will have to update and test its point of sale system – costing millions of dollars, just for IT. These costs will be ultimately borne by Massachusetts merchants and their customers.
- Generally, the system is designed to process gross amounts for authorization – inclusive of sale and sales tax amounts. The settlement functions do not contemplate functionality to calculate, collect, retain, remit and reconcile state or local sales tax amounts: in the current payment environment, merchants bear the responsibility to calculate, collect, and remit applicable taxes as required by local jurisdictions.
- The Commonwealth would have to create, thoroughly test and implement a new, duplicative, remittance channel to receive the payments that seamlessly integrates with all payment processors servicing Massachusetts merchants.
- The proposed change would not affect sales tax on purchases made with cash and checks, so the Commonwealth would have to run two collection systems as well as reconcile the new payment card daily reports associated with each retailer with the monthly retail reports aggregating the cash and check transactions.
- The process would significantly decrease the attractiveness of the Commonwealth as a place to do business.

### **Effect on Massachusetts Merchant Payments Ecosystem**

The proposal is not cost effective for merchants. The merchants and merchant Point of Sale (“POS”) ecosystem is not a ‘one-size-fits-all’ proposition – there are multiple variations (e.g. “Brick and Mortar,” Internet, cellphone, peer-to-peer, mobile-food trucks). In larger merchant operations, the POS may also include multiples of legacy systems from previous acquisitions and proprietary software systems like payroll, inventory, and others.

**Every** hardware or software system that touches payment transaction data will need to be updated and tested to accommodate the transmission of new data sets.

- Any new system will have to be tested before being integrated with each merchant and its

POS system, and it will be subject to additional tests to ensure compliance with existing network rules and security measures. This will require years of testing and cost millions of dollars.

- Thousands of ‘swipe’ terminals (which are typically utilized by “Mom and Pop” merchants) in Massachusetts will require software updates (if the hardware is advanced enough to make a software update possible) or may need to be entirely replaced - at the merchant expense - to accommodate new transaction messages (data sets).
- Typical POS refresh cycles are 5 years. Roughly 40% of merchants nationwide have just completed a refresh to upgrade to EMV chip cards.
- With more complex POS ecosystems (such as those found with large, national retailers), the payment acceptance function may connect to multiple middleware (software) systems and/or may be transmitted to other third-party intermediaries (e.g. “Gateways”) before sales data is transmitted to one (or more) processors for routing (authorization) – all of these ‘intermediary’ systems will need to be updated to accommodate new transaction messages (data sets) and tested to seamlessly integrate with each other.
- Once the POS is updated, the payment terminal and payment gateway must also be updated. This is a software change, requiring certification to each processor. Currently, new software certifications, such as those required for the new chip cards and chip-reading terminals, take up to nine months, but many versions of software offered by the largest market participants are only updated once per year.
- Any business running “Integrated/Enterprise Software” – e.g. software that helps manage the entire business - inventory management, scheduling, accounting, AP, invoices, payroll, rewards, AR and an ‘integrated’ payments portal – will need to be updated to accommodate new transaction data sets.
- For all payments made to the Commonwealth (or any political subdivision thereof) that are subject to sales tax, those front-end systems will need to be modified to handle new transaction data sets. *[e.g. there may be payments made on (at) higher education institution campuses where sales tax may be applicable, such as bookstores, commissaries, events/arenas (etc.).]*
- The issue is further complicated by customers with cards issued in foreign countries.
  - For example, with our globally-connected society, international travelers routinely visit brick and mortar retailers and eCommerce retailers domiciled in Massachusetts. In China, the dominant payment network is China Union Pay (CUP), owned and operated by the People’s Republic of China. Thus, it is likely that Chinese visitors to Massachusetts will use their CUP card to make a purchase. The same can be said for Japanese visitors using their JCB credit cards.

Therefore, the application of this proposal will not be limited solely within the confines of the

geographic boundaries of the Commonwealth or solely to Massachusetts residents or retailers – it will affect Massachusetts retailers, Massachusetts residents, any international traveler making purchases within the Commonwealth, all 11 U.S. debit networks, all four U.S. credit card networks, all non-U.S. debit and credit networks, all payment processors, all third party software vendors, and all financial institutions that authorize credit and debit card transactions for their cardholder customers. This proposal is not cost effective.

### POS Terminals

The following compliance challenges with POS terminals would need to be dealt with in order to implement the proposal at significant cost to merchants.

- Typically, small merchants have one or two POS terminals:
  - Few of these POS terminals are capable of having updates pushed to them so each terminal would need to be manually updated. This requires a call center representative to walk the merchants through manually reprogramming these terminals or technology staff visiting each merchant in the commonwealth.
  - There are over 100 different terminal types that will all need new applications written specific to each processor. Each one of these terminals would need custom-made software written for them and tested on each machine.
  - Some terminals are past their expected life and new software is no longer being developed for them. These terminals would need to be replaced with new ones at the expense of the merchant. This would likely impact at least 10% of the terminals in the market today.
  - This system would rely on the merchants to properly enter the tax amount manually. Since the processor doesn't have access to the POS and what items are taxable, merchants would have to key the total amount and tax amount separately into the terminal.
  - It is unclear from the proposal who would bear the liability from unintentional human errors associated with mis-keying sales tax amounts. This liability would likely either fall on the merchants or be factored into increased reserves for merchants.
- Medium-sized and larger merchants typically have integrated POS systems.
  - There are approximately 1,000 different Independent Sales Vendors that produce generic and proprietary software for merchants. These are segment-specific solutions and produce software specific to every type of business from car washes to retailers and restaurants.
  - All payments software that touches a POS in Massachusetts would need to be updated to accommodate passing the tax amount through the processor. Once updated, merchants would have to install the new version of software on their

system. This can be highly disruptive to the business and can change everything from work flows to payroll integrations.

- Many merchants of all sizes have an E-commerce or online functionality which would be negatively affected by the proposal.
  - There are hundreds of digital shopping carts and ecommerce platforms and all of these platforms rely on a payment gateway to pass transaction information.
  - Each shopping cart relies on a processor or gateway software for payments, and each shopping cart can touch hundreds of these software systems.
  - Payment vendors would need to update and recertify each plug-in. Collectively this is thousands of plug-ins and would be a very time consuming and expensive procedure.
- Merchant call volume will increase dramatically as processors are forced to reduce their daily deposits. Many merchants today are on gross settlement and pay their interchange at months end. In other words, if they process \$100, they receive \$100 and are debited all of the transaction fees at month end. Processors would either need to float the tax amount until month end (transferring a potentially unworkable burden onto small processors) or deal with a major spike in calls to help merchants reconcile batches.

### **Effect on Processors**

The proposal is not cost effective for processors. Processors play an instrumental role in the payments system. They facilitate the ability of merchants to accept card payments from consumers at brick and mortar locations, online or through a mobile device. They facilitate the authorization of the purchase as well as the settlement of funds from the card holder's bank to the merchant to complete the transaction. The proposed changes would trigger monumental and costly changes to authorization and settlement, as well as fundamentally altering processors' role in the payments system.

#### Processor Ecosystem (Authorization)

Significant changes would need to be made to processors' systems in order to calculate, receive, transmit, store, and report new message datasets for the sales and sales tax amounts from merchants.

#### Processor Ecosystem (Settlement)

Processors employ various and proprietary hierarchy schemes to manage processing reporting and settlement activities – a 'merchant' or MID (Merchant ID) doesn't necessarily tie out to a specific Massachusetts-based sales tax reporting entity – meaning settlement of funds to a particular "MID" may include funds for multiples legal entities and locations within or without the state. Examples include:

- Settlement to a parent corporation operating multiple locations, each of which may be incorporated separately and reporting sales tax individually.

- Payment Facilitators and/or Internet Marketplaces may have hundreds or thousands of sub-merchants (e.g. small business entities and/or sole-proprietors) for whom they aggregate transactions for authorization and settlement purposes.

Processors would need to recreate hierarchal systems to identify Massachusetts sales tax reporting entities/locations.

Processors create settlement files every day (365 days per year) and transmit those files to an Originating Depository Financial Institution (“ODFI”). [Note: These files are only sent by the ODFI on ‘banking business’ days – e.g. On a Monday, the ODFI would transmit three settlement files for a MID representing Friday, Saturday and Sunday settlement amounts.]

- Merchant statements would need to be updated.
- Back office teams would need to be created to handle reconciliation and merchant disputes.

### **Secondary Revisions**

Once a payment is processed, there are events such as disputed transactions, returns, and processing errors which modify original data and payment submissions. These are called secondary revisions. The proposal does not provide guidance on what would happen to secondary revisions to original submissions. This would be a fundamental issue for determining the total cost of compliance, and without guidance the industry is only able to identify potential issues with compliance. While a specific cost number cannot be ascertained without answering any of these questions, it is clear to all parties that even if the answers to these questions were all easy (they are not) it would still not be cost effective to implement this proposal.

When merchants issue refunds or a chargeback occurs, how will refunded sales tax amounts to consumers be handled and reconciled? This is an important question, particularly because there would be no “new” merchant sales or corresponding sales tax settlement amounts to apply these refunds amount(s) against. The *Processor would be carrying a “sales tax receivable refund” for the merchant.* Processors – and likely the networks on behalf of processors – would need to establish entirely new policies, processes and systems to handle cases in which one party has made errors in sales tax reporting, withholding, payment or adjustment. As a single example, in a case where a cardholder wins a dispute, there would need to be a process and system to re-collect remitted sales tax from Massachusetts and return it to the merchant to be refunded to the consumer. The cost of developing and supporting such systems would be prohibitive and the proposal is not cost effective. In each of the merchant scenarios, there is a material risk of being non-compliant, since there is reliance by the merchant on its POS provider to make timely updates in order to comply. As such, there would likely also need to be monitoring/editing processes developed to ensure that merchants located in Massachusetts are sending processors the appropriate data to remit. Again, the proposal is not clear as to what would happen at that point if the merchants fail to send the data.

To price for the processors’ increased liability brought on by the proposal, processors would

likely need to consider holding funds and/or closing accounts to protect their own business. Placing processors and networks in an active sales tax enforcement role could have a severely adverse effect on merchant sales and cash flow, interparty relationships and the consumer shopping experience. The results would be fewer options for merchants who seek payment processor options, and higher prices and reserves necessary to access those services.

### **Effect on Networks**

This proposal is not cost effective for payment card networks. The effect on payments networks cannot be overstated. Payment networks that contract directly with Massachusetts merchants as processors will be subject to the same challenges outlined above. There will also be additional network-specific impacts for transactions acquired by third-party processors.

- Network operating rules and processor agreements are extremely complex and would need to be revised for a relatively small subset of merchants, along with the program documents governing the operational obligations, liabilities and detailed technical requirements applicable to all participants.
- Networks would need to build out and implement new compliance, audit, fraud monitoring, detection and mitigation programs specific to Massachusetts merchants.

Ultimately the proposal could force networks to modify existing pricing structures, increasing costs to Massachusetts merchants and consumers.

### **Timing**

Not only would the proposal not be cost effective, but implement of these extensive changes is not feasible by the date specified in this proposal. Given the complexity and multi-party interdependence of the current payments systems, such a massive change would require a long timeframe to implement.

#### Rulemaking Stage – Multi-Year Process

Before any company could truly begin to put together an implementation strategy and plan, the Department of Revenue would need to provide significant guidance to answer the questions raised in this letter and many not yet contemplated. The rulemaking process alone would at a minimum be a multi-year process in order to seek the necessary input through the notice and comment rulemaking requirements in order to provide a detailed final rule with guidance at a level that would help companies understand and make sense of this complex issue. Only after a final rule was promulgated, could a company start to truly put together an actionable implementation plan and strategy for compliance.

#### Individual Company Implementation – Multi-Year Process

Many companies may have a difficult time deriving a specific estimate of the cost of compliance for this RFI because those estimates are heavily dependent on both the unanswered questions raised in this letter and other parties in the payments ecosystem. The payments ecosystem is extremely interconnected to the point that participants would be dependent on specifications, software details, or contractual relationships to be finalized by other market participants before they could start to identify, plan, and implement their own multi-year implementation plans. For

example, the processor certifications of any POS software changes alone could take the industry up to 9 months to complete.

Additionally, merchant statements and legal agreements between parties would need to be updated to accurately reflect the change in the ecosystem, new responsibilities, and changes in liability.

#### Testing – Multi-Month to Multi-Year Process

The payment ecosystem was built over decades to ensure that payments are fast, frictionless, and secure. It is a critical part of the infrastructure of commerce and can have significant impacts to the economy and consumers. 70% of the GDP of the United States is retail and electronic payments make up 70% of that. If any part of the payments ecosystem fails, the fallout could be crippling to businesses, consumers, and banks in Massachusetts. Given the significant overhaul required by all parts of the payments ecosystem to implement the proposal, substantial testing must be done after the implementation is complete to ensure the safety and reliability of the system.

The overall implementation timeline of the proposal is a moving target dependent on a number of factors and parties which have not yet been finalized, but **it is a certainty that the industry would not be able to meet the June 1, 2018 effective date.**

#### **Effect on the Commonwealth**

The Commonwealth will likely receive and have to reconcile sales tax from hundreds of thousands of sales tax settlement files (in varying amounts from thousands of dollars to a few cents) – *each day and then also reconcile them with cash and check sales tax filings each month.* The Commonwealth will need to establish systems that can accommodate a massive daily data upload from every single processor.

The Commonwealth is likely to see an increased volume of inbound transactions and remittances that could increase by a factor of 100x, when considering the increased number of parties that are remitting. The Commonwealth will see a large increase in ACH fees from its bank to cover the daily receipt of the sales taxes. Additionally, tax audits would also increase in complexity and cost with multiple parties being added to the tax collection and remittance process.

A new remittance channel would have to be developed between the processor and the Commonwealth, as this does not exist today, so this step would also require development of some kind, for both parties. In effect, Massachusetts would be required to set up an entirely new system that can efficiently communicate connectivity, file data, timing and other specifications to networks and processors and work seamlessly with every single player in the payment system to maintain data links and integration – ultimately establishing a technical dependency between all processors, the Commonwealth and its banking servicer.

In addition to developing this functionality, the Commonwealth will also have to invest heavily in safeguarding transmission channels and stored information from fraud and theft and complying with relevant data security standards.

### **Minimal Benefits for This Proposal**

The proposal would not realize material benefits for the Commonwealth while at the same time raising the costs for the payments ecosystem, merchants, the Department of Revenue, and ultimately Massachusetts consumers. The proposal would not significantly increase revenue or decrease fraud in the Commonwealth in a meaningful way.

#### Fraud

Large retailers are under a consistent tax audit and are not the types of retailers that collect sales tax and then fail to remit the tax to the state. Given that electronic transactions offer a more visible audit trail, even for small merchants, the most likely companies that could commit tax fraud are small retailers with mostly cash sales. This proposal would not affect those actors. In fact, this proposal would only serve to make electronic payments more expensive and thereby giving merchants an incentive to drive more transactions to cash.

#### Revenue

The proposal relies on the premise that the proposal would eliminate the time between when sales tax is collected and remitted to the state, thereby raising revenue. This is called the float. This may provide a one-time revenue increase, but cost many times more than would be raised by the proposal and would saddle, merchants, processors, consumers, and the Commonwealth with significant ongoing costs. The minimal benefits of the proposal of real time sales tax remittance is significantly outweighed by the cost of implementing this system.

If the Commonwealth is interested in eliminating the float with the least disruption to the current system, it could instead consider prepayment of tax by the largest retailers in the state. This is a method which is currently being used in 12 other states and which the largest retailers are already equipped to comply with. While ETA prefers the current system for remittance of sales tax by merchants, because the system works, prepayment of tax represents a more balanced and less disruptive approach to eliminating the float than the current proposal. Additionally, a prepayment of sales tax would be much faster to implement than the current proposal and would provide a way for the Commonwealth to capture this revenue this fiscal year.

### **Overall Effect on Doing Business in Massachusetts**

The fact that this will be a unique process only for Massachusetts could significantly complicate the overall development efforts. Any resources devoted to Massachusetts would decrease resources devoted to the entire country.

For all of the reasons discussed, this proposal would make the business climate much worse for processors and national merchants and many of them would have to strongly consider whether it makes business sense to continue processing for merchants in Massachusetts.

Additionally, the proposal will disrupt the allocation of resources and the drive towards innovation and competition. For example, a software startup would have to decide between investing in making improvements that will work in the other 49 states, or spend those same resources making its software compliant in Massachusetts. At the very least, there will be a lag between what is available nationwide and what is available in Massachusetts. A more realistic

scenario would see the consumers in the Commonwealth have less access to electronic payments, higher costs of products, and less retailers available to purchase those products.

## Summary

This proposal for real time sales tax collection and remittance by payment processors is not cost effective. Even if the entire payments ecosystem, merchants, consumers, and the Commonwealth were able to implement this system at a cost of billions of dollars over many years, it would remain unnecessary and ultimately do more harm than good for the businesses and consumers of Massachusetts.

\* \* \*

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any issues, please contact me or ETA Senior Vice President, Scott Talbott at [Stalbott@electran.org](mailto:Stalbott@electran.org).

Respectfully submitted,



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Cc: Governor Charlie Baker  
Secretary of Finance & Administration Michael Heffernan  
Kristen Lepore, Chief of Staff to Governor Baker

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Next submitted item begins on the following page

September 26, 2017

The Honorable Chris Harding  
Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street  
Boston, MA 02114

**RE: First Data's Comments on Section 94, HB 3800, Real-Time Remittance of Sales Tax  
by Payment Processors**

Dear Commissioner Harding:

On behalf of First Data, I appreciate the opportunity to provide comments as your agency conducts a technical assessment of the implementation of Section 94 in HB 3800, which would require third party payment processors to identify sales tax associated with credit, debit, or other types of electronic payment cards, remit that sales tax to the Department of Revenue, and provide a monthly report aggregating electronic transactions for each retailer and the total sales tax paid that month.

As background, First Data is a global provider of technology solutions and services to merchants and financial institutions with clients in 118 countries. With our services, First Data enables 6 million merchants to accept electronic payments such as credit, debit, and prepaid cards, processing 2,800 transactions per second and handling \$2.2 trillion in payments annually. We also perform a number of back-office services for over 4,000 financial institutions of all sizes and own the STAR® debit network. In Massachusetts, First Data processes payments for thousands of merchants that exceed an annual transaction volume of \$37 billion.

First Data serves the payments market in various capacities – as an acquiring processor, an issuing processor, an owner and operator of a debit network, a third party service provider to financial institutions, an eCommerce gateway, a program manager for prepaid products, and a nationally licensed money transmitter – roles that afford us an unparalleled ability to look across the ecosystem and provide an expert analysis of whether the current payments infrastructure could support a real-time sales tax collection and remittance system.

In short, we believe such a system cannot be created by June 1, 2018. To explain why we make such a definitive statement, we will focus the rest of this comment letter on two elements called out in Section 94(b) as necessary to your analysis: the technological feasibility and the financial impact on consumers and businesses.

## Technological Feasibility

The plastic-card based electronic payments system in the United States is a relatively young system, commencing with the introduction of the Diners' Club, Inc. credit card in the 1950s, adding enhancements in the 1970s to facilitate ATM and debit card transactions, and spreading its reach in recent years to the current system that allows consumers anywhere in the world to make purchases at any time with credit, debit, prepaid or other types of accounts using plastic cards, mobile wallets, key fobs, etc.

And while the system has, indeed, dynamically evolved to respond to increasing consumer and market demands, it remains at its core a system that was built for a fairly simple reason: to push transaction data across the payment "rails" as quickly, efficiently and securely as possible, providing a frictionless, satisfying experience to consumers in order to entice them to pay electronically rather than with cash or check.

The payment processing system manages the transmission of thousands of transactions per second, every second of every day, year after year. It requires a chain of activities starting with the initiation of a transaction, to the transmission of payment information to participating parties, sorting and aggregating payment information, and ultimately moving funds to the accounts of the appropriate parties. We refer to these activities as authorization, clearing and settlement.

The stakeholders that are generally involved in these processes include the following:

- Merchant: the business where the cardholder wishes to make a purchase, which can be a physical store or Internet-based
- Point of sale terminal hardware manufacturer: the entity that makes the device that interfaces with payment cards and allows the merchant or cardholder to swipe, dip, tap or manually enter the card information
- Integrated software vendor (ISV): the company that develops software that powers the business operations of merchants and can integrate payment acceptance into the platform; ISVs may sell the business-management software directly to a merchant or may partner with a value-added reseller (VAR) to do so
- Independent sales organization (ISO): the company that sells or leases point of sale terminals to merchants, may provide installation and maintenance for those terminals and may arrange for a merchant processor to collect and process payments as well as interact directly with retailers on operating strategies and operating regulations
- Gateway service provider: the entity that transmits transaction information to appropriate institutions and enables merchants and/or financial institutions to have direct connections to multiple networks of their choice and provides some control over transaction routing
- Acquiring financial institution: the entity that allows the merchant to accept card transactions, purchases ("acquires") the card transactions from the merchant and may directly capture point of sale transaction information and subsequent settlement of

transactions; generally the merchant has an account at this financial institution for settlement of funds

- Acquirer processor: the entity that is hired by the acquiring financial institution to perform day-to-day payment card operations, merchant services, account maintenance and authorization services, transaction routing and gateway services, offline debit processing services, and clearing and settlement services
- Card network: the entity that licenses its brand to card-issuing financial institutions so that the institutions' cards can carry the brands, creates operating rules that govern how the cards can be accepted and used and facilitates transactions between merchants and card issuers
- Issuing financial institution: the bank or credit union that approves credit card and debit card applications, issues the cards, sets the terms of the debit/credit account, funds the credit limits, and provides customer service to the cardholder; card issuers can perform these functions directly or use a third party processor
- Issuing processor: the entity that is hired by the issuing financial institution to perform day-to-day payment card operations, which in addition to payment processing may also include fraud detection services, cardholder verification, mailing of transaction statements, card embossing, etc.

Several hundred thousand retailers sell goods and services in Massachusetts, and hundreds of the entities described above are working with these retailers to power commerce every day. *Each and every one* of these entities would be affected by the changes necessary to create a real-time sales tax system.

This is largely because the electronic payments system was not designed to be a tax collecting extension of the government, so, generally, sales tax information is not part of the transaction data flow.

When merchandise is scanned at checkout, the retailer's cash register captures individual purchase items and the sales tax amount, but that data is not transmitted to the payment processor during the initial card authorization, nor during the later settlement of the transaction when money is taken from the consumer's card account at the bank and deposited into the merchant's bank account. Only the total transaction amount is provided from the cash register to the point of sale terminal (where the debit or credit card/access device is swiped, dipped, or tapped). In other words, for debit or credit card transactions, the payment processor does not know what types of items were purchased, whether they were taxable or non-taxable, whether cash back was received, whether a sales tax holiday is occurring, etc.

In order for a payment processor to comply with the sales tax system outlined in Section 94, additional data fields would need to be added to the transaction data stream that would allow the retailer to key in or electronically capture the sales tax amount separately from the total transaction amount.

To add a new sales tax data field into the transaction data flow is not simple, cheap or fast. It is an addition that would result in thousands of hours of coding, testing, certification, training and deployment – by each of the entities listed above.

The Department would have to draft and release specifications providing details on elements that were left out of the statutory text (e.g., details about how merchants would be identified to the Department, the specific time frame that sales tax remittance would need to occur, etc.) before any of the payments stakeholders could begin their own implementation effort. We assume release of these specifications would occur no sooner than December 2017, which would leave seven months before the June 1, 2018 implementation deadline.

It would be impossible for all of the payment stakeholders to accomplish such a massive undertaking in such little time.

### **Financial Impact to Consumers and Businesses**

Two fairly recent developments within the payments industry provide us with useful analogies about the cost required to set up a real-time sales tax system: the federal IRS merchant transaction reporting law and the transition to chip cards and chip-reading point of sale terminals.

#### IRS Merchant Reporting Law

In 2010, a new federal law was implemented, codified in Internal Revenue Code Section 6050W, that requires a “payment settlement entity” and an “electronic payment facilitator” to annually provide information to the IRS listing each merchant’s gross electronic transactions in a given year. In addition to providing gross electronic transaction data to the IRS, payment settlement entities and electronic payment facilitators are also required to send each merchant a report of this aggregated information via a Form 1099-K.

First Data spent \$30 million dollars to comply with this law, due to system changes to replace our unique merchant identification numbers with the merchant’s federal tax ID, to aggregate the transaction data in the form prescribed by the IRS, to populate the 1099-K according to the IRS instructions, and to print and mail these forms to our merchant clients. Our ongoing reporting costs total approximately \$2 million dollars each year.

#### Chip Card Transition

Since 2015, the U.S. payment card market has been undergoing a shift to a global security standard known as EMV® (EMV stands for EuroPay, MasterCard and Visa, the three companies that devised the standard). An EMV-enabled payment card has an embedded computer chip inside the card that interacts with an EMV-enabled point of sale terminal to validate that the card being used is legitimate. EMV provides dynamic data versus the static data that resides on the card’s magnetic stripe. This dynamic data sits on a chip inside the card, and it helps authenticate that the payment card is valid when it communicates with an EMV-enabled point

of sale terminal. The more detailed communication between chip card and terminal provides stronger protection against fraudulent use of lost or stolen cards, counterfeiting and skimming.

The transition impacted all of the payments stakeholders referenced above, from the terminal manufacturers, ISVs, ISOs and gateways, to the merchants, the processors, the card networks and all card-issuing financial institutions. Because the transaction fields were modified to accommodate the additional data from the security chip, significant costs had to be absorbed by the industry for coding, testing, certification and deployment.

For First Data alone, the costs we have incurred to develop the new software code for the changes to the transaction data fields, upgrade software and hardware, certify the changes for our merchant clients, test the new flows and deploy in the United States have exceeded \$35 million.

It is important to keep in mind with this analogy that the EMV transition generally affects only our front-end (authorization systems). The sales tax collection and remittance system would impact the front end authorization platforms as well as our back-end platforms that handle the settlement/transfer of funds between banks and merchants. Thus, we think the cost for First Data to build and implement such a sales tax system could range from approximately \$50-\$150 million.

#### Additional Costs

We believe that retailers would also incur costs from new point of sale terminal hardware purchases or software upgrades necessary to handle the new sales tax data prompts and inputs, with the costs rising depending on the sophistication of their current point of sale terminals. (These purchases would occur on the heels of many merchants spending money on their new chip-card acceptance terminals.) Increased costs for payment acceptance would likely be shifted to consumers in the form of higher prices to pay for goods and services.

Importantly, however, the pain points and costs would not be limited to the payments industry to bear. The Commonwealth would also be impacted with one-time and ongoing costs.

For example, the Department's current tax acceptance systems would have to be reconfigured to handle remittances inputted by hundreds of payment processors or other third parties representing thousands of retailer transactions each day. Additionally, the system would have to be able to handle the complexity to accept inputs from multiple third party processors working with one retailer (e.g., for those retailers that contract with one processor for credit card transactions and a separate processor to process debit card transactions, etc.).

Ongoing costs for system analytics and new staff would be required in order to sort through all of the daily remittance data and to handle the complex reconciliation processes that would have to be implemented to address items that are exchanged for different prices, refunded, or charged back due to faulty merchandise or fraud. Reconciliation would have to be provided for the numerous transactions when a credit or debit card is authorized for payment but the final

settlement amount is not known for days or even weeks, for example, hotel or rental car reservations. Reconciliation would also have to be provided for items purchased online but not shipped for days, weeks, or months due to inventory backlogs, and reconciliation would need to be performed when exchanges or refunds occur in different tax years.

Additionally, if the Department were looking for a vendor to assist in this process, it is likely that the service would be fee-based, and the daily transmission of remittance data would involve various telecomm costs.

Because neither the current tax code nor the contractual arrangements among the payments stakeholders contemplate which entity should be liable in the event of sales tax computing errors, errors with the identified sales tax amount or errors with the remitted amount, for example, contracts with every single entity that accepts or facilitates electronic payment in Massachusetts would have to be renegotiated to address this. Contract negotiation can take months of back-and-forth dialogue, and to re-open that process with every single business in the Commonwealth would be time consuming and costly.

First Data is a global processor with very specific and controlled interface standards. Our costs to configure this system solely for the Commonwealth actually would make us highly customized for one state; one-off, customized systems require additional resources to manage and maintain and are paradoxical to any “modernization” effort. The system would also require all of the payments stakeholders (listed above) to implement the logic only for *one* state which runs counter to having a national, ubiquitous payments system.

Finally, the real-time sales tax proposal does not solve for situations when businesses accept cash and under-report that taxable income. Under-reporting simply does not take place for payment card transactions because retailers know there is a “paper trail” that exists with the payment processors, networks and card-issuing financial institutions, each of whom has seen the transaction data and has records of such transactions.

It is widely known that cash transactions are the root cause of under-reporting because third party entities aren’t involved in those transactions and cash purchases can essentially be hidden. Because Section 94 would only capture payment card transactions – since payment processors don’t touch cash payments – the proposal would never capture 100 percent of the Commonwealth’s uncollected sales tax and help the Department identify the businesses that are gaming the system.

When taking all of these items into consideration, we do not believe that the return on investment for this proposal favors the Commonwealth – to essentially trade a one-time revenue boost (converting from monthly remittance to daily actually only accelerates 13 months of revenue into a 12-month fiscal period) for a future of costs imposed on businesses and the government tied up in new staff, new systems and complex reconciliation processes.

## Conclusion

The Department was obligated by statute to thoroughly analyze the technical feasibility and cost of creating a real-time sales tax system in the Commonwealth. We believe that we have illustrated that it would be impossible to roll out such a system by June 1, 2018, and that it would be enormously expensive and disruptive for all payments stakeholders, including retailers that accept card payments in Massachusetts, the payment processors and supporting third parties like independent sales organizations or integrated software vendors operating in Massachusetts, the payment card networks accepted in Massachusetts, and the financial institutions that issue credit and debit cards in Massachusetts.

The system would also generate ongoing costs to the Department that would undercut the sales tax revenue that this system would supposedly yield to the state. It is unclear if the Department's current tax filing system can even keep up with daily remittances, and the massive reconciliation that would be required to handle chargebacks, returns, and errors would require additional staff and resources.

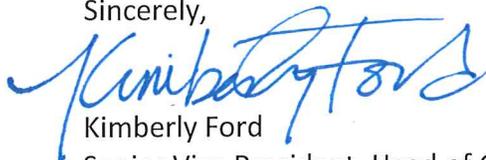
Simply put, the real-time sales tax system that's contemplated in the legislation is not compatible with the current architecture of the U.S. payments system. Therefore, the risk of interruption of electronic payment acceptance across the Commonwealth is a serious one.

There are easier ways for the Commonwealth to capture what is essentially just a one-month acceleration of sales tax revenue, fraught with far less risk to the U.S. payments system. Moreover, if the Department is looking for better analysis of projected tax revenues, we would be happy to work with your leadership team and other policymakers to find other ways to harness data analytic solutions that would provide a more accurate prediction each month.

We therefore respectfully ask the Department to certify to the legislature that this system is not only not cost-effective to implement by June 1, 2018, but that it should not be implemented in any form.

I appreciate your consideration of our comments. Please do not hesitate to contact me if I can help answer additional questions or provide clarification on any of the points outlined above.

Sincerely,



Kimberly Ford

Senior Vice President, Head of Government Affairs

[Kim.ford@firstdata.com](mailto:Kim.ford@firstdata.com)

(202) 478-1112

Cc: Mr. William McNamara, Deputy Commissioner  
Mr. Kevin Brown, General Counsel

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Next submitted item begins on the following page



September 28, 2017

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

Dear Commissioner Harding,

On behalf of the Greater Boston Chamber of Commerce and the more than 1,300 employers we represent, I write to express our serious concern with the potential change to accelerated – or same day/real-time – sales tax remittance in Massachusetts. Shifting from the current monthly submissions to daily or real-time payment of sales taxes would require enormous changes to the existing banking and retail infrastructure, and sales tax administration would become more complex. In short, the one-time revenue generated by this shift does not justify the disruption it would create for industry, employers, and the state's residents.

The Commissioner has requested comments on three specific areas: established industry practices, technological feasibility of implementation, and the financial impact on consumers and businesses. The impact in each will be detrimental for the state.

Many of our members – including those on both the retail and banking side of the issue – have expressed concern that the technology to implement same day remittance is not yet feasible and, problematically, unlikely to be ready by the June 1, 2018 effective date. Third-party payment processors would have to significantly transform the present infrastructure in order to make electronic payment transactions.

Even if the technology is available, installing new technology infrastructure at virtually every brick-and-mortar retailer in the state will have costs for both businesses and consumers. And compliance challenges not only affect physical infrastructure: making an almost immediate transfer of sales tax payments could affect crucial cash flows that allow businesses to pay vendors and employees. The effects on cash flow could be particularly significant for smaller businesses.

Mandating same day sales tax remittance would also add to an increasing number of items that place Massachusetts's businesses at a competitive disadvantage compared to their counterparts nationwide. Massachusetts would be the only state to require an accelerated sales tax remittance infrastructure, making the costs of compliance – both financial and administrative – isolated to businesses located here.

The proposed real-time tax collection would also be burdensome for the state's Department of Revenue (DOR), as it would be more difficult to administer, audit, and track compliance of tax payments compared to the current system. Just as vendors would be pressed to remit sales tax payments daily, DOR would be required to process the payments daily – and not just from a single vendor, but rather from every third-party payment processor used by any given vendor.

Complying with this proposal will result in substantial one-time and recurring costs for a broad range of businesses and employers in the state, as well as the state's Department of Revenue. I urge you to consider alternative methods to meet the state's budget needs that will not harm our state's employers, residents, and overall competitiveness.

Sincerely,

A handwritten signature in black ink that reads "James E. Rooney". The signature is written in a cursive, flowing style.

James E. Rooney  
President & CEO

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Next submitted item begins on the following page

JOINT COMPANY & TRADE ASSOCIATION LETTER  
TO MASSACHUSETTS REVENUE COMMISSIONER  
IN OPPOSITION TO PROVISIONS MANDATING  
REAL-TIME COLLECTION OF SALES TAX

Submitted via email to: [rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us)

September 29, 2017

The Honorable Christopher C. Harding  
Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street  
P.O. Box 9550  
Boston, MA 02114

Dear Commissioner Harding:

The Massachusetts budget (in sections 94 and 95) requires you promulgate regulations implementing methods to effectuate accelerated sales tax remittance, identify noncompliant vendors, operators, and third-party payment processors. The provisions also impose burdensome reporting requirements on merchants and payment processors.

The undersigned organizations believe, after you must consider factors including established industry practices; technological feasibility; and the financial impact on consumers and businesses; that this undertaking is not cost effective.

Simply put, real-time sales tax collection does *not* work. Companies that would be subject to such a requirement have not been required to do this in any other state and their business operations are not configured to do so.

In the U.S., there are an estimated ten million merchant locations, more than a dozen payment card networks, hundreds of payment processors, and over 8,000 card-issuing financial institutions. The infrastructure that facilitates electronic payment transactions transmits data between retailers, payment networks, and card issuers, transmitting thousands of transactions per second every hour of every day. Payment processors and payment networks send and receive these authorization messages as single units of code, routing only the necessary information required to authorize a transaction. Because neither payment processors nor payment networks see details around the goods purchased, they have no ability to identify the appropriate sales tax that should be applied to the transaction.

Real-time tax remittance would require payment processors to receive a separate tax amount for each debit or credit card transaction and then remit the sales tax to the Commonwealth. The underlying provisions presuppose that merchants, processors, payment networks and card issuers could readily change their entire payment ecosystem to capture detailed data about each sale to accurately identify sales tax – an assumption that does not recognize that all of the systems linked in the payment chain must be interoperable. Thus, changes must be coded, implemented and tested at retailers' point of sale terminals by payment processors, payment networks and the card-issuing financial institutions.

Further, 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 or maybe hundreds of thousands of such contracts would have to be amended, increasing the burden and expense even further.

The bipartisan National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation 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.” A similar effort in Connecticut also failed after review by the Department of Revenue.

Finally, we do not believe this raises any additional revenue for the Commonwealth—at best it would merely advance payment remittance at substantial cost to the Department of Revenue, which will have to create costly compliance and operations processes to receive these payments.

Thank you for this opportunity to participate in the rulemaking process.

Sincerely,

Retailers Association of Massachusetts  
Blue Snap, Inc.  
Capital One Financial Corporation  
Card Coalition  
Discover Financial Services  
Elavon  
Electronic Transactions Association  
First Data Corporation  
JP Morgan Chase & Co.  
Mastercard  
North American Bancard Holdings  
Synchrony Financial  
TechNet  
T-Mobile  
TSYS  
Vantiv  
Wells Fargo

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# MASSACHUSETTS FOOD ASSOCIATION

**OFFICERS**  
*Chair*  
**JOE KELLEY**  
 Star Market

*Vice Chairs*  
**RALPH CROWLEY, JR.**  
 Polar Beverages

**MICHAEL GOLD**  
 Big Y Foods

*Treasurer*  
**KEVIN BARRETT**  
 Deloitte

*Past Chair*  
**JAY RAINVILLE**  
 Demoulas Super Markets

**DIRECTORS**  
**TRACY ANTHONY**  
 Lees Market

**IRIS AYOTTE**  
 Hannaford

**JOHN BIERFELDT**  
 Acosta Sales & Marketing

**DAN BROCK**  
 Bozzuto's

**MIKE CARCEO**  
 Utz Quality Foods

**RICK CARON**  
 Trucchi's Supermarkets

**TONY CHICARELLI**  
 C&S Wholesale Grocers

**ED COHEN**  
 Garelick Farms

**BILL CONGDON**  
 Wegmans Food Markets

**JIM CROSBY**  
 Crosby's Markets

**CARL CULOTTA**  
 Gold Medal Bakery

**CATHERINE D'AMATO**  
 Greater Boston Food Bank

\* **CHARLES D'AMOUR**  
 Big Y Foods

\* **JOE DONELAN**  
 Donelan's Supermarkets

**PAT DWYER**  
 Stop & Shop

**ERIC FARIAS**  
 Pepsi Beverages Company

**TIM FONTAINE**  
 HP Hood LLC

**MICHAEL GARDNER**  
 ESM/Ferolie

**RONN GARRY, JR.**  
 Tropical Foods International

**PAUL HERRING**  
 Coca-Cola Refreshments

**BOB HEWITT**  
 Price Chopper Supermarkets

**JEREMY ISENBURG**  
 Chex Finer Foods

**JOHN JOYCE**  
 Bunzl New England

**MANLEY KILEY**  
 iHeart Media

**TOM LANE**  
 Ocean Spray Cranberries

**MICHAEL LEARY**  
 BJ's Wholesale Club

**PHIL LEBLANC**  
 Arthur J. Gallagher & Co.

**AL LETIZIO, JR.**  
 A.J. Letizio Sales & Marketing

**JONATHAN MACZKO**  
 Advantage Solutions

**PETER MARCHANT**  
 CROSSMARK

**JOHN MARTINO**  
 Nestle Waters N.A.

**NICK MATOOK**  
 Catalina USA

**HARRY "CHIP" O'HARE**  
 JOH

**PAT OPPEDISANO**  
 Boston Retail Grocers

**CRAIG PARISEAU**  
 Nestle Purina

**RICK ROCHE**  
 Roche Bros. Supermarkets

**ED SEEKER**  
 Trader Joe's

**JONATHAN SLAWSBY**  
 Madison Food Corp.

**MICHAEL SLEEPER**  
 Imperial Distributors

**SAM SWEET**  
 King Arthur Flour

**MICHAEL VIOLETTE**  
 Associated Grocers of N.E.

**ADAM WEISSMAN**  
 SAS Retail Services

**ANTHONY WIGGINS**  
 Windsor Marketing Group

\*Ex-Officio \*\*Honorary

*President*  
**CHRISTOPHER FLYNN**

**31 MILK STREET, SUITE 518**

**BOSTON, MASSACHUSETTS 02109**

**(617) 542-3085**  
**FAX: (617) 542-3505**  
**Email: mafood@mafood.com**

September 29, 2017

Mr. Christopher C. Harding, Commissioner  
 Massachusetts Department of Revenue  
 100 Cambridge Street, 8<sup>th</sup> floor  
 Boston, MA 02114

**Re: Feedback on proposed accelerated sales tax remittance**

Dear Commissioner Harding,

The Massachusetts Food Association is a trade association that represents the Commonwealth's grocery and supermarket industry on all legislative and regulatory issues affecting the retail and non-retail segments of the state's food industry.

I am writing to you on behalf of our membership in opposition to the proposed options for accelerated sales tax remittance or prepayment system in Sections 94 & 95 of Chapter 47 of the Acts of 2017.

Members of the Massachusetts Food Association oppose these proposals for the following reasons:

- Grocery stores are highly automated with complex software that records sales on an item basis; payments can be cash, EBT, and credit/debit card; and in some cases, a combination of all categories. Significant changes to the preexisting software would be needed to capture the sales tax collected field for credit/debit card transactions, which is currently not broken out to the third-party processor;
- Massachusetts vendors are required to store data transactions related to business activity for at least three years. This storage requirement will increase due to the extra data transfers to third party payment processors. It would be very burdensome for the grocery and supermarket industry. There are millions of transactions each day with over 30,00 to 50,000 different items offered for sale in a typical supermarket, and determining which transactions paid tax "real time" to the state and which transactions remain to be paid with alternative payment options (personal check, etc.) would be an enormous reconciliation task;



- Our members report uncertainty on whether current register processing and settlement through third party processors distinguishes between tax amount and non-taxable amounts. Also, if established, third party processor fees will most likely increase. Third party processors charge retailers a processing fee (generally 1%-3%) for processing each credit/debit card transaction. Since the sales tax collected will not be processed and returned to the retailers the processing fee will increase. In addition, there is an inter-change fee for credit/debit card transactions, but as of now, we are unable to determine what impact that would have on retailers;
- New procedures would have to be implemented to handle refunds on taxable products that have already been processed by the third-party processor. Special modifications would be needed for split transactions that have credit/debit cards and cash and/or EBT tenders. Meals tax collected would have to be segregated and handled differently both by the retailers and third-party processors. This change will cost retailers and third-party payment processors significant costs to implement as well as yearly costs to maintain this process. This change will only provide the State of Massachusetts a one-time cash flow increase yet not add any incremental revenue. Again, more costly modifications to software and procedures would be necessary with this change;
- There are also data security issues - hacking of credit card information is a known risk, fraud due to stolen credit cards, etc. would also create bookkeeping challenges to balance in such a short period of time. Grocery stores spend large sums of money to protect data and sending more data to third party payment processors increases the data privacy risk;
- Returned merchandise could pose a problem when purchased in Massachusetts and returned in another state;
- Additional professional accounting time will be needed by retailers in the back office (sales audit) to reconcile the credit/debit card transactions net of sales tax and for sales tax compliance reconciliations of sales tax charged, but transferred to a third-party processor. The State of Massachusetts will also incur additional audit time verifying tax transfers which could have been spent investigating tax noncompliance;
- "Real time" processing is not a perfect world. Systems and communications can be down or interrupted. The only benefit this would create is a one-time cash flow benefit;
- With regards to our non-food store member who hosts events, a deposit by credit card for an event in the future is usually required. There is no invoice attached since they don't always know how many people, what food, liquor, AV equipment, etc. needs will be at the time of the deposit. Some of that invoice might not be taxable, one might pay the balance by check and the host won't know until the end of the event what the final bill might be. And sometimes their clients need to cancel the event or reschedule it. It would be a booking nightmare trying to resolve the sales tax and have it submitted before the final settlement for such an establishment.

Other states which have implemented filing procedures to receive tax proceeds more expediently and have implemented a timely prepayment system to eliminate the time between tax is collected at point of sale and the time it is remitted on the tax return due to such realistic

inconsistencies. An accelerated sales tax remittance or prepayment system should be based upon an equitable pre-payment estimate (possibly implementing methods such as remitting a predetermined collection based upon the previous month collections, the same month collection the previous year, or another expected and acceptable remittance). Any approach to work with our industry to implement such a requirement would be welcome.

I thank you for the opportunity to comment on this important industry issue.

Sincerely,



*Brian Houghton*

Sr. Vice President, Government Affairs & Communication  
MA Food Association  
31 Milk Street, Suite 518  
Boston, MA 02109  
Phone: (617) 542-3085  
Fax: (617) 542-3505  
<http://www.mafood.com/>

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Next submitted item begins on the following page

September 29, 2017

The Honorable Christopher C. Harding  
Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street  
P.O. Box 9550  
Boston, MA 02114

Dear Commissioner Harding:

We are writing on behalf of the Massachusetts Bankers Association's (MBA) 155 commercial, cooperative and savings banks and federal savings banks and savings and loan associations with more than 69,000 employees throughout the Commonwealth in opposition to Outside Section 94 and Outside Section 95 of the FY2018 budget, which contain provisions related to the remittance of sales tax revenue to the Commonwealth. Specifically, MBA has serious concerns with the requirement that the Department of Revenue (DOR) promulgate regulations implementing methods to effectuate accelerated sales tax remittance, identify noncompliant vendors, operators, and third-party payment processors. The Association and our member institutions strongly believe that any rules mandating accelerated sales tax remittance will impose substantial burdens on our member banks, merchants, and payment processors.

Across the United States, there are more than 8,000 card-issuing financial institutions that operate over more than a dozen payment card networks through hundreds of payment processors. Here in Massachusetts, all of our member banks from the smallest community bank to the largest national and international financial institutions issue debit and credit cards to their customers. The infrastructure that facilitates electronic payment transactions for their customers sends data between retailers, payment networks, and card issuers, transmitting thousands of transactions per second every hour of every day.

Under the current system, banks, payment processors and payment networks send and receive these authorization messages as single units of code, routing only the necessary information required to authorize a transaction. Because these messages do not include all of the details about the goods purchased, banks and others in the payments system do not have the ability to identify the appropriate sales tax that should be applied to the transaction. For example, since many food and clothing items in Massachusetts are not subject to the sales tax, a consumer could go to a store and purchase a variety of taxed and untaxed items. In this instance, only the total amount of the transaction is transmitted through the system, not a detailed breakdown of taxable versus non-taxable items.

It is our understanding that any real-time tax remittance system would require payment processors to receive a separate tax amount for each debit or credit card transaction and then remit the sales tax to the Commonwealth. However, this assumes that all of the stakeholders can easily update their systems to handle the change to capturing detailed data about each sale to accurately identify sales tax amounts. It also does not recognize that all of the systems linked in the payment chain must be interoperable and that changes must be coded, implemented and tested at retailers' point of sale terminals by payment processors, payment networks and the card-issuing financial institutions – a costly, complicated and time-consuming operation to say the least.

In addition, since current contracts between merchants, processors, payment networks, and card issuers contemplate the settlement of whole transactions inclusive of sales tax, all such contracts between those parties would have to be amended, increasing the burden and expense on our members even further.

It is important to note that real-time sales tax remittance has been considered in other jurisdictions, including Connecticut and Puerto Rico, and has been rejected because the complexity and cost greatly outweigh any benefits. In fact, Connecticut Commissioner of the Revenue Kevin Sullivan testified that it was “a solution in search of a problem, or at least it’s the wrong solution.” The bipartisan National Conference of State Legislatures (NCSL) Executive Committee Task Force on State and Local Taxation 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.”

MBA strongly believes that after careful consideration of the factors, including established industry practices; technological feasibility; and the financial impact on consumers and businesses; that real-time sales tax remittance is not cost effective and will place a significant burden on the banking industry and others in the payments system across the Commonwealth. We respectfully ask that DOR not pursue this proposal at this time.

Thank you for considering our views on this important issue. If you have any questions or need additional information, please contact us at (617) 523-7595.



Kevin F. Kiley  
Executive Vice President

Sincerely,



Jon K. Skarin  
Executive Vice President

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Next submitted item begins on the following page

September 29, 2017

*By E-mail ([rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us))*

Commissioner Christopher C. Harding  
Massachusetts Department of Revenue  
100 Cambridge Street  
P.O. Box 9550  
Boston, MA 02114

Re: Request for Information Regarding the Cost-Effectiveness of Accelerated Tax Remittance by Payment Processors

Dear Commissioner Harding:

We are writing on behalf of Mastercard International Incorporated (“Mastercard”) in response to the Department of Revenue’s (“DOR’s”) request for information (the “RFI”) regarding the cost-effectiveness of accelerated sales tax remittance by payment processors. Section 94 of the Massachusetts budget (HB 3800) directs you to promulgate regulations to implement an accelerated sales tax remittance system that would require third-party payment processors to remit the tax portion of payments on a substantially real-time basis and report the total payments made on a monthly basis (the “Proposal”). However, under Section 95 of the budget, if you certify that it is not cost-effective to implement the Proposal by June 1, 2018, then no further will be taken to implement the Proposal.

We are writing to urge you to certify that the Proposal is not cost-effective. Before addressing the reasons why Mastercard believes this is the proper course, we believe it would be useful to provide some background on Mastercard.

### ***Background on Mastercard***

Mastercard does not issue payment cards of any type, nor does it contract with merchants to accept those cards. In the Mastercard payment system, those functions are performed in the United States by numerous banks. Mastercard refers to the banks that issue payment cards bearing the Mastercard brands as “issuers.” Mastercard refers to the banks that enter into contracts with merchants to accept Mastercard-branded payment cards as “acquirers.” Mastercard owns the Mastercard family of brands and licenses banks in the United States to use those brands in conducting payment transactions. Mastercard also provides the networks through which its customer banks can interact to complete payment transactions and sets certain rules regarding those interactions.

When a cardholder presents a Mastercard-branded payment card to a merchant to purchase goods or services, the merchant sends an authorization request to its acquirer, the acquirer routes the request to Mastercard, and Mastercard routes the request to the issuer. The issuer either approves or declines the authorization request and routes its decision back to the merchant through the same channels. Mastercard’s role in the transaction is to facilitate the payment instructions between the parties to the transaction - the cardholder, the merchant, the acquirer, and the issuer.

### ***Comments on the RFI***

We believe that it would not be cost-effective to implement the Proposal for a number of reasons.

First, implementing the Proposal will require enormous and costly modifications to the entire payments ecosystem, requiring thousands of interconnected parties to essentially build a new and duplicative payment system. For example:

- Merchants will need to upgrade at least the software of their point of sale (“POS”) terminals, and may need to completely replace the hardware. In addition, they will need to upgrade the software and/or hardware of their payment terminals and (depending on the merchant), other related merchant systems, so that they can capture and transmit to the processors and networks all of the information required to comply with the Proposal. Currently, the only amount transmitted by the merchant is the total amount of the sale; to implement the Proposal, the terminals will need to transmit a detailed breakdown of each category of good or service purchased (based on the different sales tax rates that apply to each category), and separately identify the cost of the good or service and the related sales tax.<sup>1</sup> This may disproportionately affect smaller merchants, because they are more likely to have POS and payment terminals that need to be replaced in their entirety.
- Payment processors will have to modify their systems to track the more detailed data, so that they can properly calculate the sales tax owed on a particular purchase, remit the sales tax to the Commonwealth and remit only the price for the goods or services to the merchant. They will also have to update their systems to keep track of this detailed information in order to provide the required monthly reports. Further, because payment processors will be subject to new and significant compliance obligations, they will incur costs to implement technical, administrative and other measures to ensure compliance.
- Networks will incur costs associated with processing far more data for each transaction than is currently the case, will need to modify their operating rules and agreements with financial institutions and processors to address the requirements of the Proposal, and build and implement new compliance, audit, fraud monitoring and mitigation programs specific to Massachusetts merchants.
- The Commonwealth will also need to update and/or replace its systems to enable it to receive and reconcile sales tax payments (ranging from just a few cents to thousands of dollars) and large data files submitted by every processor in the Commonwealth, made on behalf of thousands of merchants, on a daily basis, and to reconcile such tax payments with tax payments remitted by merchants separately for cash and check sales.
- The complexity of these hardware and software changes, and the cost, is further impacted by the fact that all of this updated hardware and software must interoperate in a seamless manner, which will require extensive testing and cooperation that will be costly and take a significant period of time, and cannot be accomplished by June 1, 2018.
- The network operating rules and agreements among all of the participants in the payment ecosystem (e.g., agreements between merchants and processors, between merchants and acquirers, between processors and networks, and between networks and acquirers and issuers) will all have to be amended and modified to address the change in each party’s obligations relating to the Proposal.

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<sup>1</sup> The Proposal thus would require merchants to transmit to processors and networks information about a consumer’s purchase that the consumer may prefer not to share, such as the amount spent on alcohol, tobacco products, medication, or various categories of food and other products.

The administrative and legal costs of these changes will be substantial, and likely would take a significant period of time to accomplish.

Second, the Proposal will convert a relatively simple, straightforward system in which the party that has the legal obligation to remit the sales taxes to the Commonwealth (the merchant) actually makes the tax payments, into a much more complex system in which third party processors must remit taxes on behalf of thousands of parties at different times, creating a burdensome system for merchants, processors, networks, card issuers and the DOR. This methodology effectively shifts some of the risks associated with the tax payments from the merchants to the payment processors and other third parties, which may result in additional costs being passed on to merchants (and consumers). Rather than simplifying the process, the proposal will make tax collection more complex and expensive.

Third, the Proposal will not affect the payment of sales taxes on goods and services paid in cash or by check. Thus, merchants who accept cash and checks will now have to maintain dual tax remittance methodologies – one for taxes on sales paid by cash or check, and one for taxes on sales paid by card. As a result, merchants will not see any benefit from the accelerated sales tax remittance by payment processors, and in fact will face additional burdens of reconciling two separate sales tax remittance processes to ensure that they are in full compliance with their tax obligations. Similarly, the Commonwealth would have to manage two separate systems for receiving tax payments – the existing system for taxes on cash and check sales, and a new system that does not yet exist for receiving accelerated sales tax remittance payments from processors.

Fourth, the Proposal poses a number of additional challenges, for which solutions are either not readily available, or which would benefit from a longer period of study. These include:

- Handling of disputed transactions and returns, including how taxes on such transactions will be refunded, responsibility for reconciling records of merchants, processors and the Commonwealth, and liability.
- Handling of gift card and split tender transactions.
- Tracking tax amounts by merchant, required documentation, and resolution of disputes among merchants, processors and the Commonwealth.
- Allocation of liability among merchants, payment processors and others for system or other errors resulting in discrepancies of the sales tax amount between the merchant and payment processor.
- Handling of transactions in the Commonwealth that may not be subject to Massachusetts sales tax, such as purchases that will be shipped to other states.
- Handling of claims by a purchaser that it is tax exempt.

Fifth, the Proposal would disproportionately impact Massachusetts merchants, because every Massachusetts merchant, regardless of size, type of business, or location, would incur the costs described above, whereas their counterparts in other states would not be required to incur such costs. This, in turn, may lead to higher prices for Massachusetts consumers as merchants attempt to recover their increased costs.

Sixth, the Proposal will result in little or no benefit to the Commonwealth. The total tax revenues received by the Commonwealth will not change. There might be an initial, one-time revenue increase from the so-

called “float” of receiving some tax payments on an accelerated basis, but this benefit would not be ongoing and would, we believe, pale in comparison to the increased costs of implementing this system.

Finally, no other state has implemented a system like required by the Proposal, and Connecticut rejected a similar system after its Department of Revenue determined that it would not be cost-effective. In addition to not being cost-effective in its own right, if the Proposal were implemented it would mean that merchants, processors and networks would have to implement and maintain a separate interconnected system for use only in Massachusetts, further adding to the cost and burden of implementing the Proposal.

\* \* \*

Mastercard appreciates the opportunity to provide these comments. If you have any questions regarding our comments, please do not hesitate to contact the undersigned at (914) 249-6637 or by email at [patrick.dwyer@mastercard.com](mailto:patrick.dwyer@mastercard.com) or our counsel in this matter at Sidley Austin LLP, Joel Feinberg, at (202) 736-8473.

Sincerely,



Patrick Dwyer  
Director  
State Public Policy, US Markets

cc: Joel Feinberg

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Next submitted item begins on the following page



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 1<sup>st</sup> of 2018) makes the change infeasible, if not impossible. Implementation cannot begin until the DOR completes its November 1<sup>st</sup> 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". The signature is written in black ink and is positioned below the word "Sincerely,".

Eileen McAnney  
President

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Next submitted item begins on the following page



**New England Cable & Telecommunications Association, Inc.**  
**Ten Forbes Road • Suite 440W • Braintree, MA 02184**  
**TEL: 781.843.3418 • FAX: 781.849.6267**

*New England Cable & Telecommunications Association, Inc.*

September 27, 2017

Christopher Harding, Commissioner  
Department of Revenue  
Commonwealth of Massachusetts  
100 Cambridge Street, 8<sup>th</sup> Floor  
Boston, MA 02114

Dear Commissioner Harding:

The New England Cable and Telecommunications Association (“NECTA”) strongly urges the Department of Revenue (“Department”) to reject the adoption of the one-time “accelerated sales tax” collection as proposed in section 94 of the 2017-18 state budget legislation. The costs and burdens of implementing this system for our members and similarly structured service providers far outweigh the one-time benefit to the Department. Our members generate tens of millions of dollars in annual taxes to the Commonwealth. We do not believe that a one-time implementation of such a complicated collection practice for an acceleration of 20 days is worth the disruption and cost to service providers in Massachusetts.

As part of a long standing and proven practice, service providers such as our member companies’ billing systems charge customers in advance of the delivery of service. There are different dates of collections depending on a customer’s choice of payment and service period. To accommodate the one-time collection of sales taxes for the nearly 2 million customers served by NECTA member companies would require immense investment and overhaul of existing billing systems to comply with the unrealistic deadline of this proposal, a cost in time and money that is impractical for such a small one-time acceleration. Further, even if the re-engineering of systems were possible and feasible, NECTA members and similarly structured service providers would have to coordinate the proposed accelerated payments to accommodate changes in the collection and remittance that are done as part of the normal course of sales tax compliance. This adds yet another layer of burden and encumbrance and makes this one-time acceleration impractical.

Finally, there are several other challenges regarding the implementation of Section 94 including:

- Potential conflicts with federal law regulating cable operators and customer confidentiality;
- Reconciliation concerns due to enterprise size, scope and legal structures;

- Audit risk;
- Software and systems concerns; and
- Data storage.

We would be happy to coordinate a meeting with the Department and our members to discuss these challenges.

NECTA member companies are among the major corporate taxpayers in the Commonwealth. We believe in sensible, clear and fair tax policies. Further, we caution policy makers about seemingly simple administrative tax law changes that do not support economic development principles or that increase the cost of doing business in Massachusetts. Section 94 is harmful to service providers and the one-time, short term benefits to the Commonwealth do not merit the disruption and cost compliance would demand. NECTA urges the Department to reject the adoption of Section 94, “accelerated sales tax” collection.

Sincerely,

A handwritten signature in black ink that reads "Paul R. Cianelli". The signature is written in a cursive style with a large, looping initial "P".

Paul R. Cianelli  
President

Cc: Kevin Brown, General Counsel

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Next submitted item begins on the following page

**From:** Bill Rennie <brennie@retailersma.org>  
**Sent:** Friday, September 29, 2017 11:58 AM  
**To:** DOR LEGL Rules and Regs  
**Subject:** DOR request for input on accelerated sales tax remittance



**Comments of the Retailers Association of Massachusetts**

**Bill Rennie, Vice President**

**September 29, 2017**

**Re: DOR request for input regarding methods to effectuate accelerated sales tax remittance**

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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 the membership of RAM, I respectfully submit the following comments in response to the Department’s solicitation for public input on the potential to implement methods to effectuate accelerated sales tax remittance, and the determination of whether or not such methodology is cost-effective to implement before June 1, 2018.

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 hundreds of 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 thirteen months of collections into twelve months.

One of the questions the Department sought feedback on was relative to “established industry practices.” Because no jurisdiction requires real time sales tax remittance, there are no established industry practices. 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 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.

**To provide further feedback, we asked our members to specifically look at the costs that would be incurred should the state choose to go down this path. A selection of those raw responses has been included (anonymously) at the end of these comments.**

In closing, we do not believe there is any cost effective way to implement accelerated or “real time” sales tax collection in the Commonwealth, and we urge the Department to reject this proposal.

Thank you.

Additional RAM Member comments:

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· Size of company; **\$1.5B**

- Estimate of cost for your company to comply with a state requirement for daily sales tax remittance by third-party payment processors; **>\$1m (\$\$ that would be better spent growing topline revenue that generates jobs and more taxes)**
- Costs for preparing your systems to interface with the information systems used by retailers, banks, and payment processors; **>\$1m**
- Costs for reconciling tax returns that include taxes remitted from customers who pay by check or payment instruments other than credit cards with real time remittances from customers who pay with credit cards; **\$100k (included above)**
- Costs for setting up processes to deal with bad debt, refunds, and split-tender transactions; **\$100k (included above)**
- Costs for creating an audit trail to substantiate that taxes have been remitted on credit card transactions; **\$100k (included above)**
- Costs for other accounting or enterprise system changes that might be necessary to implement the proposed daily sales tax collection system; and **Costs included above – virtually all front-end systems would need to be configured (point of sale, e-comm, sales tax platform, ERP, etc.) – this involves a coordinated effort working with multiple third party providers who lack expertise in sales tax. Highly unlikely that systems could be configured before June 1, 2018 under any scenario.**

**Other concerns:**

- **MA tax holiday is not announced in a timely manner (typically it is announced 2-3 days before the holiday) and would need to be codified to help Retailers adjust remittance logic.**
- **How would returned sales tax be handled? Returns of merchandise are complicated in MA due to the 90-day/non-receipt rule.**
- **How would send sales be handled? (Ex – a MA store sends an item to CT and collects CT tax: MA shouldn't get that tax).**
- **Would MA implement a vendor discount to offset the significant compliance costs/administrative burden?**
- **What is the perceived benefit of this legislation other than a 1-time acceleration in cash-flow? If the perceived benefit is fraud deterrence, the focus should be on cash and check transactions where that fraud more likely exists.**

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**We have one store, independent grocer in the Greater Boston area.**

- Preparing your systems to interface with the information systems used by retailers, banks, and payment processors; **\$1,000/lane??? We have 14 lanes.**
- Reconciling tax returns that include taxes remitted from customers who pay by check or payment instruments other than credit cards with real time remittances from customers who pay with credit cards; **n/a.**
- Setting up processes to deal with bad debt, refunds, and split-tender transactions; **n/a**
- Creating an audit trail to substantiate that taxes have been remitted on credit card transactions; **\$2-3,000/YR.**

- Other accounting or enterprise system changes that might be necessary to implement the proposed daily sales tax collection system; and \$2,500??
- Any other relevant costs not listed above. Daily labor to record the daily total & process payment. \$50/day.
  - Fraud?? Many business allow only one person to disburse funds. What if that person is on vacation? Or sick? Or, if they do find another person – it opens the risk for fraud. A DAILY collection is a real burden for small businesses.

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We run roughly \$4.5B in sales. After talking to our IT & Finance departments, as well as our 3<sup>rd</sup> party compliance partners, we think it would cost about \$2M for us to get our systems and processes up to speed to be able to handle daily sales tax remittances for MA. Most of that would be systems related, with about \$500,000 of the total cost in additional headcount that would need to be added and increased compliance costs to 3<sup>rd</sup> party providers.

Thanks,

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We have yearly sales of \$5.7 billion and collect \$39 million in sales tax.

Feedback on standard industry practices:

Our stores are highly automated with complex software that records sales on an item basis; payments can be cash, EBT, and credit/debit card; and in some cases a combination of all categories. Significant changes to the preexisting software would be needed to capture the sales tax collected field for credit/debit card transactions, which is currently not broken out to the third party processor today.

The Massachusetts statute of limitations is three years and vendors are required to store data transactions related to business activity. This storage requirement will increase due to the extra data transfers to third party payment processors.

Retailers are always vulnerable to computer hackers. Stores spend large sums of money to protect data and sending more data to third party payment processors increases the data privacy risk.

Third party processors charge retailers a processing fee (generally 1%-3%) for processing each credit/debit card transaction. Since the sales tax collected will not be processed and returned to the retailers the processing fee will be reduced. In addition there is an inter-change fee for credit/debit card transactions, but as of now, we are unable to determine what impact that would have on retailers.

New procedures would have to be implemented to handle refunds on taxable products that have already been processed by the third party processor. Special modifications would be needed for split transactions that have credit/debit cards and cash and/or EBT tenders. Meals tax collected would have to be segregated and handled differently both by the retailers and third party processors. Again, more costly modifications to software and procedures would be necessary with this change.

Additional professional accounting time will be needed by retailers in the back office (sales audit) to reconcile the credit/debit card transactions net of sales tax and for sales tax compliance reconciliations of sales tax charged, but transferred to a third party processor. The State of Massachusetts will also incur additional audit time verifying tax transfers which could have been spent investigating tax noncompliance.

Currently, Chapter 64G states a return must be filed by the vendor. The vendor is responsible for remitting the sales tax. Would this proposed change, therefore, make the third party payment processor the vendor for sales tax purposes and would that “vendor” then inherit all the audit risk associated with being a vendor?

This change will cost retailers and third party payment processors significant costs to implement as well as yearly costs to maintain this process. This change will only provide the State of Massachusetts a one-time cash flow increase yet not add any incremental revenue. This is very poor tax policy.

Estimated costs for us to comply with daily sales tax remittances:

Hardware/Software Modifications  
IT Support \$1.8 M

Accounting Support:

Changing procedures for bd, refunds and split-tender transactions \$360K  
Creating new sales audit reports and reconciling general ledger accounts

Sales Tax Support:

Changing procedures for the MA sales tax return \$360K  
Create new download reports for sales tax change  
Reconciling reports for the tax returns and general ledger  
Create new audit detail report to substantiate sales tax have been remitted on credit card activity  
Prepare for audit defense on credit card activity

(Footnote: Accounting and Sales Tax Support costs include one FTE including average salary and benefits.)

SUMMARY:

Estimated <u>Implementation Costs</u>	Estimated <u>Yearly Maintenance Costs</u>
<b>\$2.52M</b>	<b>\$252K</b>

(Footnote: Yearly maintenance costs will be incurred to monitor software updates and reconcile activity, etc.)

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- Size of company; **\$5.3B**
  - Estimate of cost for your company to comply with a state requirement for daily sales tax remittance by third-party payment processors; **\$40K (increase in annual service fees)**
  - Costs for preparing your systems to interface with the information systems used by retailers, banks, and payment processors; **\$500K**
  - Costs for reconciling tax returns that include taxes remitted from customers who pay by check or payment instruments other than credit cards with real time remittances from customers who pay with credit cards; **\$20K**
  - Costs for setting up processes to deal with bad debt, refunds, and split-tender transactions; **\$300K**
  - Costs for creating an audit trail to substantiate that taxes have been remitted on credit card transactions; **\$50K**
  - Costs for other accounting or enterprise system changes that might be necessary to implement the proposed daily sales tax collection system; and **\$350K**
- 
-

- Size of company - **approx. \$50 million annual store sales in MA**
- Estimate of cost for your company to comply with a state requirement for daily sales tax remittance by third-party payment processors - **See summary below**
- Costs for preparing your systems to interface with the information systems used by retailers, banks, and payment processors - **See summary**
- Costs for reconciling tax returns that include taxes remitted from customers who pay by check or payment instruments other than credit cards with real time remittances from customers who pay with credit cards - **See summary**
- Costs for setting up processes to deal with bad debt, refunds, and split-tender transactions - **See summary**
- Costs for creating an audit trail to substantiate that taxes have been remitted on credit card transactions; **See summary**
- Costs for other accounting or enterprise system changes that might be necessary to implement the proposed daily sales tax collection system **See summary**

**Summary of estimated costs to implement:**

IT	-	\$40,000 (initial)
Annual:		
IT	-	12,000
Treasury	-	12,000
Sales Audit	-	15,000
Accounting	-	6,000
Tax	-	18,000
Total Annual	-	\$ 63,000

- Any other relevant costs not listed above.

Our MA stores sales include inter-state commerce, which are therefore, not subject to MA sales tax. How will that be handled under the real time remittance?

How will exempt sales be handled? How about internet sales? and cash or check sales?

These proposed changes create inherent risks within our complex payment systems that have the real potential to adversely impact operations and create business disruptions. While the early estimates for these changes would burden our company for tens and tens of thousands of additional costs. Potential payment systems disruptions resulting from these types of modifications could be within the ranges of hundreds of thousands of dollars.

Costs to modify and maintain our payment and remittance systems are passed onto our consumers in the form of pricing increases for goods. The proposed changes will create significant additional costs for our company and result in higher prices for our consumers if passed.

William C. Rennie  
 Vice President  
 Retailers Association of Massachusetts  
 18 Tremont Street, Suite 810

Boston, MA 02108  
Ph: (617) 523-1900 ext. 110  
Fax: (617) 523-4321  
[brennie@retailersma.org](mailto:brennie@retailersma.org)  
[www.retailersma.org](http://www.retailersma.org)

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Next submitted item begins on the following page



September 29, 2017

**Via Electronic Submission:** [rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us)

The Honorable Christopher C. Harding  
Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street, 8<sup>th</sup> Floor  
Boston, MA 02114

**Re: Regulations to Implement Methods to Effectuate Accelerated Sales Tax Remittance**

Dear Commissioner Harding:

Santander Bank, N.A. (“SBNA”) appreciates the opportunity to respond to the request by the Massachusetts Department of Revenue for input on the cost effectiveness of effectuating accelerated sales tax remittance in the Commonwealth.

SBNA is one of the country’s largest retail and commercial banks with more than \$83 billion in assets. SBNA is a subsidiary of Boston-based Santander Holdings USA, Inc., Banco Santander’s intermediate holding company in the U.S. SBNA’s 9,500 employees, more than 650 branches, 2,100 ATMs, and 2.1 million customers are principally located across eight states in the northeast corridor. With its corporate offices in Boston, SBNA has approximately 3,200 employees and 220 branch locations in Massachusetts.

As noted in the Department’s request for input, and pursuant to section 94 of House Bill 3800, the Commissioner is required to determine whether it is cost-effective to implement a requirement for third party payment processors to collect and remit sales tax from retailers, on an accelerated basis, on all third party credit and debit card purchases, by June 1, 2018. In this letter, we discuss the reasons why such a proposal is not cost-effective and should not be pursued by the Commonwealth.

**Impact to Massachusetts Industry and Consumers**

Currently, retailers collect and remit all sales tax to the state. This process would continue under the state’s proposal for all purchases made with cash or check. However, under the state’s proposal, a new electronic payment system process would need to be developed for all purchases made using a third party credit or debit card. The build out and maintenance of such a system would have substantial initial and recurring costs for retailers, payment processors, card issuers, payment networks, and ultimately consumers.

In addition, because accelerated or “real-time” sales tax remittance does not exist in any other state, the adoption of such a requirement would place Massachusetts retailers, card companies, and processors at a cost disadvantage.

### **SBNA Impact**

SBNA is an active issuer of debit and credit card products, and also operates as its own card processor. As a result of these dual roles, SBNA would be uniquely impacted by the proposed accelerated sales tax collection and remittance requirement.

Compliance with the state's proposal would require SBNA to develop new capabilities within its proprietary processing software to distinguish between, and separately process, the sales tax and purchase amounts for each debit or credit card transaction. Such a change would require coordination from local software developers in the U.S. and across the Santander Group. SBNA would also be required to develop and maintain new reporting, controls, payment infrastructure, and capabilities in order to process the daily remittance of sales tax to the Department of Revenue.

As is the case with any technology rollout of this size and scope, substantial new Bank resources would need to be committed to internal training and compliance, vendor management, and contract revision. Also, in order to meet the proposed June 1, 2018 implementation deadline, this project would have to be prioritized within the Bank at the expense of other regulatory, technology, innovation, and growth initiatives.

### **Recommendation**

As consumers move increasingly toward electronic transactions, SBNA appreciates state leaders' intention to improve sales tax compliance and economic forecasting by exploring options to "modernize" the third-party payment system. However, given the fundamental change to the existing electronic payments system that would be required to accommodate the state's proposal – including overcoming significant cost, complexity, and implementation challenges across the entire electronic payments chain in the span of less than seven months – we believe the proposal is not cost-effective and urge the Department to find as such in its final determination to the Legislature.

SBNA appreciates the Department's willingness to engage in a dialogue with the business community on this important issue, and we thank you in advance for your consideration of the above comments. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact me at (617) 646-2500.

Sincerely,



Timothy W. Sweeney  
Director of State and Local Government Relations  
Santander Holdings USA, Inc.

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Next submitted item begins on the following page

September 28, 2017

Mr. Christopher Harding, Commissioner  
Department of Revenue  
100 Cambridge Street, 8<sup>th</sup> Floor  
Boston, MA 02114

Re: Opposition to Sales Tax Acceleration Provision in proposed FY2018 Budget

Dear Commissioner:

Staples, Inc. (“Staples”) respectfully submits this correspondence to communicate its strong opposition to the inclusion of a sales tax acceleration provision (the “STAP”) in the proposed FY2018 budget. The implementation of the STAP is not cost effective as it will impose excessive additional costs to all Massachusetts retailers, financial institutions, and credit card processors that are involved with the process of selling taxable items, on credit, in Massachusetts. As an example, for Staples alone, if implemented, the STAP would result in a forecasted \$3.25M additional expense in-order-to comply with this proposed sales tax collection requirement.

In addition to the staggering expense and resources that will be required to implement such a proposal (outlined below), the STAP will also expose retailers to increased liabilities as it introduces a 3<sup>rd</sup> party into the trustee relationship existing between the retailer and the Commonwealth of Massachusetts. As noted, the STAP will significantly increase costs to banks and credit card companies, which costs will ultimately be passed on to retailers and the end consumer. Finally, the banks and credit card companies, retailers and the MDOR will bear the financial and organizational burden of hiring additional resources to manage this new process.

Most importantly, the STAP is simply not necessary. Massachusetts could accomplish the same result by implementing a “pre-payment structure” which would be far less intrusive, more cost effective, and easier to implement, which would result in Massachusetts receiving its sales tax revenues much quicker.

### **Cost Effectiveness**

Like many complex businesses, Staples has several business units and subsidiaries that operate on multiple ordering and point of sale systems. It is important to recognize that any tax collection changes will need to be adopted by several systems even within the same company, thereby multiplying the work effort and expense.

As understood, the STAP will require systems to separately report only Massachusetts sales tax to the banks and credit card companies. Further, companies will need to modify their internal books and records to include a separate account to track Massachusetts credit card sales tax, in addition to the cash, gift card Massachusetts sales tax. Examples of how the STAP will increase expenses to various Staples' business units is set forth below and is indicative of how this provision will adversely impact businesses across the Commonwealth.

### **Delivery Business**

In addition to the internal accounting changes, the remittance of sales tax directly to the banks and credit card companies will require additional systems work on credit authorization, credit card settlement, and end-of-day sales posting. Significant testing will be needed to ensure that no other parts of the system are affected by the Massachusetts-only changes. This work effort and expense is forecasted to take 8-12 months at an anticipated cost of \$1M.

### **.Com Business**

In addition to the internal accounting changes, the remittance of sales tax directly to the banks and credit card companies will require work on invoicing logic, Enterprise Service Bus mapping, changes to the financial posting service, settlement service and financial service automation.

Significant testing will be needed to ensure that no other parts of the system are affected by the Massachusetts only changes. This work effort and expense is forecasted to take 8-12 months at an anticipated cost of \$1M.

### **Retail Business**

In addition to the internal accounting changes, it is anticipated that the implementation will force a change to the authorization process along with cross functional groups & bank recertification. Not including resources and expenses as outlined above, this effort is forecasted to take 8-12 months at an anticipated cost of \$800K.

In addition, our retail locations frequently take multiple tenders for retail transactions. As such, a proration functionality may need to be developed. This effort is forecasted to take 6-8 months at an anticipated cost of \$350K.

### **Corporate IT**

Corporate IT implementations to facilitate the change across all business units is forecasted to take 6 months at an anticipated cost of \$250K.

**Copy & Print**

Our self-serve copy and print machines in our retail locations utilize gift cards that run through a 3<sup>rd</sup> party authorization and settlement process. If affected, the logic in the stand-alone key-pads will need to be modified. Forecasted 6-month job at an anticipated cost of \$100K.

Please contact me at (508) 253-5439 with any questions.

Best regards.

Sincerely,

  
James McGowan

CC: Mr. Bill McNamara, MDOR, Chief of Staff  
Mr. Kevin Brown, MDOR, General Counsel  
Mr. Jason Ellis, Staples, Senior Company Counsel

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Next submitted item begins on the following page



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# STRI

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**STATE TAX RESEARCH INSTITUTE**

**DAILY SALES TAX COLLECTION  
SYSTEM COULD COST  
MASSACHUSETTS BUSINESSES \$1.2  
BILLION**

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*Prepared by*

Scott Mackey  
*Economist and Managing Partner  
Leonine Public Affairs*

September 2017

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*Scott Mackey is an Economist and Managing Partner at Leonine Public Affairs in Montpelier, Vermont. He is an expert on state and local tax policy, focusing primarily on the wireless telecommunications industry where he works with a coalition of wireless telecommunications providers to publicize the tax burden on wireless consumers and end discriminatory tax treatment of wireless network investment. In this capacity, he has testified before the United States Congress (most recently in April 2011) and in numerous state legislatures on tax issues.*

*His studies on the impact of taxes on wireless consumers have been featured in USA Today, the Wall Street Journal, 20/20, and dozens of newspapers across the country.*

*Prior to joining Leonine Public Affairs, Mr. Mackey was Chief Economist at the National Conference of State Legislatures (NCSL) in Denver. He staffed the NCSL Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. This task force developed model legislation passed by legislatures in 17 states that created the "Streamlined Sales Tax Project." The Task Force also developed model principles for state telecommunications tax reform that were unanimously endorsed by delegates at the 2000 NCSL annual meeting and are still NCSL policy today.*

*He earned his undergraduate degree in Environmental Economics at Middlebury College and his MBA from the University of Colorado.*

## EXECUTIVE SUMMARY

This report estimates the cost to Massachusetts businesses of implementing a daily sales tax collection system by third party payment processors. Sections 94 and 95 of House Bill 3800, the Massachusetts state budget, direct the Commissioner of Revenue to promulgate regulations to accelerate sales tax remittance by requiring third party payment processors to remit sales taxes at substantially the same time that any non-tax amounts are paid (usually on a daily basis) on transactions using a "...credit card, debit card, or similar payment arrangements..." Implementation of such a system would require significant changes in the existing payment processing systems, requiring retailers, financial institutions, and payment processors to make substantial investments in new technology and personnel.

A daily sales tax collection system is not currently in place in any state, so there is some uncertainty about exactly what such a system would look like and what would be required to implement it. The estimates in this report are based on information collected from over 20 potentially impacted businesses by the State Tax Research Institute (STRI), as well as discussions with information technology professionals from financial institutions, payment processors, and small and large retailers. The cost estimates from these companies are based on experiences with other major systems integration projects involving both in-house and outsourced programming expertise.

The study also incorporates publicly available data on the number and size of retailers and

payment processors operating in Massachusetts. There are over 70,000 retail establishments in Massachusetts. In addition, there are over 700 third party payment processors operating nationally that would be affected by the proposed system.<sup>1</sup>

This study finds that implementing a daily sales tax collection system would cost businesses about \$1.2 billion in one-time, non-recurring costs and an additional \$28 million in annual recurring costs. This does not include the cost of integrating the systems of roughly 8,000 card-issuing financial institutions because the author lacked data to develop cost estimates for this sector. While these are very high-level estimates based on the best data available (albeit limited due to the short time frame provided), they nonetheless indicate that an accelerated sales tax remittance system would impose a significant financial burden on businesses operating in Massachusetts.

## RETAILERS

There are over 70,000 retailers operating in Massachusetts. Appendix A identifies these retailers by their North American Industry Classification System (NAICS) codes and segregates these retailers by employee size. A conservative estimate suggests that 95% of small retailers accept credit or debit card payments and are therefore connected to the payment processing system. Many retailers have recently incurred the cost of updating their POS hardware to accept EMV reader systems, the global standard that uses a chip reader to authenticate card transactions. Unfortunately, some of these small retailers

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<sup>1</sup> See, e.g., the Visa Global Registry of Service Providers, available at <http://www.visa.com/splisting/>.

could be required to upgrade their hardware again to implement the daily sales tax collection system. Since there is no existing daily sales tax collection system currently in operation to provide real-world data, it is necessary to make assumptions about how many retailers will need to replace their existing hardware and how many will only need to purchase new software updates to accommodate a new system.

*Small retailers.* For small retailers, this report assumes that 20% of the roughly 72,000 small retailers will need to upgrade their hardware and software at an average cost of \$1,000 per retailer and that 80% will need only software upgrades at an average cost of \$400 per retailer. Small retailers are defined as Massachusetts businesses with fewer than 100 employees. Using this methodology, the estimated cost for the small retail segment is \$35.5 million.

In addition to these direct technology costs, the following additional personnel-related costs were identified by small retailers responding to the STRI survey:

- Reconciling tax returns that include taxes remitted from customers who pay by check, cash, or payment instruments other than credit or debit cards with real time remittances from credit card payments;
- Setting up processes to deal with bad debt, refunds, and split-tender transactions;
- Creating an audit trail to substantiate that taxes have been remitted on credit card transactions;

- Daily accounting of third party payments (instead of current monthly accounting); and
- Preventing fraud, as many small businesses have only one person to reconcile tax payments – daily collection requires someone to be monitoring remittances daily.

Since many of these retailers are too small to have an employee dedicated to tax compliance, surveys suggest that the system will require owners to work more hours to comply with the new system. These recurring annual costs are not accounted for in this report.

*Medium sized retailers.* Medium sized retailers are defined as businesses with 100 to 499 Massachusetts employees. These businesses are likely to have multiple locations and use payment systems that are integrated with financial accounting, inventory, and enterprise systems. There are approximately 1,600 of these retailers operating in Massachusetts. Due to the lack of survey data from these firms, it is very difficult to estimate with precision the cost impact for these businesses. However, based on very limited survey information, this study assumes that the average estimated one-time cost of compliance would be \$35,000 per retailer in non-recurring costs and \$3,500 in annual recurring costs. The estimated total costs for this segment are \$54.8 million in one-time costs and \$5.5 million in recurring costs.

*Large retailers.* STRI received the most robust of its survey responses from large national retailers operating in Massachusetts, with national sales ranging from \$1.5 billion to \$40 billion nationally and with Massachusetts operations ranging from a single store location to 45 retail locations and e-commerce operations and sales into Massachusetts. This

study defines large retailers as those with 500 or more Massachusetts employees. The estimated average cost of implementing the daily sales tax collection system for large retailers is \$2.0 million in one-time costs and approximately \$100,000 in annual recurring costs. The estimated total costs for the estimated 164 retailers in this category are \$328 million in one-time, non-recurring costs and \$16.4 million in annual recurring costs.

These cost estimates reflect the complexity involved in changing enterprise systems that integrate accounting, tax compliance, and other enterprise system functions. Below is a list of the issues that were identified as cost drivers by large retailers responding to the STRI survey:

- Configuring systems to identify sales tax in batch processing of credit/debit card transactions;
- Reconciling daily remittances with monthly remittances from cash/check/other payment transactions;
- Development of daily tax and finance reports that reconcile with monthly tax and finance reports;
- Changes to month-end statements to reflect withheld sales tax;
- Storing, validating, and reconciling third party payment processor information;
- Training customer service/operations to address refund processing, customer questions regarding tax payments, and related inquiries;
- Creating an audit trail for third party transactions and storing it for 3 years as required under Massachusetts law;
- Ensuring that systems changes support Sarbanes-Oxley compliance;

- Developing systems and training tax compliance staff to account for and document complex transactions such as refunds, bad debt, and split tender transactions;
- Developing systems that reconcile tax liabilities at a customer level instead of at a macro level would significantly increase costs; and
- Most large retailers prohibit any IT projects during the holiday selling period (October through January) that could potentially impact POS systems, which would further compress the timeframe available to implement any systems changes.

In addition to these issues, certain retailers that sell taxable products or services that are billed on a monthly basis face additional challenges. For example, some retailers that bill for taxable services accrue tax liabilities when the service is billed and not when the customer pays the bill. In these instances, there is no current association between the tax remittance and the customer payment date. Under the current methodology, sales tax may be remitted before the company receives payment from the customer, on the same day the company receives payment, or shortly after the company receives payment. It would be very costly and complex to switch from the accrual system for all sales tax remittances to one that reconciles payments between accrual and daily remittance based on the type of payment instrument used, since the company would not know the payment instrument used until the payment is received from the customer.

Finally, the proposal would require adding new interfaces between retailers' point-of-sale systems, payment processors, and financial

institutions. It would also add over 700 payment processors that would be remitting sales taxes directly to the Department of Revenue in addition to the tens of thousands of retailers that are currently remitting under the current system. These new technology interfaces introduce additional opportunities for theft and fraud that may require additional expenditures on data security systems. These potential costs are not quantified in this report.

*Telecommunications Providers.* This report does not include “telecommunications providers” in the category of large retailers because telecommunications providers have separately reported detailed cost estimates to the Commissioner of Revenue. The estimated cost to the four major telecommunications providers operating in Massachusetts is \$96-\$102 million in one-time costs and \$5-6 million in recurring annual costs.<sup>2</sup>

## **PAYMENT PROCESSORS AND FINANCIAL INSTITUTIONS**

As mentioned previously, there are over 700 payment processors and 8,000 card-issuing financial institutions in the United States. Given the size of the Massachusetts market, it is expected that all or substantially all of these entities would be affected by implementation of daily sales tax collection in the Commonwealth. The STRI survey did not include any responses from card-issuing financial institutions, so this report does not include any costs associated with integrating financial institution systems with those of the payment processors.

This estimate is based on data provided by payment processors to STRI on the survey of implementation costs. Some payment processors reported that they based the cost estimates in part on the actual costs incurred in upgrading payment systems to accommodate the EMV chip reader, the global standard for authenticating card transactions. The costs involved in converting systems to EMV are similar to the daily sales tax collection system because they both would change the transaction data flow to accommodate the flow of additional data. In the case of EMV, this involved additional “back end” verification that the card was valid using the data contained in the chip.

In the case of the daily sales tax collection proposal, the technology upgrade requires transmitting additional information from retailers’ POS systems into the card payment system, affecting all parties in the payment network (merchant banks, issuing banks, and processors). Currently, a retail merchant sends only the total cost of the transaction (merchandise plus tax calculated by the point of sale system) through the payment network. Under the daily collection proposal, additional data fields (tax amount and taxpayer ID, at a minimum) would need to be sent through the payment network, requiring additional software.

A second complexity is that the settlement process would involve two entities instead of one. Currently, all revenues are sent to the retailer who is then responsible for paying the collected sales tax to the Department of Revenue. Under the proposed new system,

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<sup>2</sup> Comments of AT&T, Sprint, T-Mobile US, and Verizon on Daily Sales Tax Collection by Third Party Payment Processors, submitted September 28, 2017.

money would flow from the issuing bank to both the retailer selling the taxable item as well as the Department of Revenue. Therefore, the proposed system upgrade would be more complex than the EMV system upgrade.

The following is a partial list of tasks that would be required for payment processors to upgrade their systems to accommodate the proposed daily sales tax collection system:

- Updating the core payment platform to accommodate additional data requirements;
- Updating payment gateways (web, mobile, payment devices) to accommodate additional data requirements;
- Retention of additional data required for remittance, reconciliation, and audit requirements;
- Retention of data necessary to process chargebacks and reversals;
- Allowing for daily posting of Massachusetts sales tax to the general ledger or other daily reporting necessary to remit tax;
- Creating a process/interface to send sales tax payments to the Commonwealth;
- Updating reporting templates so merchants could see daily tax remittances;
- Testing of all code updates for core and payment gateways;
- Testing and certification of merchants and merchant systems; and
- In-house staff training to handle tax inquiries from merchants.

The payment processor market is characterized by a handful of major payment processors that

handle the majority of transactions. The cost estimates received by STRI reflect the larger payment processors operating in the marketplace. Those estimates ranged between \$2.6 million on the low end to many multiples of that amount on the high end. While the vast majority of the other payment processors have a much smaller market share in Massachusetts, they would still need to comply with the new daily sales tax remittance rules for all retailers they provide services for in Massachusetts. To be conservative, this report estimates the average cost across the payment processor industry reflecting both the larger and smaller market share companies would be \$1.0 million per entity, or approximately \$700 million in total.

In addition to the substantial costs outlined above, payment processors responding to the STRI survey also expressed serious concerns about the feasibility of meeting the June 1, 2018 implementation deadline. The complexity and risk is magnified by the fact that both payment processors and retailers must simultaneously update their systems and integrate them with those of the card issuing financial institutions. There is a very substantial risk that the system would not be ready by the deadline.

#### **ADDITIONAL COST CONSIDERATIONS**

This report assumes that the costs of implementation would be borne by Massachusetts businesses. It is unclear from the provisions of House Bill 3800 whether a single company would be chosen to set standards for the system, and whether or how that company would be compensated for this service. A potentially significant implementation cost could involve the payment of royalties if a firm asserts that it has patented an idea for

accelerated sales tax remittance. For example, one company asserted at a meeting of the National Conference of State Legislatures it could charge a state a royalty of .25% of the sales tax collected for the use of its idea. If this is a valid assertion, it could be a \$15 million annual cost to the state.<sup>3</sup> This potential cost is not included in the total estimate provided in this report.

### **ASSERTED BENEFITS**

An accelerated sales tax collection system does not result in any new revenue to the Commonwealth. The legislature estimated that the Commonwealth would receive a one-time, \$125 million benefit by accelerating thirteen months of revenue into a twelve-month fiscal period (thus merely shifting revenue recognition and not generating actual new revenue). Some have also asserted that the Commonwealth could potentially receive other benefits. However, the same acceleration of tax collections could be achieved by simply requiring retailers to submit an estimated prepayment, which would not require businesses or the Commonwealth to incur the costs necessary to build new payment systems.

### **CONCLUSION**

The proposed daily sales tax collection system will impose an estimated \$1.2 billion in non-recurring costs on businesses operating in Massachusetts. By type of businesses, these costs are estimated as follows:

- Retailers (excluding telecommunications providers) -- \$418 million

- Telecommunications providers (midpoint) -- \$99 million
- Payment processors -- \$700 million
- TOTAL COSTS -- \$1.22 billion

Additionally, the system will impose nearly \$28 million in annual, recurring costs on businesses operating in the Commonwealth.

As previously noted, there is an important caveat: these are very high-level estimates based on the best data available (albeit limited due to the short time frame). Nonetheless, even after taking into account the limitations of available data, there can be little doubt that an accelerated sales tax remittance system would impose a significant financial burden on businesses operating in Massachusetts. When comparing these estimated costs to a one-time revenue shift that could be accomplished without incurring such costs, it is evident that implementing a daily sales tax collection system is not cost effective.

Further, according to payment processors and retailers with direct experience with major computer system upgrades, the implementation of a daily sales tax remittance system would require a substantial amount of lead time for development, implementation, and testing. Therefore, it is extremely unlikely that a daily sales tax remittance system could be in place by the June 1, 2018, deadline required by the legislature in House Bill 3800. This uncertainty would create significant risk for retailers, payment processors, and the Commonwealth that the systems would not be operational by the statutory deadline.

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<sup>3</sup> National Conference of State Legislatures, Executive Committee Task Force on State and Local Taxation, May 30, 2014, Anchorage, Alaska.

[http://www.ncsl.org/documents/task\\_forces/Alaska\\_TF\\_Summary\\_May30.pdf](http://www.ncsl.org/documents/task_forces/Alaska_TF_Summary_May30.pdf)

Appendix A: Massachusetts Retailers by Category and Number of Employees					
		Retail Establishments			
NAICS	Subsector	Total	Estimated	Estimated	Estimated
		Retail Establishments	1 to 99 Employees	100 to 499 Employees	500 + Employees
441	Motor vehicle and parts dealers	4,687	4,607	79	1
442	Furniture and home furnishings stores	1,920	1,908	12	0
443	Electronics and appliances stores	1,437	1,410	25	2
444	Building material / garden equipment and suppliers	2,149	2,070	77	2
445	Food and beverage stores	6,756	6,312	431	12
446	Health and personal care stores	3,988	3,967	19	1
447	Gasoline stations	2,031	2,031	0	0
448	Clothing and clothing accessories stores	6,151	6,114	34	4
451	Sporting goods, hobby, book and music stores	2,920	2,896	22	1
452	General merchandise stores	1,405	1,249	149	7
453	Miscellaneous store retailers	7,676	7,630	41	5
454	Nonstore retailers	13,213	12,621	466	125
722	Food services and drinking places	19,261	19,049	210	2
	<b>TOTAL</b>	<b>73,594</b>	<b>71,864</b>	<b>1,565</b>	<b>164</b>
Sources: National Retail Federation, Infogroup					
Cost Estimates					
Percent of Sector Accepting Credit Cards			95%	100%	100%
Impacted businesses			68,271	1,565	164
Average Cost Per Sector (non-recurring)		20% hardware	\$1,000	\$35,000	\$2,000,000
		80% software	\$400		
Total estimated cost (non-recurring)			\$35,500,799	\$54,775,000	\$328,000,000
Average Cost Per Sector (recurring)				\$3,500	\$100,000
Total estimated cost (recurring)			\$ -	\$ 5,477,500	\$ 16,400,000
<b>TOTAL COSTS (non-recurring)</b>			<b>\$418,275,799</b>		
<b>TOTAL COSTS (recurring)</b>			<b>\$ 21,877,500</b>		
Source: Author's calculations based on STRI survey data and interviews.					



The State Tax Research Institute (STRI) is a 501 (c)(3) organization established in 2014 to provide educational programs and conduct research designed to enhance public dialogue relating to state and local tax policy. STRI is affiliated with the Council On State Taxation (COST). For more information on STRI, please contact Douglas Lindholm at [dlindholm@cost.org](mailto:dlindholm@cost.org). ©STRI 2017

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Next submitted item begins on the following page

September 29, 2017

Honorable Christopher C. Harding  
Commissioner  
Massachusetts Department of Revenue  
100 Cambridge Street  
P.O. Box 9550  
Boston, MA 02114

Re: "Real Time" Sales Tax Remittance Legislation/Budget Considerations

Dear Commissioner Harding:

Section 94 of House Bill 3800 directs the Department of Revenue to promulgate regulations to "implement methods to effectuate accelerated sales tax remittance" unless implementation of such proposal is not cost effective. It is clear that implementation of such a proposal would not be cost effective.

Synchrony Financial (SYF) is one of the nation's premier consumer financial services companies, becoming a member of the S&P 500 in November 2015 and the Fortune 500 in June 2017. Our roots trace back to 1932, and today we are the largest provider of private label credit cards in the United States based on purchase volume and receivables<sup>1</sup>.

In summary, accelerated sales tax remittance legislation is not cost effective because:

- It will not raise additional revenue for the state – it only accelerates receipts for one month;
- It requires a major systems overhaul for retailers, their payment processors, and credit card companies—resulting in over \$1 billion of one time costs and over \$28 million annual costs for those wanting to continue to do business in the state<sup>2</sup>; and
- Not only will it cost the private sector over \$1 billion to implement, but Massachusetts will need to assess its internal costs to implement a completely new remittance and reconciliation system.

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<sup>1</sup> Source: The Nilson Report (June, 2017, Issue # 1112) - based on 2016 data

<sup>2</sup> Source: State Tax Research Institute (September 2017)

### **No Revenue Will Be Raised**

There is currently an existing structure in place for the remittance of sales tax by merchants. Legislation requiring third party processors to remit sales tax to the state on a daily basis will not raise any additional revenue for the state. Most large retailers currently remit sales tax to the state on a monthly basis. Accelerated sales tax remittance legislation would result in a one-time acceleration of sales tax receipts for a one month period.

Section 95 of HB 3800 provides an alternative to real time sales tax remittance that will achieve the same fiscal result without completely disrupting the payment systems of Massachusetts retailers, their credit card issuers, credit card processors and the Department of Revenue. Section 95 of HB 3800 provides that in the event it is determined that accelerated real time sales tax remittance is not cost effective, retailers will be required to pre pay all sales tax collections for the month of June 2018.

### **How the Credit Card Payment System Works**

In the U.S., there are an estimated ten million merchant locations, more than a dozen payment card networks, hundreds of payment processors, and over 8,000 card-issuing financial institutions.

The infrastructure that facilitates electronic payment transactions must transmit data between these retailers, payment networks, and card issuers, transmitting thousands of transactions per second every hour of every day. Accelerated sales tax remittance legislation would require payment processors to receive a separate tax amount for each debit or credit card transaction and then remit the sales tax to the state. This does not occur today, and would be an operational and technological nightmare for retailers and those who process their payments.

Payment processors and payment networks send and receive authorization messages as single units of code, routing only the necessary information required to authorize a transaction. Because neither payment processors nor payment networks see details around the goods purchased, they have no ability to identify the appropriate sales tax that should be applied to the transaction.

Accelerated sales tax remittance legislation assumes that merchants, processors, payment networks and card issuers could readily change their entire payment system to capture detailed data about each sale to accurately identify sales tax. Thus, changes must be coded, implemented and tested at the retailers' point of sale terminals by payment processors, payment networks and the card-issuing financial institutions. Further, since current contracts between merchants, processors, payment networks, and card issuers contemplate the settlement of whole transactions inclusive of sales tax, all of the contracts between these entities would have to be amended, increasing the burden and expense further.

Even if this could be accomplished, the result will be a complex and burdensome system for the retailers, third-party processors, networks, card issuers and the Department of Revenue. Currently, sales tax is collected and remitted to the state by the retailers. Under an accelerated sales tax remittance process, retailers will charge sales tax, and third party processors will remit the tax to the state requiring the retailers, third party processors and private label credit card companies to reconcile these payments with each other and the state.

While some vendors claim to offer software systems specifically created to allow payment processors to remit sales taxes, no vendor has answered the critical question of who would pay the enormous costs of development, testing, implementation, and maintenance that would fall on merchants and payment systems alike. In addition, the cost to the Massachusetts Department of Revenue may be significant as it will have to modify its internal systems to collect revenue from third party processors and to change the sales tax reconciliation process.

#### **This Concept Has Been Universally Rejected**

The bipartisan National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation carefully examined "real-time" remittance of sales taxes by parties other than the taxpayer and concluded "...a 'real time' sales tax process is not a solution." It is important to note that Connecticut has repeatedly considered and rejected accelerated sales tax remittance legislation as well.

Based on SYF's internal review, it will take our company a minimum of two years and cost \$5M -\$10M to change its payment system. SYF currently settles credit card receipts with our retailers on a daily basis. We settle all credit card transactions, including sales tax. The retailers then remit the sales tax to the Department of Revenue. Massachusetts's proposal would require SYF to overhaul its entire payment system and settle with not only its retailers but credit card processors daily. This is in addition to the time and cost incurred by our retailers and payment processors to change their internal systems. SYF also does not know whether it is even possible for these companies to make the changes needed to implement an accelerated sales tax remittance process. There will be additional time and cost related to working with our retailers and payment processors to reconcile these remittances on an ongoing basis. There is no reason to impose these costs on those of us who do business in Massachusetts, especially since there would be no net fiscal impact.

The same fiscal results can be achieved by the Massachusetts Department of Revenue by simply requiring retailers to pre pay their sales tax as outlined in Section 95 of HB 3800.

For these reasons, we respectfully request that you determine that the implementation of accelerated sales tax remittance is not cost effective. Thank you for your consideration.

Sincerely,



Michele Johnson  
Senior Vice President, Government Affairs

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Next submitted item begins on the following page

September 29, 2017

Massachusetts Department of Revenue  
By email to [rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us)

### **Anticipated Impacts of Accelerated MA Sales Tax Remittance**

Legislation enacted in July of this year requires the Commissioner of Revenue to promulgate regulations to “implement methods to effectuate accelerated sales tax remittance.” That legislation requires the Commissioner to determine whether such methodology is cost effective to implement before June 1, 2018. To assist with the determination, the Commissioner seeks public input.

The TJX Companies, Inc. (TJX) is the leading off-price apparel and home fashions retailer in the United States and worldwide with over 3,800 stores. Our T.J. Maxx, Marshalls, HomeGoods, Sierra Trading Post and Homesense chains have over 138 stores in Massachusetts.

We believe that the proposed implementation of an accelerated remittance of Massachusetts sales tax would not be cost effective and would adversely impact business operations in Massachusetts. Some of the potential issues and costs that TJX believes at this time could result, include:

- The significant costs and time associated with IT, Point of Sale (POS) and financial accounting changes necessary to (1) implement separate accounting by tender type in order to handle split tender transactions and (2) separate sales tax from sales amounts in order to comply with the requirements of a single state.
- Costs and time needed for implementing appropriate data privacy and data security processes and controls around the extensive customer information that would need to be provided to third party processors.
- Costs and time of negotiating new contracts with third party processors that would be necessary to reflect their increased responsibilities under accelerated remittance.
- Potential increase in third party processor costs due to the significant burden that identifying and remitting sales tax on behalf of individual retailers would create.

- Increased costs surrounding audits and resolving discrepancies that may arise with third party processors. Retailers would be responsible for audits even though there will be more than one party remitting the sales tax due to Massachusetts.
- Costs of increased staffing that would be necessary to reconcile, monitor and communicate with the third party processor regarding the daily remittance on TJX's behalf.
- Potential premium charges associated with expediting implementation of the necessary work referred to above so as to be completed and operational by June 2018.

Given the issues and costs highlighted above, implementation of an accelerated remittance of Massachusetts sales tax would not in our view be cost effective for Massachusetts retailers.

Thank you for your consideration in this matter.

Sincerely,

David Averill  
SVP Corporate Tax  
The TJX Companies, Inc.

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www.tsys.com

September 29, 2017

**VIA EMAIL TO: [rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us)**

The Honorable Christopher C. Harding  
Commissioner  
Massachusetts Department of Revenue

RE: Accelerated Sales Tax Remittance – Request for Information

Dear Commissioner Harding:

Total System Services (commonly referred to as TSYS) is pleased to provide this letter in response to the Massachusetts Department of Revenue’s Request for Information concerning Section 94 of House Bill 3800. TSYS provides payment processing, merchant, and related payment services to financial and nonfinancial institutions in the United States and internationally.

Pursuant to House Bill 3800, the Commissioner of the Massachusetts Department of Revenue is required to promulgate regulations “to implement methods to effectuate accelerated sales tax remittance.” The legislation further requires the Commissioner to determine whether the methodology is cost-effective to implement ***before June 1, 2018***. To assist with the determination, the Commissioner has requested information as to (i) established industry practices, (ii) the technological feasibility of implementation, and (iii) potential financial impact on consumers and businesses.

i. Established Industry Practices.

To TSYS’ knowledge, there is no established industry practice whereby payment processors remit sales tax to state revenue commissioners based on tax amounts identified at the point of sale and transmitted by means of the existing payments infrastructure.

ii. Technological Feasibility.

TSYS is a member of both the Electronic Transactions Association (“ETA”) and the Card Coalition. Both organizations have submitted comprehensive responses to the Commissioner’s Request for Information. Rather than simply repeat the responses provided by the ETA and the Card Coalition, TSYS respectfully directs the Commissioner to the responses submitted on behalf of those entities and incorporates them herein by reference.

To be clear, however, it is TSYS' position that there are significant technological and logistical challenges to the implementation of the accelerated sales tax remittance proposal set forth in HB 3800.

iii. Potential Financial Impact on Consumers and Businesses.

The planning, development, testing and implementation of a same-day sales tax remittance program in the Commonwealth of Massachusetts would take years to implement, would be extremely expensive, would be exceedingly complex, and would prove unnecessarily disruptive to ongoing commercial relationships in the Commonwealth. Moreover, such a program would provide little, if any, benefit to the taxpayers of Massachusetts. To the contrary, the significant cost of implementing such a program would be paid – directly and indirectly – by businesses and consumers throughout the Commonwealth. As noted in the comment letter filed on behalf of the Council On State Taxation ("COST"), "the proposed accelerated sales tax remittance program could cost businesses operating in Massachusetts \$1.22 billion in up-front costs and an additional \$28 million in annual recurring costs."

Sincerely,

A handwritten signature in black ink, appearing to read "Deron Hicks", written over a circular stamp or seal.

Deron Hicks

Associate General Counsel

DH:kn

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**VIA EMAIL:** [rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us)

September 29, 2017

The Honorable Christopher Harding  
Commissioner of Revenue  
Commonwealth of Massachusetts  
100 Cambridge Street  
Boston, MA 02114

Dear Commissioner Harding:

In connection with the Sections 94 and 95 of the Massachusetts budget and the Massachusetts Department of Revenue (“DOR” or “Department”) request for information (“RFI”) regarding the cost effectiveness of accelerated sales tax remittance by payment processors. Vantiv is pleased to provide the following comments to assist the Department evaluation of this proposal.

### **Summary**

The payments ecosystem has been developed over the last 50 years for the purpose of quickly, safely and accurately processing and settling payment card transactions. The proposed sales tax remittance process would require the redesign of many complex systems amongst and between a wide variety of interrelated companies, costing tens of millions of dollars without having a significant impact on revenue, fraud or compliance. It is simply not a cost effective sales tax collection mechanism for Massachusetts merchants, payment processors or the Commonwealth.

Vantiv strongly recommends that the Commissioner certify by November 1, 2017 that implementation of the proposal is not cost-effective and cannot be achieved within the proposed timeframe of June 1, 2018.

### **About Vantiv**

For nearly 50 years, Vantiv has been at the vanguard of ensuring safe and secure access by our merchants and financial institutions customers to the nation’s electronic payments systems - and our 250 team members in Lowell lead Vantiv’s charge to deliver innovative,

products and services for the high-growth eCommerce and Digital Commerce channels that fuel the Internet economy.

In 2016, we handled over 25 billion transactions and settled nearly a trillion dollars for our 800,000 merchant locations, including everyone from the corner coffee shop to 11 of the 25 top national retailers – as well as around 1300 regional and community financial institutions clients.

Vantiv serves many Massachusetts-based businesses and merchant locations, and government agencies, including: TJ Maxx, BJ's Wholesale Club, Uno Pizzeria, University of Massachusetts, Talbots, Clarks, Aubuchon Hardware, Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Registry of Motor Vehicles, and the Massachusetts Turnpike Authority.

### **General Comments**

In connection with Vantiv's comments regarding the impact to processors and the payments ecosystem, it is important to note that the Sections 94 and 95 are lacking in any specificity as to how this new process would work. Consequently, it is impossible to provide a detailed estimate of costs associated with particular efforts without detailed specifications.

Our estimate of cost is approximately \$10-15 million and is based (generally) on changes that would need to be made to processor's systems as described below. Vantiv does not attempt to project the significant costs that would be incurred by other payments ecosystem participants including, merchants, networks, issuers, software and hardware providers, or the Commonwealth, although we do include some high-level observations below.

### **Merchant Payments Ecosystem**

The merchant Point of Sale (POS) ecosystem is not a 'one-size-fits-all' proposition (e.g. "Brick and Mortar", Internet, Mobile) and in larger merchant operations, it may include multiples of legacy systems from previous acquisitions.

- Thousands of 'swipe' terminals (which are typically utilized by small merchants in Massachusetts) will require software updates (if technically possible) or may need to be replaced - at the merchant expense - to accommodate new transaction messages (datasets)
- More complex POS ecosystems may connect to multiples of middleware (software) and/or may be transmitted to other third-party intermediates (e.g. "Gateways") before

sales data is transmitted to one (or more) processors for routing (authorization) – all of these ‘intermediary’ systems will need to be updated to accommodate new transaction messages (data sets).<sup>1</sup>

- Any business running “Integrated/Enterprise Software” – e.g. software that helps manage the entire business - inventory management, scheduling, accounting, AP, invoices, AR and an ‘integrated’ payments portal – will need to be updated to accommodate new transaction data sets.

*<sup>1</sup>If and to the extent any payments made to the Commonwealth (or any political subdivision thereof) are subject to sales tax, those front-end systems will need to be modified to handle new transaction data sets. [e.g. there may be payments made on (at) higher education institution campuses where sales tax may be applicable - e.g. bookstores, commissaries, events/arenas (etc.).]*

### **Processor Ecosystem**

Generally, every merchant processing agreement would need to be amended to reflect the responsibilities and allocations of risk/liability for this new sales tax scheme. Additionally, all other services agreements between Vantiv and other participants in the merchant processing ecosystem will need to be amended as appropriate.

- Merchant, reporting, accounting and statements will need to be changed.
- Processors would need to recreate hierarchal systems to identify Massachusetts sales tax reporting entities/locations.
- At each point of interaction with a POS, gateway, or other middleware provider, new standardized messages (datasets) will need to be developed, coded, and certified (tested).
- Processors employ various (unique) hierarchy schemes to manage processing reporting and settlement activities – a ‘merchant’ or MID (Merchant ID) doesn’t necessarily tie out to a specific Massachusetts-based sale tax reporting entity – and in the case of Vantiv, that means when we settle funds to a particular “MID” that settlement amount may include funds for multiples of legal entities and locations within or out of the state. Examples include:
  - Settlement to a parent corporation operating multiple locations each of which may be incorporated separately and reporting sales tax individually.
  - Payment Facilitators and/or Internet Marketplaces may have hundreds or thousands of sub-merchants (e.g. small business entities and/or sole-

proprietors) for whom they aggregate transactions for authorization and settlement purposes.

Every day, 365 days a year, Vantiv creates between 400,000 to 500,000 settlement files which are delivered to our ODFI. [Note: These files are only sent by the ODFI on 'banking business' days – e.g. On a Monday, the ODFI would transmit three settlement files for a MID representing Friday, Saturday and Sunday settlement amounts].

- Presuming (conservatively) that a small portion of these files represent sales activity for Massachusetts merchants, Vantiv would need to create, and the ODFI transmit, upwards of 100,000 files each month to the Commonwealth.
- The Commonwealth would receive, account, and reconcile (along with the sales tax amounts for cash and checks from each merchant) these electronic sales tax settlement files - which will vary in amounts from thousands of dollars to a few cents.
- Vantiv, our merchants and the Commonwealth will need to develop accounting, reporting and reconciliation processes and systems properly account for the settlement of each of these remittances to the state.
- Some merchants may have a daily 'gross settlement' arrangement with Vantiv - meaning all fees (Including Interchange) are settled monthly. Vantiv may be required to either cover those carry sales tax amounts or would need to completely may do a monthly settlement of fees and Interchange amounts
- When merchants issue refunds or a chargeback occurs, the sales tax amount refunded will need to be transmitted (see discussion above regarding changes to the Authorization messages – similar changes will need to be made to support chargeback messages/datasets).
- Vantiv will be required to carry sales tax receivables on merchant accounts when there are no new merchant sales (settlement amounts) to offset refunds against.

### **Conclusion**

As stated previously, it is a practical impossibility to anticipate all of the changes that would need to be made to our systems and the corresponding costs. Our figures are based upon our recent experiences in implementing major system changes, including the most recent deployment of EMV technology.

Vantiv continues to be available to the Department to answer any questions you or your staff may have in connection with our comments or with respect to the payment systems generally. Please do not hesitate to contact me if we can be of any assistance.

Best Regards:



Jon Genovese  
Government & Regulatory Affairs  
(513)-900-5209  
[jonathan.genovese@vantiv.com](mailto:jonathan.genovese@vantiv.com)

Copies:

Commissioner Christopher Harding: [hardingc@dor.state.ma.us](mailto:hardingc@dor.state.ma.us)  
Deputy Commissioner William McNamara: [mcnamaraw@dor.state.ma.us](mailto:mcnamaraw@dor.state.ma.us)  
Chris Koczela: [csk@quinnmorris.com](mailto:csk@quinnmorris.com)  
Jonathan Ellman: [jonathan.ellman@vantiv.com](mailto:jonathan.ellman@vantiv.com)

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**Joe Zukowski**  
Vice President - Government Affairs

Bowdoin Square, Floor 10  
Boston, MA 02114  
Phone: 857-415-5178  
joseph.h.zukowski@verizon.com

September 29, 2017

Via email to: [rulesandregs@dor.state.ma.us](mailto:rulesandregs@dor.state.ma.us)

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

Dear Commissioner Harding:

Thank you for the opportunity to submit the following comments on the proposal for accelerated sales tax remittance. Verizon joins other major carriers in expressing concern with the significant and unnecessary cost and time required to implement this change.

Landline and wireless services are some of the few services taxed in Massachusetts, which gives our industry a unique perspective on this issue. It is from this vantage point we offer both our opposition and some very specific concerns about the negative impacts of this proposal. These apply not only to products we may sell, but the underlying landline or wireless services themselves.

Carriers only provide total transaction amounts to credit card vendors, with no breakout. This proposal forces communications carriers to create new systems to communicate taxable and non-taxable services, payment amounts, partial payments, and payments via other methods like gift cards.

Similar systems would have to be created to accommodate chargebacks and credits, returns, disputes, combined and partial payments for taxable and non-taxable items including 911 and other fees. New, burdensome internal processes and systems would have to be created or updated to accommodate daily reconciliation of the above.

Our industry has grown and matured through mergers, acquisitions and combinations of companies and networks of all sizes, each of which may have been operating its own billing systems. The fact is, many in our industry operate with multiple billing, order processing, accounting, tracking and other operational systems. Verizon alone has dozens of these systems.

Given this reality, and based on the analysis of only these four carriers (attached), this proposal will trigger at least \$100 million in changes to billing and processing systems, along with significant new and ongoing resources to track, audit and reconcile the multitude of transactions that come in on a daily basis from our own sales and service representatives, authorized agents and vendors and digital marketing channels. Building an additional system or process to capture the amount of tax for each transaction is more difficult for a company like Verizon that sells not only tangible goods but also services, some taxable and some non-taxable. The complexity cannot be understated.

Our customers use multiple payment methods – sometimes at the same time – to complete transactions. To maintain the same convenience and options for our customers would require Verizon to layer real-time transaction processing and tracking onto all of these systems, payment methods and payment partners. Another complicating factor to the systems development is the need to accommodate service and billing adjustments and credits that inevitably occur considering the wide breadth of both taxable and non-taxable services we offer our customers.

Finally, depending on the billing system involved, we estimate it would take up to two years to fully implement this system – if it works – across all our systems. Of course, the underlying assumption in all of this analysis is that there is a functional product that can actually accomplish all it needs to do without error (which will create additional costs and delays). Our understanding is that no other state has implemented this technology and approach, so it's difficult to predict what other challenges may develop with an untested and unproven commercial product as it's rolled out across thousands of entities simultaneously.

There's also an untold cost to consumers, who could find themselves caught in the middle of disputes between carriers, credit card vendors and possibly the Department of Revenue about who owes what, and to whom.

Finally, since communications services are linked to phone numbers, this proposal raises additional privacy issues and may run afoul of federal network disclosure rules if information about customers' services become a mandatory part of the information flow between carriers, credit card companies and the Department of Revenue.

For all of these reasons, we urge you to find that this proposal is not economically feasible. Please let me know if we can provide you with any additional information.

Sincerely,

*Joe Zukowski*

Joe Zukowski  
Verizon Communications

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Note: the following pages (to the end of the document) are a single submission.

9/29/2017

Commissioner Christopher C. Harding  
Massachusetts Department of Revenue  
100 Cambridge Street, 8<sup>th</sup> Floor  
P.O. Box 9550  
Boston, MA 02114

**RE: Implementation of Governor Baker's Sales Tax Modernization Initiative**

Dear Commissioner Harding,

On behalf of STAC Media, LLC, and as a taxpayer and resident of the Commonwealth of Massachusetts, I am writing to you in support of the implementation of Governor Baker's Sales Tax Modernization Initiative that was enacted by the legislature and signed into law as part of the FY2018 budget.

I applaud the Governor's initiative to leverage existing technology and infrastructure to make sure that all currently paid sales tax dollars go where they are supposed to go: to schools, parks, infrastructure, and basic services. This innovative sales tax collection modernization effort will improve the total revenue collected on a recurring basis for the Commonwealth under already existing tax rates in a cost-effective way.

**BACKGROUND AND CONTEXT**

Current sales tax systems nationwide are not working. They rely on elevated levels of voluntary compliance and are antiquated and costly to administer. They impose staggering and unnecessary burdens on businesses. Worst of all, current sales tax systems lead directly to the loss of billions in sales tax revenue that states, including the Commonwealth, and their local governments desperately need:

- Delinquencies and non-compliance results in significant sales tax revenue leakage:
  - Economists believe that what's lost by Massachusetts and every state in the nation is at least 5 percent of the amounts that are collected.<sup>1</sup>
  - Empirical analysis has identified actual noncompliance rates for sales tax are a minimum of 10 percent and may be as high as 28 percent.<sup>2</sup>
  - Tax losses from Zappers and related frauds in the Massachusetts restaurant industry alone could exceed \$600 million.<sup>3</sup>
  - Many states, such as Indiana, do not even know how much sales tax they are owed.<sup>4</sup>
  - Connecticut Sales Tax delinquencies alone (does not include non-compliance) are between 4% and 5%.<sup>5</sup>

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<sup>1</sup> "Minnesota Sales and Use Tax Gap Project: Final Report" - Prepared for Department of Revenue, State of Minnesota, American Economics Group, Inc., November 19, 2002.

<sup>2</sup> "Sales Tax Enforcement: An Empirical Analysis of Compliance Enforcement Methodologies and Pathologies", FIU Electronic Theses and Dissertations, 2010.

<sup>3</sup> Please see ATTACHMENT A.

<sup>4</sup> Please see ATTACHMENT A.

<sup>5</sup> Connecticut DRS, 2014.

- California has reported that its sales tax gap (not including its use tax gap) exceeds an estimated \$1 billion each year.<sup>6</sup>
- Florida's annual sales tax gap of taxes collected from customers but not paid to the state is estimated to be as much as \$2 billion.<sup>7</sup>
- Longer remittance times of sales tax cash collected materially negatively impacts state and local cash generation and the costs of doing business.
  - Reduces the millions of dollars of interest float that cash on hand would deliver.
  - Increases debt burden costs as more borrowing is required to satisfy operating cash flow needs.

We agree with the Governor and the Legislature that modernizing the antiquated and inefficient sales tax collection process is ripe for improvement as it currently results in significant revenue leakage in Massachusetts of hundreds of millions of dollars every year.

Right now, the Commonwealth is the only one not getting any money in "real-time" during a retail transaction. In fact, when you talk to the average taxpayer, most people when asked are shocked that no sales and meals tax revenue go to the state and locality when it is paid by consumer. The good news is that by leveraging existing technology and infrastructure, Massachusetts through the Governor's Sales Tax Modernization Initiative can make sure that sales and meal tax dollars go to where they are supposed in a timely fashion: to schools, parks, infrastructure, and basic services.

This Sales Tax Modernization Initiative empowers the Department of Revenue to make changes that will literally revolutionize Massachusetts sales tax administration. It will put the Commonwealth at the forefront as a national model for how to do sales tax correctly, how to lift a burden off businesses, and how to ensure the prompt delivery of sales tax dollars which belong to the State.

The potential here is so dramatic and the reasons for doing it are so important that I urge you to not hesitate in the implementation to move this antiquated unsuitable system into the modern age. Take advantage of the current technologies. Use those technologies to make this a straightforward process.

"There is no technical reason why sales taxes cannot be transferred directly to the tax agency at the close of the transaction...It will happen in our lifetimes, and the cash flow implication for the states will ultimately make it happen...When electronic commerce is ubiquitous, the logic (and the dollars) of real time sales tax payment will become a reality."<sup>8</sup>

### **IMPLEMENTATION OVERVIEW**

Contrary to misinformation from big box store lobbyists and billionaire banker special interest groups such as the Council for State Taxation (COST), implementation of the Sales Tax Modernization Initiative is technologically feasible using existing technology and infrastructure.

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<sup>6</sup> Report of the California State Board of Equalization, "Addressing the Tax Gap, Fiscal Years 2011-2012 Through 2013-2014".

<sup>7</sup> "Final Report of the Miami-Dade County Grand Jury," Feb. 7, 2011, at page 27.

<sup>8</sup> The Sales Tax in the 21st Century. Matthew Neal Murray, William F. Fox, Greenwood Publishing Group, Jan 1997.

"I am actually surprised that the bifurcation of sales tax directly to the states has not been implemented in all the states yet. JetPay already supports split funding for several government entities as well as merchant cash advance companies today."

Peter Davidson  
Vice Chairman, JetPay Corporation<sup>9</sup>  
September 7, 2017

#### *CAPTURING AND TRANSMITTING SALES TAX DATA*

Credit card processing technology today supports Corporate Purchasing Cards, which require the processing and reporting of sales tax transaction amounts. The capability to capture sales tax amounts has existed since the advent of Commercial, Corporate and Purchasing cards from all the different Card Brands for over 15 years. In fact, in a Merchant Services Response to Request for Information prepared in 2014 for the Commonwealth and the MBTA, Vantiv touted that its ability to include sales tax data in incoming settlement files saved a merchant approximately \$354,000 in annual interchange expense.<sup>10</sup>

If the people responsible for tax remittance talked to their treasury department, they would find that major retailers save a significant amount of money a year by providing their processors and card issuers the tax amount of any transaction using one of these card types. Sending the exact sales tax amount with each transaction (along with a few other data elements) ensures that the transaction will comply with Card Brand interchange requirements so that the merchant pays the most beneficial Discount Rate. If the merchant fails to send the tax amount the transaction will downgrade and the Merchant will have to pay as much as 50 additional basis points.

#### *SPLITTING CREDIT AND DEBIT BATCH RECEIVABLES INTO TWO SEPARATE ACCOUNTS*

Credit card processing technology today also allows for any credit card processing company to split settlement funds into two separate funding accounts. This ability has existed for many years.<sup>11</sup>

For example, Vantiv Dynamic Payout can split fund on a transaction by transaction basis with varying percentages per transaction. First Data can split fund merchants daily with its Payment Facilitator clients as well as government clients.

In fact, many credit card processors have developed, utilizing this technology, significant lines of Merchant Cash Advance business. Merchant Cash Advance companies provide funds to businesses in exchange for a percentage of the businesses' daily credit card income, directly from the processor that clears and settles the credit card payment. The credit card processing company automatically splits the credit card sales between the business and the finance company. This is generally a common and preferred method of collecting funds for both the clients and finance companies since it is seamless. A company's remittances are drawn from customers' debit and credit-card purchases daily until the obligation has been met. This is considered split funding.

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<sup>9</sup> JetPay is a publicly traded and national processor of credit, debit and check solutions.

<sup>10</sup> Please see ATTACHMENT B for documentation from Vantiv, Mastercard, Visa, American Express, and Chase Paymentech.

<sup>11</sup> Please see ATTACHMENT C for confirmation of this fact in 2013 testimony given by First Data Corporation, an industry leader in credit processing and issuing, to the Connecticut Finance, Revenue and Bonding Committee.

With split funding, the merchant authorizes its processor to forward the agreed amount of the merchant's daily settlement dollars to the provider's account and remit the balance to the merchant's account. Split funding is a preferred structure because it takes less time and is less risky. It offers the most convenient option for merchants, since it makes it easier for the merchant to manage its payback activity. Most providers form partnerships with payment processors and then take a fixed or variable percentage of a merchant's future credit card sales.<sup>12</sup>

The credit card processors also currently can split off merchant settlement funds to build a reserve to cover fees and assessments. This is done either by establishing a rolling reserve or a fixed dollar amount reserve. This processor functionality is clearly itemized in the Bank Card Merchant Agreement between Vantiv and the Commonwealth dated 9/9/2015.<sup>13</sup>

The implementation of the Governor's Sales Tax Modernization Initiative would simply mandate that the technology that is being used to put revenue in the credit card processor's pocket also be used to ensure that Massachusetts taxpayers are also seeing the benefits from this existing technology.

#### *PROCESSOR REMITTING FUNDS DIRECTLY TO GOVERNMENT REVENUE ENTITIES*

Section 6050W of the Internal Revenue Code and the implementing Treasury Regulations mandate that reporting entities must report merchants' payment card and third-party network transactions, based on tax identification numbers and tax filing names and that these entities must support the bifurcation of merchant settlement dollars based on IRS guidelines.

Payment settlement entities are required to identify and split off tax obligations from reportable transactions in 2013 based on the current IRS regulations (currently 28 percent) and they are subtracted from the merchant's daily deposits.

Not only do credit card processors have the technology today to be compliant with the IRS, but they also use it to be compliant with various states who have similar requirements applied differently.<sup>14</sup>

#### *SUCCESSFUL PILOTS OF REAL TIME SPLITTING OF SALES TAX OBLIGATIONS*

The technological feasibility of the Sales Tax Modernization Initiative has been demonstrated through two pilots, one that lasted for two years at a small business in New York City and one that was performed at a restaurant during the 4<sup>th</sup> quarter of 2016 in Massachusetts for a week. In each case, while the business was in operation, amounts were identified for sales tax obligations and were successfully remitted daily to secondary accounts that were established as proxies for State receiving accounts.<sup>15</sup>

#### *PROCESSOR REPORTING CAPABILITIES*

Existing processor reporting capabilities are very advanced and can easily support the Governor's Sales Tax Modernization Initiative. For example:<sup>16</sup>

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<sup>12</sup> Please see ATTACHMENT D for marketing material from First Data Corporation and other credit card processors promoting the technological ability in this area.

<sup>13</sup> Please see ATTACHMENT E for a copy of the contract.

<sup>14</sup> Please see ATTACHMENT F for information provided by First Data Corporation that confirms this.

<sup>15</sup> Please see ATTACHMENT G.

<sup>16</sup> Please see ATTACHMENT H.

- Both of First Data's advanced reporting tools can deliver data to merchants in any format reports down to the sub transaction level.
- Vantiv's has a fully customizable interface to design reports that help streamline workflows, analyze large data sets and deliver on-demand reports.
- Robust 1099 reporting is already supported by processors today.

Processors are currently able to provide a monthly amount collected in sales tax and remitted to the Commonwealth. This can be included similarly on the monthly 1099 reporting today.

## **IMPLEMENTATION FRAMEWORK, ROADMAP, AND TIMELINE**

### *OVERVIEW*

The overall sales tax system involves two main components – the money collection part and the reporting part. The implementation strategy for the Sales Tax Modernization Initiative should be almost wholly focused on the money collection part as funds should be collected by the Commonwealth in real time through a bifurcation process. Reporting to the Commonwealth by merchants should not be affected. This implementation strategy means that Massachusetts will get the best of both worlds – the benefits of accelerated cash flow and improved compliance with no change to the reporting documentation processes in place.

### *INDUSTRY STANDARDS*

While the big box store lobbyists and billionaire banker special interest groups such as the Council for State Taxation (COST) might claim that there are no industry standards to support implementation of the Sales Tax Modernization Initiative, that is simply another falsehood.

Through its implementation guide, Mastercard clearly lays out to its customers an industry standard for how it captures sales tax data for Level II and Level III customers:

“For those suppliers that have been enabled to do so, (Level II and Level III merchants) sales tax information will be collected directly at the supplier's point-of-sale terminal and then transmitted to MasterCard. MasterCard will, in turn, report the information to the organization as part of the transaction detail. For those suppliers that are unable to collect and transmit this information, MasterCard will be able to compute the sales tax via sales tax tables which are cross-referenced to the ship-to zip code and the point-of-purchase zip code. The calculated sales tax transactions will be identified as “calculated”, and the applied sales tax rate will also be transmitted.”<sup>17</sup>

This overall industry framework of leveraging data provided, or in its absence, using a predetermined default data point was emulated by the IRS and several states in developing the 1099-K regulatory framework as part of Section 6050W of the Internal Revenue Code:

“If a merchant fails to provide its TIN or if the IRS notifies the reporting entity that there is a discrepancy between the information provided by the merchant and the IRS records, the reporting entity will be required to withhold tax on the merchant's future funding amounts. Backup withholding, which is currently 28 percent, will start in 2013.”<sup>18</sup>

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<sup>17</sup> Please see ATTACHMENT B.

<sup>18</sup> Please see ATTACHMENT E.

### RECOMMENDED IMPLEMENTATION FRAMEWORK

As the Department of Revenue develops the implementation framework for the Governor's Sales Tax Modernization Initiative, we recommend that it should leverage the existing industry standard. Below we have provided a specific implementation framework for you to consider.

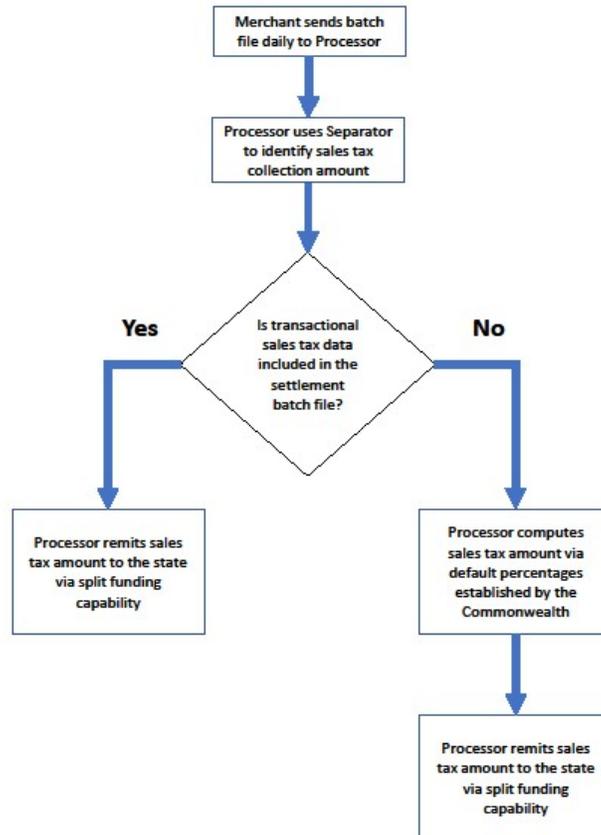


Figure 1. Industry Practice and Standards Based Sales Tax Modernization Implementation Framework<sup>19</sup>

This simple and straightforward implementation framework will directly address many of the unfounded concerns that are being raised in combination with survey results based on false hypotheticals by the big box store lobbyists and billionaire banker special interest groups such as the Council for State Taxation (COST):

1. Easily communicated
2. DOR and its stakeholders will have confidence leveraging an existing industry standard
3. Does not mandate processors to be responsible for seeking out data
4. Merchants will have two different compliance paths
5. Leverages existing technology making it both technologically feasible and cost-effective
6. Will enable the Commonwealth to address its sales tax leakage and deliver millions of dollars of recurring revenue without raising any taxes

<sup>19</sup> Also provided as ATTACHMENT I.

In terms of providing insights and details regarding reasonable implementation timeframes, it is very important that Commonwealth's implementation, through mandate and regulations, focuses processors on two key areas to roll out the Sales Tax Modernization Initiative. Bifurcation (split funding to the state directly) and Reporting where they can leverage their existing infrastructure to support the states initiative.

#### *IMPLEMENTATION SCHEDULE*

Based on our extensive understanding of the processors' systems and capabilities, we believe that processors can implement this program within 90 to 120 days from when the mandate and regulations are promulgated by DOR to meet the requirements enacted by the legislature.

Processors should provide two compliance paths<sup>20</sup> for merchants to ensure that execution is achieved by the dates outlined by the legislature. We strongly feel that DOR rolling out as soon as possible the mandate and regulations will assist processors in meeting the legislative deadlines.

#### *COMPLIANCE PATH 1: MERCHANT BATCH FILE INCLUDES SALES TAX DATA*

Processors will be able to offer this as a value-added solution to the merchant community. Once mandated by DOR, we strongly believe that processors will compete to be able to do this first. They will require any POS, terminal manufacturer connected to their systems during the certification process to transmit sales tax data with every transaction.

- IMPACT ON PROCESSORS
  - Processors will only need to treat the state as another cash advance company and just utilize the dynamic data they receive daily from the batch.
  - Processors will add the requirement to accept sales tax on consumer cards in addition to business, commercial, and corporate purchasing cards. Please keep in mind that the field already exists for these card types today.
  - Processors need to start including the entire month's daily sales tax collected and remitted to the state on the monthly statement.
  - Processors will also include the amount collected daily in their online reporting suite. This is simple and extremely achievable by the expected date.
  - Processors can and will leverage their reporting and funding systems to ensure that the state has accurate reporting. They can provide the hierarchy to deliver this data to the state specifically today. This will ensure that the Commonwealth can update their reporting daily as to the status of a merchant's outstanding tax liability.
  - If processors do not want to leverage their existing split funding systems, they can add a new billing sequence code and collect the tax this way.
    - Processors have the ability today to bill a daily discount rate net of deposits.
    - Processors make changes at least twice a year because of interchange modifications that the card companies implement in October and April.
- IMPACT ON MERCHANTS
  - Merchant will NOT be required to make any POS system changes or modifications
  - Merchants will request that their POS system send the sales tax with the transaction.

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<sup>20</sup> Please see ATTACHMENT I.

## **COMPLIANCE PATH 2: MERCHANT BATCH FILE DOES NOT INCLUDE SALES TAX DATA**

State sets a default percentage of daily settlement dollars as a sales tax portion. This can be done as one percentage across all industries or as industry specific percentages leveraging the MCC classification system that is standard across the processing industry.

- **IMPACT ON PROCESSORS**
  - Processors will only need to treat the state as another cash advance company.
  - Processors need to start including the entire month's daily sales tax collected and remitted to the state on the monthly statement.
  - Processors will also include the amount collected daily in their online reporting suite. This is simple and extremely achievable by the expected date.
  - Processors can and will leverage their reporting and funding systems to ensure that the state has accurate reporting. They can provide the hierarchy to deliver this data to the state specifically today. This will ensure that the Commonwealth can update their reporting daily as to the status of a merchant's outstanding tax liability.
  - If processors do not want to leverage their existing split funding systems, they can add a new billing sequence code and collect the tax this way
    - Processors have the ability today to bill a daily discount rate net of deposits.
    - Processors make changes at least twice a year because of interchange modifications that the card companies implement in October and April
- **IMPACT ON MERCHANTS**
  - Merchant will NOT be required to make any POS system changes or modifications

Once processors view the options outlined in the implementation framework and assess their current systems, they will realize that implementation of the Governor's Sales Tax Modernization Initiative is aligned with their current business operations.

## **COST EFFECTIVENESS AND IMPLEMENTATION COSTS**

One of the specific unfounded concerns that have been claimed by the big box store lobbyists and billionaire banker special interest groups such as the Council for State Taxation (COST), to protect their millions of dollars in float revenue, is that the Governor's initiative will be very costly to implement for merchants. These claims are usually supported by survey results (sometimes cloaked under the guise of a study) that aggregates questionnaires based on false hypotheticals or incorrect/nonexistent scenarios.

The implementation of the Sales Tax Modernization Initiative in the Commonwealth of Massachusetts will be cost effective for the Commonwealth, its taxpayers and the citizens who depend on state services. It will also be cost effective to do with merchants and processors.

Current hardware and software will not need to be changed to be compliant with the mandate:

- "it's not a software, it's actually a back end platform enablement where we've just -- we've enabled our settlement platform to split the funds into two separate funding accounts...any credit card processing company could enable themselves to do it as well."<sup>21</sup>

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<sup>21</sup> First Data Corporation. Please see ATTACHMENT C.

- “Processing for Level 2 data requires the same hardware/software components for processing as a regular retail account.”<sup>22</sup>
- “[Level 2] transactions can be run through a standard credit card terminal or PC processing program if setup correctly”<sup>23</sup>

As previously cited, the processors already have (and have acknowledged such) their ability to split fund (bifurcate) and remit funds back to the merchant and to the State. They also are currently able to capture sales tax information.

There is also empirical evidence as to the cost effectiveness. During a two-year pilot of split funding for sales tax obligations, there was no evidence that it would impose additional burdens on merchants — especially small ones.

In fact, the pilot experience suggested that it in fact lessened the burden on the small business owner as it reduced the 2-3 days a month spent trying to determine the proper sales tax payments.<sup>24</sup>

There are some specific implementation cost issues that have been raised by the big box store lobbyists and billionaire banker special interest groups such as the Council for State Taxation (COST) that we wanted to address in some detail:

- Implementation costs preparing systems to interface with the information systems used by retailers, banks, and payment processors.
  - Processors are already set-up with processes and workflows to address this with minimal cost.
    - Visa and Mastercard have hundreds of interchange categories that are what the card issuing banks receive as a form of compensation. Interchange is modified on an annual basis whereby fees increase, decrease, new categories are created and changes to requirements for each category occur with respect to data elements passed with the transaction. Typically, these releases are with limited notice (less than 90 days) and are implemented in October and April every year.
    - Visa and Mastercard as well as the rest of the card companies often implement new fees outside of interchange that are either percentage based or per item based. The processors have systems in place to quickly react and make sure they meet the deadlines outlined by the card companies to remain compliant with the rules and regulations of the card companies.
  - Compliance Path 2 requires no change to any POS software, terminal or any other payment acceptance device.
- Implementation costs reconciling tax returns that include taxes remitted from customers who pay by check or payment instruments other than credit cards with real time remittances from customers who pay with credit cards.
  - Immaterial as this is a simple calculation as the amount already collected by the state will be decremented from the total amount owed as due each month.
- Implementation costs setting up processes to deal with returns, refunds, and split-tender transactions.
  - Immaterial as they are handled in a very simple and straightforward fashion.

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<sup>22</sup> Secure Global Pay. Please see ATTACHMENT B.

<sup>23</sup> Evolve Systems. Please see ATTACHMENT B.

<sup>24</sup> Please see ATTACHMENT G.

- Any returns, refunds and disputes received during the day would be subtracted from the sales tax remittance made at the end of that day to the state by Processors.
- Split transactions would be handled no differently than they are handled by the POS today. The POS calculates the tax on each transaction and authorizes that amount. This will not negatively impact the merchant or require any other processes to take place.
- Implementation costs creating an audit trail to substantiate that taxes have been remitted on credit card transactions;
  - The state would receive the Merchant Identification Code (every location has one), Tax ID Number, DBA Address, Corporate Address and Sales Tax dollar amount remitted to the state daily. This is not a complicated effort.
  - Most if not all this information resides in the processors database.
  - In the event the processor is missing a component a quick database synchronization can occur nightly with the state to pull the required information.

### **SUMMARY AND CONCLUSION**

It is important to never forget that implementation is worth your while. There is a lot of money at stake that goes uncollected every year.

That's cash that belongs to you. That's cash that belongs to the taxpayers of Massachusetts. At a minimum, they deserve having money already paid collected immediately so the Commonwealth can take advantage of the float.

I would be happy to answer any questions that you might have regarding this background brief or the benefits that Massachusetts, its localities and taxpayers will enjoy from implementation of the Governor's Sales Tax initiative and moving the sales tax collection process into the 21st century through leveraging existing technology and applying business best practices.

I look forward to the implementation of Governor Baker's initiative that will benefit the taxpayers of the Commonwealth and its residents who depend on the services we provide.

Sincerely,

Cliff Rotenberg  
President - STAC Media, LLC  
crotenberg@stacmedia.com

# ATTACHMENT A

## **MASSACHUSETTS ZAPPERS – COLLECTING THE SALES TAX THAT HAS ALREADY BEEN PAID**

Boston University School of Law Working Paper No. 09-28  
(May 28, 2009)

Richard T. Ainsworth

This paper can be downloaded without charge at:

<http://www.bu.edu/law/faculty/scholarship/workingpapers/2009.html>

## MASSACHUSETTS ZAPPERS – COLLECTING THE SALES TAX THAT HAS ALREADY BEEN PAID

Richard T. Ainsworth

No other New England state is as vulnerable to Zappers as is the State of Massachusetts.<sup>1</sup>

Zappers and related software programming, Phantom-ware, facilitate an old tax fraud –  
skimming cash receipts. In this instance skimming is performed with modern electronic cash  
registers (ECRs).

Zappers are a global revenue problem, but to the best of this author's knowledge they  
have not been *uncovered* in Massachusetts. A global perspective says: it is highly unlikely that  
Zappers are not in the Commonwealth – we just need to find them. In fact, using a Quebec  
template,<sup>2</sup> tax losses from Zappers and related frauds in the Massachusetts restaurant industry  
alone could exceed \$600 million.<sup>3</sup>

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<sup>1</sup> Massachusetts has the largest GDP of any of the New England states. See: Demographia, *Regional Gross Domestic Product (GDP): Ranked North America, Europe, Japan & Oceania(Purchase Power Parity)* Wendell Cox Consultancy available at <http://www.demographia.com/db-intlppp-region.htm>. Massachusetts also has the largest restaurant sales profile of any of the New England states. Projected to be \$11,788,189 in 2009 (up 1.8% even in a down economy from 2008). NATIONAL RESTAURANT ASSOCIATION, 2009 RESTAURANT INDUSTRY FORECAST 27.

<sup>2</sup> The rough estimate that follows assumes that Zappers are as prevalent in Massachusetts as they are in Quebec where some of the most empirically accurate studies on Zappers have been conducted. It further assumes that because the Massachusetts economy (\$239.4) is larger (143% larger) than the Quebec economy (\$166.9) based on relative GDP (measured on a purchase power parity basis) that Massachusetts losses to this fraud would similarly be about 143% of the Quebec losses. Some caveats are appropriate: (1) losses are most likely much higher, because the best Quebec studies were limited to the most abused sector – the restaurant industry – even though Zapper-based ECR frauds are common in grocery stores (USA, Netherlands, Brazil), hairdressing salons (France, Netherlands, Germany), and discount clothing stores (Australia); and (2) to the extent that the Massachusetts economy is more or less dependent on the restaurant and hospitality sector than is Quebec then estimates should again be adjusted. The data used to compare the Massachusetts and Quebec economy comes from the US Department of Commerce and Statistics Canada. See: Demographia, *Regional Gross Domestic Product (GDP): Ranked North America, Europe, Japan & Oceania(Purchase Power Parity)* Wendell Cox Consultancy available at <http://www.demographia.com/db-intlppp-region.htm>.

<sup>3</sup> On January 28, 2008 the Quebec Minister of Revenue, Jean-Marc Fournier, published the revenue loss estimated that were based on the empirical work of Statistics Quebec when he stated:

Although the majority of restaurant owners comply with their tax obligations, the restaurant sector remains an area of the Quebec economy where tax evasion is rampant, both in terms of income taxes and sales taxes. Tax losses in this sector are significant. Revenue Quebec estimates them at \$425 million for the 2007-2008 fiscal year.

Revenue Quebec, Press Release, Jean-Marc Fournier, *Pour plus d'équité dans la restauration : il faut que ça se passe au-dessus de la table;* (English trans. *For more equity in the restaurant sector it is required that [business is conducted] above the table*) available at :

Thus, if Massachusetts is indeed in need of revenue it might do well to look for Zappers and Phantom-ware installed in the ECRs of retail establishments that have a high volume of cash sales. Given the recent attempt to increase in the sales tax by 25% to 6.25%, an effort that is supposed to raise \$600 million in new taxes, it might be appropriate to consider looking for the software add-on programs that are taking the same amount of “old taxes” from the public fisc.<sup>4</sup>

There should be the political will to this. Governor Deval L. Patrick conceded that there is a need to raise additional revenue when he promised to veto the tax increase on April 27, 2009.<sup>5</sup> The legislature agreed with the Governor (at least on this point) when it passed the rate increase by veto-proof margins. It is also likely that the citizens of the State are in accord. At least **with respect to the sales tax, what we are essentially taking about is recovering the taxes that the citizens have already paid. This should be preferable to paying more taxes.**

#### ZAPPERS AND PHANTOM-WARE

Technology has changed the efficiency with which businesses skim cash receipts. The agents of change are software applications – Phantom-ware and Zappers.<sup>6</sup> Phantom-ware is a “hidden,” pre-installed programming option(s) embedded within the operating system of a

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[http://www.revenu.gouv.qc.ca/eng/ministere/centre\\_information/communiqués/autres/2008/28jan.asp](http://www.revenu.gouv.qc.ca/eng/ministere/centre_information/communiqués/autres/2008/28jan.asp) (last visited May 12, 2009). See also the accompanying powerpoint presentation, *Facturation obligatoire dans le secteur de la restauration, L'évasion fiscale au Québec, Sous-déclaration des revenus dans le secteur de la restauration*; (English Trans. *Tax Evasion in Quebec : Obligatory Billing in the Restaurant Sector – Under-declaration of revenues in the restaurant sector*) 3 (January 28, 2008) (in French) (on file with author, with translation). Thus, 143% of \$425 million = \$607 million.

<sup>4</sup> Michael Levenson, *Senate Approves Sales Tax Hike: 6.25% levy would include alcohol; margin veto-proof in both chambers*, Boston Globe, May 20, 2009 available at:

[http://www.boston.com/news/local/massachusetts/articles/2009/05/20/senate\\_approves\\_sales\\_tax\\_hike/](http://www.boston.com/news/local/massachusetts/articles/2009/05/20/senate_approves_sales_tax_hike/)

<sup>5</sup> Governor Deval L. Patrick, *Letter to the Massachusetts Senate*, (April 27, 2009) available at:

[http://www.boston.com/news/local/breaking\\_news/MESSAGE%20FROM%20THE%20GOVERNOR.pdf](http://www.boston.com/news/local/breaking_news/MESSAGE%20FROM%20THE%20GOVERNOR.pdf)

<sup>6</sup> For more detailed discussion of Zappers and Phantom-ware see: Richard T. Ainsworth, *Zappers: Tax Fraud, Technology and Terrorist Funding* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1095266](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1095266); *Zappers & Phantom-Ware: A Global Demand for Tax Fraud Technology*

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1139826](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1139826); *Zappers and Phantom-Ware at the FTA: Are They Listening Now?* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1147023](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1147023)

## Revenue rip-off: State missing out on sales tax

Troy Kehoe

Published: January 30, 2014, 11:20 pm | Updated: July 16, 2014, 5:41 pm



(WISH Photo, file)

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INDIANAPOLIS (WISH) — Millions of dollars in Indiana tax revenue may be missing. I-Team 8 found the money is being stolen from taxpayers and used to line the pockets of business owners across the state.

It's a revenue rip-off that could be costing you.

## **PADDED POCKETS**

Sales taxes make up more of Indiana's monthly revenue than any other kind of tax. In FY2013, the state collected nearly \$7 billion from sales taxes, making up more than one-third of its total revenue. [Click here \(http://lintvwish.files.wordpress.com/2014/01/2014-jan-indiana-revenue-collection.pdf\)](http://lintvwish.files.wordpress.com/2014/01/2014-jan-indiana-revenue-collection.pdf) to see a breakdown of Indiana revenue collection.

But, a two-month long I-Team 8 investigation found that number should have been much larger.

It's all because of a breakdown in transactions. Consumers pay state sales tax on most products at the cash register, and that money is then collected by retailers.

"We call them trust taxes in our world, because we entrust to the business that responsibility. Any tax that we ask a business to collect is an agreement between the State of Indiana and that business. And, the agreement is this: you can do business in Indiana. The only thing we require of you is that you collect a 7 percent sales tax, report it to us, and on a periodic basis — normally monthly — remit it to us," said Indiana Department of Revenue spokesman Robert Dittmer.

A series of [I-Team 8 investigations last year \(https://www.youtube.com/watch?v=lvRU2Tb1DDA\)](https://www.youtube.com/watch?v=lvRU2Tb1DDA) found confusing state tax codes were causing some Indiana retailers to charge sales tax on a long list of products that are tax exempt. That caused the state to cash in on tax funding it wasn't entitled to.

But, I-Team 8 discovered the state is also being shorted by some retailers who are padding their own pockets with tax money, and getting away with it.

"What we don't want to see businesses do is run their business or make their profit on the 7 percent sales tax," Dittmer said. "That's the state's money to fund schools and roads, and so on. That's not their money."

## **BROKEN TRUST**

When sales taxes aren't remitted accurately or timely, the Department of Revenue sends out a late payment notice. It's a bill for overdue funds, mailed within 10 days of a missed due date.

Dittmer says most retailers quickly get the message.

"Most people do," Dittmer nodded. "It [may be] an inadvertent error, or it might be a cash flow issue where they need a couple days to make the payment. The reasons are across the board."

But, some retailers don't respond.

If the bills keep piling up, the state steps things up by sending the bill to a collections agency. The state currently holds an exclusive contract with Indianapolis-based Premiere Credit of North America to perform those services.

However, not every delinquent account ends up on Premiere's radar. Others may result in a tax warrant.

## **TAX WARRANTS GROWING**

“By the very nature of the term warrant, it does, I think, cause folks to perk their ears up a bit and pay attention,” said Hamilton County Sheriff Mark Bowen.

Bowen’s deputies are part of a growing number of law enforcement officers statewide who are now cashing in on delinquent sales tax collection.

“We are not going to be coming and arresting them if they’re not current on their taxes. But, it does give us some options. The sheriff does have the option to go out and levy businesses and collect those taxes right out of the cash till of those businesses if we deem it necessary. We don’t often go to those lengths, but we certainly can. And, we have assisted the Department of Revenue on a few occasions where we’ve closed businesses down,” Bowen said.

And, officers are given strong motivation to succeed.

“10 percent of what’s collected by the department goes toward the pension plans for the officers. So, we do have some vested interest in it,” Bowen said.

Collection agencies are also legally allowed to take 10 percent, and it comes as an additional penalty to the full amount of back taxes owed, Dittmer said.

Because of that financial incentive, the volume of warrants now being served in Hamilton County is nearing an all-time high.

Last year alone, Hamilton County served more than 13,500 tax warrants, bringing its five year total to nearly 60,000 tax warrants served. Other metro counties reported similar figures — including Boone County, where nearly 56,000 warrants were served and Johnson County, where nearly 28,000 warrants were served over the last five years.

But, the far more impressive figures come from counties with a more dense population of businesses, like Lake, Tippecanoe and Marion counties.

Two years ago, the Marion County Sheriff’s Office served more than 80,000 tax warrants in a single year, bringing a five-year total to more than 368,000. Multiple warrants may be issued for the same business as delinquent taxes grow, a spokesperson said, but the rates now add up to more than 3,500 warrants per deputy, per year.

For Sheriff Bowen, the rising numbers are a concern.

“It does signify a problem,” he said. “We all are required to pay our taxes, and, these are folks that aren’t. It’s important that we are following up to collect the revenue the state is owed.”

## COLLECTION CLOSE-OUT

**Some of the rapidly rising rates may be due to a single problem: retailers that shut down.**

“We do run into a lot of folks now who don’t properly close out their businesses if they go out of business. We’re getting more [and more] tax warrants for businesses that are no longer in operation. We try to track those businesses. And, we’re in a unique position to do that. We’re more familiar with the communities,” Bowen said.

But, lag times can grow quickly, even as the number of warrants issued rises. And, that may be complicated by incomplete data.

“If they report [sales tax collection] incorrectly, we generally don’t know that until the end of the year,” Dittmer said.

Revenue inspectors can perform a trend analysis to identify anomalies and patterns, however, he added.

“If you remit a certain amount every month and then that amount drops drastically, our system flags that. There may be adequate reasons. There may not be. But, it tells us we should look closer,” Dittmer said.

And, Dittmer says that system is largely successful.

“We’re going to collect \$100 million in sales tax from delinquent accounts this year,” he said. [Click here \(http://lintvwish.files.wordpress.com/2014/01/2014-jan-dor-delinquent-tax-collections.pdf\)](http://lintvwish.files.wordpress.com/2014/01/2014-jan-dor-delinquent-tax-collections.pdf) to see a breakdown of Indiana sales tax collections over the last 5 years.

It’s an impressive number, representing about 1 percent of the state’s total sales tax collection per year.

But, I-Team 8 found those collections come with a catch.

## NOWHERE TO BE FOUND

Turns out, the Indiana Department of Revenue has no idea how much sales tax revenue it’s actually owed.

“We couldn’t even possibly tell you how much [money is missing], because many of these [delinquent sales tax accounts] are actually closed businesses. Businesses go out of business every day. But, not all of them tell us when they do,” Dittmer said.

When that happens, many businesses fail to “settle up” with the state.

That’s a problem, because the state isn’t able to calculate what its true revenue should be.

“Some may owe thousands, some may not owe the state anything” Dittmer said. “If they’re a closed business and they filed right up until the point they closed, but they never bothered to file that form to tell us they’re closed, we don’t know they’re closed. If we don’t know that business is closed, we’re going to assume that you’re still collecting retail sales tax.”

But, the state does know how many business owe, and the list is growing at an alarming rate.

## REVOKED RETAILERS

In 2010, Indiana legislators passed a law requiring the Department of Revenue to [publish the names and addresses \(http://www.in.gov/apps/dor/rrmc/Default.aspx\)](http://www.in.gov/apps/dor/rrmc/Default.aspx) of all Indiana businesses who have had their business license — known as a Registered Retail Merchant Certificate, or RRMC — revoked due to delinquent retail sales tax debt.

It now includes more than 36,000 businesses, likely representing millions of dollars in outstanding sales tax debt. It is lost revenue that could help offset other taxes assessed statewide.

The list is now updated weekly, Dittmer said. And, retailers on it shouldn’t be surprised.

“If the business really exists, they’re aware of it,” he said. “Because, we have an agent, accompanied by a deputy sheriff, go out and talk to the owner or manager on site and deliver a document that has to be posted in their window or on their door.”

But, even if the business has vanished, Dittmer says the state never stops trying to get its money back.

“They are on the list because we revoked an RRMC. There is no provision to taking it off the list just because they don’t exist. There is no statute of limitations on debt to the state. [Closing a business down] doesn’t protect you. It doesn’t protect you at all,” he said.

Which leads to a critical question: what is the state doing to track the money down?

## Search Expired RRMC list as of 1/30/2014

DataPage does not exist. ([Caspio Bridge](#) error) (50501)

### Related Posts

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Indiana looking to courts to change online sales tax rules

[Indiana looking to courts to change online sales tax rules](http://wishtv.com/2017/08/29/indiana-looking-to-courts-to-change-online-sales-tax-rules/)  
(<http://wishtv.com/2017/08/29/indiana-looking-to-courts-to-change-online-sales-tax-rules/>)

[Indiana man wins battle over missing Social Security numbers](http://wishtv.com/2017/08/03/indiana-man-wins-battle-over-missing-social-security-numbers)  
([http://wishtv.com/2017/08/03/indiana-man-wins-battle-over-missing-](http://wishtv.com/2017/08/03/indiana-man-wins-battle-over-missing-social-security-numbers)

# ATTACHMENT B



# Merchant Services

## Response to Request for Information

Prepared for

### ***COMMONWEALTH OF MASSACHUSETTS***



*and*

### ***MASSACHUSETTS BAY TRANSPORTATION AUTHORITY***



RFP response compiled by:  
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- Retail Information Systems News
- National Association of Convenience Stores
- National Retail Federation
- Treasury Management Association of Chicago
- Treasury Management Association
- Various State Grocers Association
- Various Other Regional and National Associations
- Various State Restaurant Associations

32) List any major credit/debit card rule or policy changes your company has proposed or influenced.

Vantiv is a vocal merchant advocate and although we have not directly influenced a credit / debit rule or policy change we will challenge the networks on behalf of our merchants. Over the past 20 years, Vantiv has dominated the acquiring space in electronic payments processing, making interchange management a priority. Instead of relying on an issuing portfolio to drive revenue, Vantiv has focused on retaining customers through a more consultative and professional approach to relationship management and program support. We work closely with our merchant partners in analyzing performance and establishing strategies to minimize this cost component, which has allowed them to recognize in some cases, hundreds of thousands of dollars in savings on an annual basis. A couple of examples of these successes are summarized below:

**Merchant #1:** This is one of our better examples. Merchant #1 was a retailer for whom we processed PIN debit, but did not process credit. Interestingly enough, this merchant processed their credit with a large card issuing bank processor through MDEX. Our first significant cost savings initiative was to help them restructure their routing priorities, and upon an in depth analysis, we recommended a strategy, and then negotiated directly with the Debit Network to structure a deal that saved the merchant over \$3 million/year. We then analyzed their MDEX pricing structure and discovered that they were being billed incorrectly as a result of the tier that their processor had them under. This allowed them to recognize another million dollar plus savings, and convinced the merchant that they should migrate their credit business to Vantiv.

**Merchant #2:** With their former processor, Merchant #2 was not providing the requisite Level II data for all their Visa and MasterCard commercial transactions in order to qualify them at the incented interchange rates. By simply making a change to include the sales tax data in their incoming settlement file, Merchant #2 was able to save approximately \$354,000 in annual interchange expense.

**Merchant #3:** Following Merchant #3's conversion to Vantiv, we were able to work with them on a number of initiatives that are projected to save them approximately \$950,000 in annual interchange expense, including activating them for our Automated Reauthorization System, lobbying MasterCard to qualify a portion of their processing portfolio at the Supermarket rate for their Consumer credit and debit activity as well as working with a number of the credit and debit networks to improve their respective tier qualifications.

**Merchant #4:** We were able to help this merchant get into a Maestro tier (after several discussions - we finally convinced MC that they needed to put them in a Maestro tier, even though they were not making any Maestro tier changes for the April 2008 release). Getting Merchant #4 into the Maestro Tier 1 program was considered a huge success.

Also, we worked very hard with Visa so they would pull ALL of Merchant #4's volumes (several different DBAs) and Visa determined they should be in Visa Tier III Debit Supermarket. Visa had not recognized them as a tier eligible merchant until we brought this to their attention and helped them



**Corporate  
Payment Solutions**

# MASTERCARD CORPORATE PURCHASING CARD

▶ IMPLEMENTATION GUIDE



## D. MasterCard Corporate Purchasing Card Program Functionality and Features

SECTION

01

A PROCESS TRANSFORMED

The MasterCard Corporate Purchasing Card is able to streamline the purchasing process by utilizing the ubiquitous nature of credit cards today. The enhanced functionality of the Corporate Purchasing Card provides additional data and authorization controls to enable purchasing managers to manage their suppliers and internal constituents more effectively.

► The following features highlight the benefits of the MasterCard Corporate Purchasing Card:

Feature	Benefit
<b>Unsurpassed Supplier/Merchant Acceptance</b>	
<ul style="list-style-type: none"> <li>• Over 19 million merchants worldwide accept a MasterCard card for payment</li> <li>• Over 200,000 merchant locations can capture and transmit Level II and Level III data (see Incremental Data Capture below).</li> <li>• MasterCard is accepted in over 200 countries.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides a large network of suppliers available to meet corporate needs as well as enhanced relationships with existing suppliers.</li> <li>• Provides an easy-to-implement program.</li> </ul>
<b>Enhanced Authorization controls</b>	
<ul style="list-style-type: none"> <li>• Criteria set by corporation.</li> <li>• Limits can be set at departmental and/or employee level                             <ul style="list-style-type: none"> <li>- Dollar limit per transaction and/or per month</li> <li>- Transaction frequency limit per day and/or month</li> <li>- Limits by supplier type</li> </ul> </li> <li>• Authorization/decline is done at point of sale based on corporation defined limits.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides total flexibility to assign purchasing power – Managers can empower employees while maintaining control.</li> <li>• Provides efficient way to control purchasing activity.</li> <li>• Reduces time and costs for authorizing purchases.</li> </ul>
<b>Incremental Data Capture</b>	
<ul style="list-style-type: none"> <li>• Captured at point of sale</li> <li>• Transmitted via MasterCard network to issuer provided reporting system</li> <li>• Key data elements:                             <ul style="list-style-type: none"> <li>- Level I:                                     <ul style="list-style-type: none"> <li>- Name of merchant</li> <li>- Address of merchant (city and state)</li> <li>- Amount of transaction in US dollars</li> <li>- Date transaction was authorized</li> <li>- Date transaction was posted to issuer's system</li> <li>- Exchange rate, if applicable</li> </ul> </li> <li>- Level II:                                     <ul style="list-style-type: none"> <li>- Level I data</li> <li>- Sales tax amount</li> <li>- Customer Code:   <ul style="list-style-type: none"> <li>• Uniquely identifies each transaction</li> <li>• Provided by employee to supplier/merchant at point of sale</li> <li>• Up to 16 characters alpha/numeric</li> </ul> </li> </ul> </li> <li>- Level III:                                     <ul style="list-style-type: none"> <li>- Level II data</li> <li>- Line item detail:   <ul style="list-style-type: none"> <li>• Item description(s)</li> <li>• Item quantity(ies)</li> <li>• Cost per unit</li> <li>• Total transaction amount</li> </ul> </li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Streamlines administrative procedures</li> <li>• Facilitates allocation to separate cost centers, project numbers, etc. from one purchasing statement</li> <li>• Provides efficient monitoring of purchasing activity</li> <li>• Reduces time and costs for monitoring purchasing activity</li> </ul>
<b>Electronic Data Feed and Reporting</b>	
<ul style="list-style-type: none"> <li>• Data available from MasterCard within 48 hours of card transaction activity by cardholder.</li> <li>• Coordinate with your Issuing Bank for Electronic Reporting                             <ul style="list-style-type: none"> <li>- User-defined report formats</li> <li>- User-defined reporting frequency (daily, weekly, monthly, quarterly)</li> <li>- Transmits all data captured at POS including Level III</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Provides flexibility in receiving reports                             <ul style="list-style-type: none"> <li>- Detail</li> <li>- Frequency</li> <li>- Location</li> <li>- Management level</li> </ul> </li> <li>• Reduces/replaces paper storage</li> <li>• Increases employee productivity</li> <li>• Increases timeliness of management and financial reporting</li> <li>• Streamlines administration procedures</li> <li>• Provides efficient reconciliation of purchasing activity</li> </ul>

## D. MasterCard Corporate Purchasing Card Program Functionality and Features

It is important to note that incremental data capture is captured at the supplier's point-of-sale terminal and transmitted through the MasterCard network. The sophistication of the supplier's point-of-sale device will determine what data is captured and transmitted.

To capture Level II information, the supplier does not generally require hardware upgrades. Level III capability generally requires sophisticated hardware and software at the merchant location to handle bar code information or inventory/order entry systems interacting with the card authorization terminal. This will usually require a significant investment by the supplier and, therefore, this functional capability will most likely be limited to larger national suppliers.

### **MasterCoverage® Liability Protection Insurance**

Experience indicates that employee misuse of company credit card privileges is rare. However, to protect against these losses if they occur, MasterCard established the MasterCoverage® Liability Protection Program.

The MasterCoverage® Liability Protection Program is provided at no cost to financial institutions and companies covered by the program for cards issued in the U.S.\* For corporations that have four or fewer cards, the liability protection is up to \$5,000 per cardholder, for corporations with five or more cards, excluding the Corporate Multi Card, the Public Sector Multi Card and the Government Integrated Card, the liability protection is up to \$15,000 per cardholder. For Corporate Multi Cards, Public Sector Multi Cards and Government Integrated Cards, the liability protection is up to \$30,000 per cardholder.

\*The MasterCoverage Liability Protection Program is provided subject to the terms and conditions set forth in the master policy. For cards issued outside of the United States, there may be an applicable fee.  
All MasterCard benefits subject to the terms and conditions of the policies and may vary country to country.

**Question:** *Will our suppliers raise prices to cover the cost of card fees?*

**Answer:** Many of your suppliers are already accepting MasterCard cards from other customers. The fees paid to the acquirer (institution servicing the supplier's MasterCard card transactions) are typically on a decreasing fee schedule as volumes increase. By converting non-card customers to card payments, these fees will decrease on existing card business. In addition, the supplier will realize a lower cost of business in dealing with the invoice/check payment customers. The supplier will be paid by the acquirer within a few days. The supplier's internal cost of invoice generation, check /invoice reconciliation, receivables posting, and check deposit fees will be reduced or eliminated. These internal cost savings should more than offset the acquirer fees. To ensure that your supplier accepts your MasterCard Corporate Purchasing Card, include the requirement in your request for proposals.

**Question:** *How will we be able to capture sales tax information?*

**Answer:** For those suppliers that have been enabled to do so, (Level II and Level III merchants) sales tax information will be collected directly at the supplier's point-of-sale terminal and then transmitted to MasterCard. MasterCard will, in turn, report the information to the organization as part of the transaction detail. For those suppliers that are unable to collect and transmit this information, MasterCard will be able to compute the sales tax via sales tax tables which are cross-referenced to the ship-to zip code and the point-of-purchase zip code. The calculated sales tax transactions will be identified as "calculated", and the applied sales tax rate will also be transmitted. The organization's efforts with its supplier base to upgrade merchants to Level II will increase the incidence of direct capture and transmission of sales tax.

**Question:** *How can we control which suppliers our employees choose for their purchases?*

**Answer:** The front-end authorization controls allow the organization to limit the access to suppliers by supplier type (i.e. hardware, office supply, etc.). Some issuers are even offering the ability to limit purchases by specific supplier. In addition, most reporting programs/applications, such as MasterCard Smart Data for Windows® and MasterCard Smart Data OnLine™, allow an organization to enter a "preferred supplier" list and generate an exception report which lists transaction detail on all purchases made at "non-preferred" suppliers. The organization will then be able to take appropriate corrective action.



## Custom integration

- Select key preferences such as language and alert notifications
- Can be tailored to organizational travel and entertainment policies—compliance triggers, multi-tiered approval workflow, receipt imaging, and more
- Direct integration of transaction data to ERP, with support of customized formats as well as to third-party applications
- Integration with travel booking

## Visa Enhanced Data

Visa leads in consistency and completeness of enhanced data, with **more than 2.2 million merchants providing Level II data, more than 2.1 million providing Level III summary data, and more than 350 thousand merchants providing Level III line item detail.**

### ∨ Purchasing data

#### Level II

Level I data elements

**Sales tax amount**

Sales tax indicator

#### Level III - Summary Data

**Level I and II data elements plus**

Ship to/from ZIP code

Destination country code

VAT invoice reference number

VAT tax amount/rate



**Level III - Line Item Detail****Level I and II data elements plus**

Item description  
Item quantity  
Item unit of measure  
Item total

Customer code  
Purchase ID  
Purchase ID format

Discount amount  
Freight/shipping amount  
Duty amount  
Order date

Item commodity code  
Item product code

Item unit cost  
Item VAT tax amount/rate

> Fleet data

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> Airline itinerary data

> Hotel folio data

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> Car rental data

> Shopping and overnight courier services data

---

> Temporary help services data

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## Procurement data integration

Visa delivers a full range of convenient payment options designed to integrate into front-end procurement and payables processes and systems.

## VISA'S ENHANCED DATA SERVICES

Designed to support Visa Commercial Solutions, Visa's Enhanced Data Services enable access to consolidated management data, along with transaction detail, to more effectively manage and control your company spending.

### **Visa's Enhanced Data Services is the right solution for:**

- Companies that want to reduce costs and increase operating efficiencies
- Corporate travel managers who want detailed transaction data to better manage and report travel-related expenditures
- Corporate procurement managers and other program managers who want detailed transaction data to closely monitor and control purchasing expenditures

### **How your company can benefit from using Visa's Enhanced Data Services:**

*There are three levels of enhanced data to meet your reporting and accounting needs:*

- Level I (Basic Data)—Provides standard financial information present in all card transactions, i.e., merchant name, location, amount of sale, and date of sale.
- Level II—Provides summary level tax information (sales/VAT) and customer reference (accounting) codes. Additional purchase information may be provided for certain industry sectors such as airlines, car rentals, and hotels.
- Level III—Provides the most comprehensive data available, with summary information and full line item detail.

While Level I data fulfills reporting and automation of accounting functions, enhanced data enables companies to further improve both the reporting and automation process. In some markets, enhanced data may also satisfy regulatory tax reporting requirements.

*Vendor management.* You'll have greater flexibility to control and validate costs, allowing you to more effectively manage your vendor relationships.

*Travel and procurement policy compliance.* Detailed purchase information and line item descriptions allow you to better audit employee travel and procurement policy compliance.

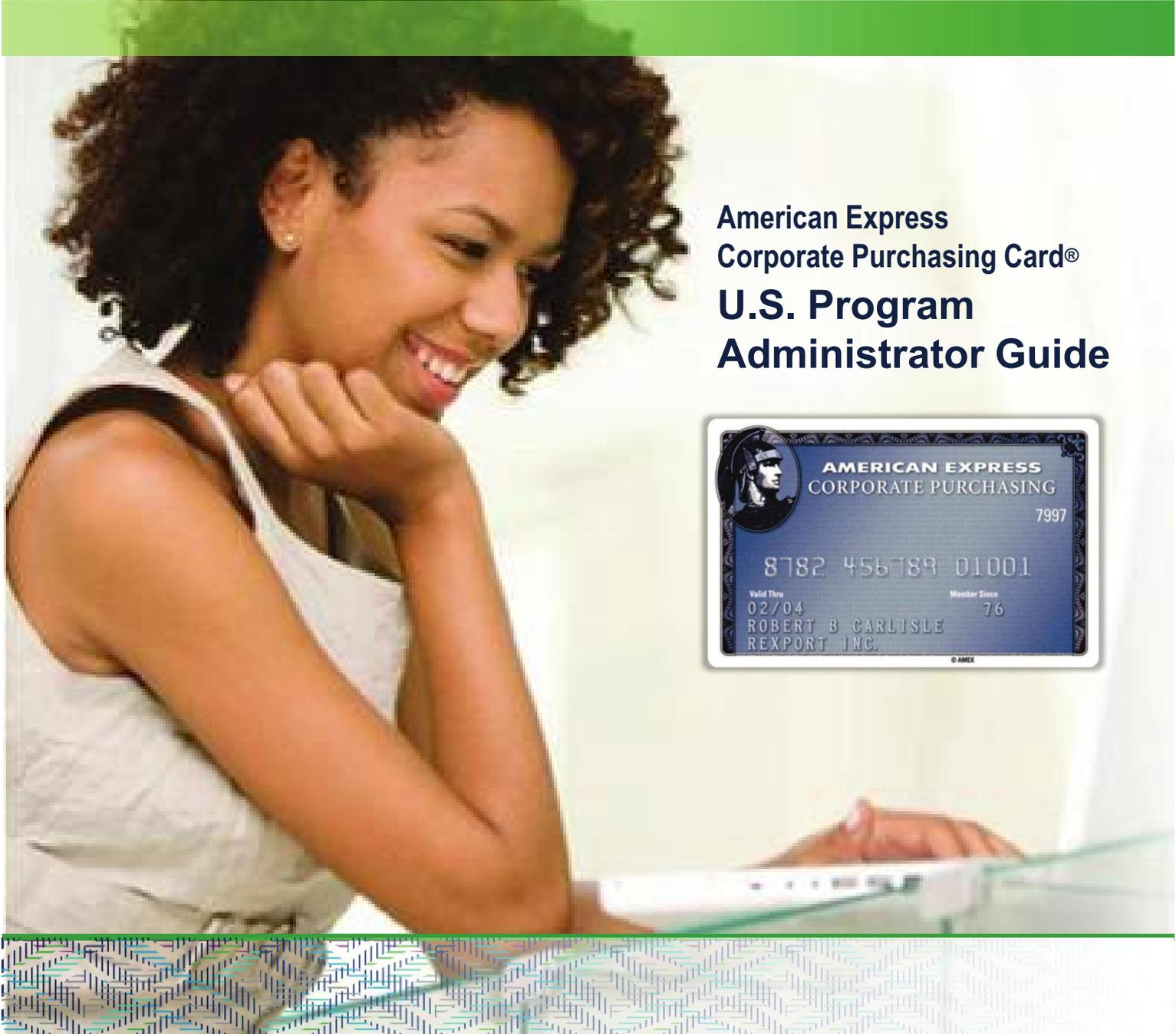
*Automation of expense reporting.* Visa's Enhanced Data Services can be used in conjunction with third-party software to automate employee expense reporting and reconciliation.

*Improved reporting and analysis.* Using Visa's powerful reporting solutions, you can create reports with greater detail than ever before. Financial managers can analyze spending to improve overall efficiency of critical business processes, such as accounting, tax compliance, policy control, and cost/supplier management.

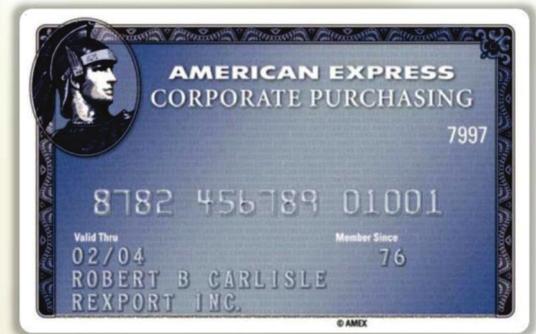
*Reduced administrative costs.* Visa's Enhanced Data Services lets you streamline the information gathering process, allowing you to increase efficiencies and save time and money.

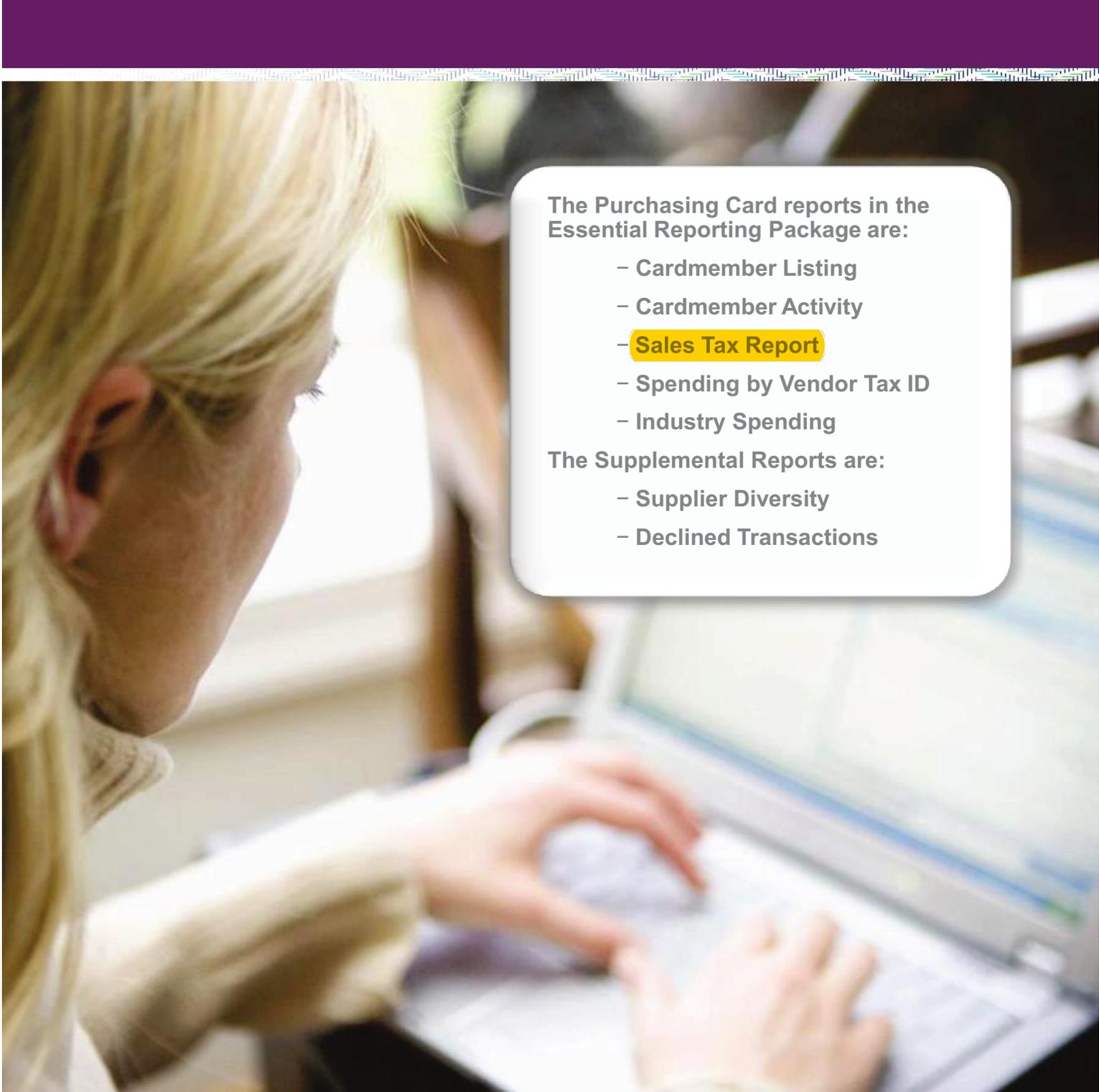
**Contact your financial institution about Visa's Enhanced Data Services today!**





**American Express  
Corporate Purchasing Card®  
U.S. Program  
Administrator Guide**





The Purchasing Card reports in the Essential Reporting Package are:

- Cardmember Listing
- Cardmember Activity
- **Sales Tax Report**
- Spending by Vendor Tax ID
- Industry Spending

The Supplemental Reports are:

- Supplier Diversity
- Declined Transactions

## Tax Compliance

- Involve your tax professional early in the process of implementing a Purchasing Card program.
- Require preferred suppliers to be “Purchasing Card capable” in order to capture sales tax and other enhanced information.
- Encourage Cardmembers to purchase from preferred suppliers that are “Purchasing Card capable” to ensure that tax information is captured.
- Develop a company policy for handling sales tax on the small number of transactions generated via suppliers without CPC data capture equipment.
- Use Corporate Purchasing Card “Sales Tax Reports” as a tool to aid tax compliance.
- Use Corporate Purchasing Card “Spending by Taxpayer ID” reports to accumulate purchases made at vendors for whom you file 1099’s. Merge CPC data with your existing database for IRS reporting.



# Program Growth

## MERCHANT DATA AND ACCEPTANCE

There are three levels of supplier data capture for American Express transactions: Level 1, Level 2 and Level 3. The data that a supplier is able to pass to American Express is dependent upon the Point of Sale (POS) equipment that it uses to process transactions.

### Level I (Retail Suppliers)

Basic transactional information

- Date
- Supplier Name/Merchant ID Number
- Dollar Amount
- Zip Code & Street Address

### Level II (CPC Suppliers)

All information in Level I data plus...

- Sales Tax
- Client Defined Variable Data Field ( "Cardmember Reference Field") limited to 17 characters
- Order number, cost center or accounting code, OR
- Employee name, OR
- A sample number (as in the case of providers of laboratory testing services)
- Tax ID Number (TIN)
- Minority, Women Owned and Small Business status
- Corporate (1099) Status
- Ship-to Zip Code
- Supplier Reference Number - order or invoice number (used for reconciliation)
- 4x40 free-form field

### Level III (Line Item Detail)

All information in Levels I and II data plus..

- Item description
- Unit price
- Quantity
- Freight/handling
- Asset number
- SKU
- Split Shipments/Shipment #
- Total meter count
- Service credits
- Tax type code
- Supplier reference code



# Partner Integration Overview

July 2016

Document Version: 1.3

## 2.2 Enhanced Core Transactions

You can enhance the operation of many of the Core transaction types by including additional elements in the LitleXML request messages. This section provides an overview of the advantages of using these enhancements and the coding requirements.

Items discussed in this sections include:

- [Level 2/3 Data](#)
- [3DS Authentication](#)
- [MasterCard MasterPass and Visa Checkout](#)
- [Custom Billing Descriptor](#)
- [Advanced AVS \(American Express only\)](#)
- [Partial Authorization](#)
- [Point of Sale Transactions](#)
- [Mobile Point of Sale Transactions](#)

### 2.2.1 Level 2/3 Data

When transactions involve business or government entities using purchasing cards, you can obtain a significantly better interchange rate by including additional data with the transaction. This data is referred to as Level 2 or Level 3 data. You can include this data in any of the following transaction types: Authorization, Capture, Capture given Auth, Credit, or Sale.

The following tables provide information about required elements you must submit to achieve Level 2 or Level 3 Interchange rates for Visa and MasterCard.

**TABLE 2-2** MasterCard Level 2/Level 3 Data Requirements

MasterCard Level 2 Data	MasterCard Level 3 Data	LitleXML Element (child of enhancedData unless noted)
Customer Code (if supplied by customer)	Customer Code (if supplied by customer)	<b>customerReference</b>
Card Acceptor Tax ID	Card Acceptor Tax ID	<b>cardAcceptorTaxId</b> (child of detailTax)
<b>Total Tax Amount</b>	<b>Total Tax Amount</b>	<b>salesTax</b>
	Product Code	<b>productCode</b> (child of lineItemData)
	Item Description	<b>itemDescription</b> (child of lineItemData)

**TABLE 2-2** MasterCard Level 2/Level 3 Data Requirements

MasterCard Level 2 Data	MasterCard Level 3 Data	LittleXML Element (child of enhancedData unless noted)
	Item Quantity	<b>quantity</b> (child of lineItemData)
	Item Unit of Measure	<b>unitOfMeasure</b> (child of lineItemData)
	Extended Item Amount	<b>lineItemTotal</b> (child of lineItemData) or <b>lineItemTotalWithTax</b> (child of lineItemData)

**TABLE 2-3** Visa Level 2/Level 3 Data Requirements

Visa Level 2 Data	Visa Level 3 Data	LittleXML Element (child of enhancedData unless noted)
Sales Tax	Sales Tax	<b>salesTax</b>
	Discount Amount	<b>discountAmount</b>
	Freight/Shipping Amount	<b>shippingAmount</b>
	Duty Amount	<b>dutyAmount</b>
	Item Sequence Number	<b>itemSequenceNumber</b> (child of lineItemData)
	Item Commodity Code	<b>commodityCode</b> (child of lineItemData)
	Item Description	<b>itemDescription</b> (child of lineItemData)
	Product Code	<b>productCode</b> (child of lineItemData)
	Quantity	<b>quantity</b> (child of lineItemData)
	Unit of Measure	<b>unitOfMeasure</b> (child of lineItemData)
	unit Cost	<b>unitCost</b> (child of lineItemData)
	Discount per Line Item	<b>itemDiscountAmount</b> (child of lineItemData)
	Line Item Total	<b>lineItemTotal</b> (child of lineItemData)

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**NOTE:** Vantiv always attempts to qualify your transactions for the optimal Interchange Rate. Although in some instances your transaction may qualify for either Level 2 or Level 3 rates without submitting all recommended fields, for the most consistent results, Vantiv strongly recommends that you adhere to the guidelines detailed above.

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In addition to the requirements listed in Table 2-2 and Table 2-3, please be aware of the following:

- **For Visa:**
  - The transaction must be taxable.
  - The tax charged must be between 0.1% and 22% of the transaction amount.
  - For Level 3, the transaction must use a corporate or purchasing card.
- **For MasterCard:**
  - The transaction must be taxable.
  - The tax charged must be between 0.1% and 30% of the transaction amount.
  - For Level 3, the transaction must use a corporate, business, or purchasing card.

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**NOTE:** You can qualify for MasterCard Level 2 rates without submitting the total tax amount (submit 0) if your MCC is one of the following:

- 4111 - Commuter Transport, Ferries
- 4131 - Bus Lines
- 4215 - Courier Services
- 4784 - Tolls/Bridge Fees
- 8211 - Elementary, Secondary Schools
- 8220 - Colleges, Universities
- 8398 - Charitable and Social Service Organizations - Fund raising
- 8661 - Religious Organizations
- 9211 - Court Costs, Including Alimony and Child Support - Courts of Law
- 9222 - Fines - Government Administrative Entities
- 9311 - Tax Payments - Government Agencies
- 9399 - Government Services (Not Elsewhere Classified)
- 9402 - Postal Services - Government Only

- 
- 
- You must include at least one line item with amount, description, and quantity defined.

## VeriFone's POS Device already accepts sales tax data today



Credit Card Processing companies can remotely program these machines to automatically add the sales tax or, as in the picture to the left, request the merchant insert it.

Prompting for sales tax is a core feature

VeriFone  
VX 520 Terminal  
Merchant Manual  
for XEPT/SEPT410 Application

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JULY 2013

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Paymentech

# Optional Prompts – Credit, Debit, EBT and Gift Card

Optional prompts are defined by the terminal setup or the card type/transaction type being used.

## Optional Prompts

Terminal Display		Action	Transaction Types	
			Credit, Debit, EBT	Gift Card
<b>Prior to Amount Prompt</b>				
[Type] Password:		Key password and press Enter.	Sale Force Refund Void Auth Only Manual entry	Issuance Activation Redemption Balance Inquiry Force Issuance Force Activation Force Redemption Deactivation Reactivation Block Activation
Invoice Number:		Key invoice number and press Enter.	Sale Force Refund Auth Only Void	Issuance Activation Redemption Balance Inquiry Force Issuance Force Activation Force Redemption Deactivation Reactivation Block Activation
Clerk\Server Id:		Key clerk/server ID and press Enter.	Sale Force Refund Auth Only	Issuance Activation Redemption Balance Inquiry Force Issuance Force Activation Force Redemption Deactivation Reactivation Block Activation
Logon	Yes F1 No F2	Press F1 to logon the clerk. Press F2 to cancel.	Sale Force Refund Auth Only	Issuance Activation Redemption Balance Inquiry Force Issuance Force Activation Force Redemption Deactivation Reactivation Block Activation
Password:		Key clerk password and press Enter.	Sale Force Refund Auth Only	Issuance Activation Redemption Balance Inquiry Force Issuance Force Activation Force Redemption Deactivation Reactivation Block Activation
<b>After Amount Prompt</b>				
Tax Amt: \$	0.00	Key tax amount and press Enter.	Sale Force Refund	

# Level 2 and Level 3 Credit Card Processing for Business or Government

[secureglobalpay.net/site/2016/03/07/level-2-and-level-3-credit-card-processing-for-business-or-gouvernement/](http://secureglobalpay.net/site/2016/03/07/level-2-and-level-3-credit-card-processing-for-business-or-gouvernement/)

3/7/2016



SecureGlobalPay offers many different merchant account solutions for those who need processing for business-to-business and government-to-business credit and debit card accounts. Credit card processing generally falls into three different categories: Level 1, Level 2, and Level 3. Each level designates how much information is needed in order for a credit card to be processed. Level 1 requires the least amount of information to process credit cards and is used by most retail businesses. Level 2 and Level 3 credit and/or debit card processing is generally for business-to-business and government-to-business processing.

If you qualify for a Level 2 or Level 3 credit/debit card processing account, we recommend that you [call us today](#). We can offer a customized solution with a much lower interchange rate.

Our team will work one-on-one with you to determine which processing solution will work best for your business.

## What Cards can I Accept with SecureGlobalPay's Business-to-Business or Government-to-Business Merchant Services?

With our business-to-business or government-to-business credit card processing services, you can begin processing payments from all of the major credit card companies and enjoy the most competitive processing rates:

- Corporate Level 2 and Level 3
- Visa®
- MasterCard®
- Debit
- American Express®
- Discover®
- Diners Club®
- EBT

## What is Level 2 Credit and/or Debit Card Processing?

A Merchant Service Provider may refer to Level 2 credit card processing (or Level II processing) when setting up a Merchant Account that caters exclusively to business-to-business or government-to-business transactions.

A Level 2 credit and/or debit card processing account typically means that the account processes larger transaction volumes. To be approved for a Level 2 processing account, you are required to collect extra information before a transaction can be processed. This extra information allows for Visa and Mastercard to let SecureGlobalPay offer you a lower interchange rate. Visa and Mastercard assume that sales for Level 2 processing are likely to be legitimate because of the extra information that is collected. In other words, they feel their risk of chargebacks is significantly lower with these accounts and will reward you for being in a lower risk category.

Processing for Level 2 data requires the same hardware/software components for processing as a regular retail account. You will receive a credit card terminal, or a payment gateway that is configured for Level 2 credit/debit card processing.

## Information Needed for Level 2 Credit/Debit Card Processing

When submitting customer information for Level 2 processing for either commercial, corporate, business and government purchasing, you will be required to ask for the following information:

- Credit Card Number
- Expiration Date
- Billing Address
- Zip Code
- Invoice number
- Customer Code or PO Number (the four digit number that will appear on the cardholders billing statement so they can track purchases made with a Level 2 card.)
- Sales tax provided separately (If there is no sales tax amount just enter \$0. If no amount is entered the merchant will not receive the lower interchange rate.)



**MOVING YOUR BUSINESS FORWARD**

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P: 651.628.4000 • F: 651.628.4004 • TF: 877.229.2954  
www.evolve-systems.com • info@evolve-systems.com

Level 1 transactions are your standard retail transaction. The card holder is using a personal credit card issued from an American bank.

Level 2 transactions are normally corporate cards issued from an American bank.

Level 3 transactions are government credit cards or corporate cards.

**Level 1 and 2 transactions can be run through a standard credit card terminal or PC processing program if setup correctly.**



**2974 Rice Street • St. Paul, MN • 55113**  
Evolve Systems is a Registered Sales Agent for Sterling Payment Technologies, LLC

# ATTACHMENT C

REP. WIDLITZ: Thank you very much. I think we'll have the next speaker and then entertain questions.

KIMBERLY MCCREEVEN: Good morning again. My name is Kimberly McCreeven and I am actually with First Data Corporation. First Data is an industry leader in credit processing and issuing. It's a U.S. corporation with assets near \$50 billion dollars. We are a preferred vendor to many state and municipal governments and, in fact, the State of Connecticut currently a client of First Data.

First Data Testifier  
Background

I am here today to offer testimony in support of Bill 1110 and to simply address the method by which escrowing for sales tax can be achieved through credit card processing companies, should this bill be passed and Commissioner Sullivan make a decision to implement some of its provisions to collect more taxes than currently collected.

Several years ago we were approached by certain individuals in Connecticut to partner with them in developing a convenient and easy system for escrowing sales dollars on a daily basis. After careful deliberation and much effort, we developed a successful program which is now called Pay MY Taxes, by which we can deposit a designated percentage of a Merchant's credit and debit batch receivables on a daily basis. These funds settle into a secondary account, belonging to that merchant intended for sales tax obligations. The percent deposited into the escrow account is

First Data is able to split credit and debit transactions on a daily basis and deposit an amount into a secondary account for sales tax obligations.

agreed upon by the Merchant and the processor during the enrollment process, with the objective being to escrow enough funds to equal the merchant's tax liability. Any interest, if it's an interest bearing account would belong to that merchant as always.

First Data currently does not charge a fee for this service above and beyond the normal cost of acceptance. The technology is such that the merchant should not have to upgrade any equipment to benefit from this program. The program is not patentable and presumably most credit card companies should be able to offer the same service, whether on a fee basis or otherwise.

First Data does not charge a fee for this service.

First Data, as with all other credit card processing companies, is required to be in full compliance with the payment card industries data security standards. There should be no concerns around the integrity of these programs.

First Data can do this in full compliance with security standards.

Subject to security and privacy standards, of course for state and other participating credit card companies may have also have the availability to share statistical information with the State, to assist in budgetary forecasting.

First Data is able to provide the Commonwealth with data to assist in budgetary forecasting.

As stated by Katherin Barrett and Richard Greene in an article entitled "Growth and Taxes" in Governing Magazine, a tax policy is only as good as the systems that collect the taxes and make it simple for people to pay them.

First Data agrees that this is good tax policy (and not as others have said a solution in search of a problem).

With today's available technology it's time for states to embrace the technology to assist merchants in paying their sales taxes in a simple, stress-free way, on time, every time, and better serve the citizens by reducing delinquency. I am confident that if this bill passes, and subsequent analysis by the Department of Revenue Services will see the merits of such programs and adopt them accordingly. Thank you very much for your time today.

First Data testifies that available 2013 technology can support sales tax modernization that reduces sales tax.

REP. WIDLITZ: Thank you very much for your interesting testimony. Are there many businesses in Connecticut that participate in this program?

KIMBERLY MCCREEVEN: The program itself as it did take some time to develop, is pretty new and hasn't been marketed beyond some internal -- and that's only because we don't have necessarily adoption at the state level.

REP. WIDLITZ: You say in your testimony that it is not patentable. Why is that?

KIMBERLY MCCREEVEN: I don't know the answer to that question.

REP. WIDLITZ: I just wondered if that's, you know, if someone has an exclusive right to this type of program or not.

KIMBERLY MCCREEVEN: No, no.

REP. WIDLITZ: They do not. Okay. Are there questions? Representative Wright followed by Representative Altobello.

REP. WITLITZ: You're welcome. Senator Witkos.

SENATOR WITKOS: Thank you, Madame Chair. I'm not sure if I missed something but, we had an issue with paying our sales tax so we came up with a system and it's been working fine since then. Why do we need to have this bill if there's a system in place where everything's working fine? I see the bill says let's look at best practices and the (indiscernible 13:09:45) so, I'll -- is there resistance from the Department of Revenue Services to accommodate some of these requests? If you could help me to understand why we need to have this legislation.

KIMBERLY MCCREEVEN: In order to -- I'm probably not prepared to answer that question. It makes sense from a government standpoint to have a program in place that encourages merchants to do that and to escrow the taxes. I don't know that there's necessarily been any push back.

SENATOR WITKOS: Thank you. Thank you, Madame Chair. And, I think Representative Candelora --

REP. WIDLITZ: Thank you. Representative Candelora.

REP. CANDELORA: Thank you, Madame Chair. Thank you for coming to testify and I just had a question. So, on this -- your company has the software, I guess, to enable this. Is this something that

is standard in the industry for processing companies?

KIMBERLY MCCREEVEN: So, it's not a software, it's actually a back end platform enablement where we've just -- we've enabled our settlement platform to split the funds into two separate funding accounts. It's my point of view that any competitor of First Data, any credit card processing company could enable themselves to do it as well.

First Data testifies that in 2013 all credit card processing companies can separate out funds for sales tax obligations.

REP. CANDELORA: And, are there other states that do this or other companies that you know of that do this?

KIMBERLY MCCREEVEN: We're not aware of any other company that is doing this today. That's not to say that it's not happening. I'm just not aware of anyone else who has actually enabled the technology.

REP. CANDELORA: And, so right now if you're using it, it's sort of on a voluntary basis, people that sign up through your processing company, it's a service that you offer to them so a sales tax remitter can just take --?

KIMBERLY MCCREEVEN: Absolutely. So, today it's just a value add on our platform.

REP. CANDELORA: Okay. Thank you. Thank you, Madame Chair.

REP. WIDLITZ: You're welcome.  
Representative Larson.

REP. LARSON: Thank you, Madame Chair. Sort of a follow up on that line of questioning, does the State of Connecticut not have the ability to let that small business escrow or take that charge directly?

KIMBERLY McCREEVEN: To take the funds directly?

REP. LARSON: Well, he's going to escrow with your company, right?

KIMBERLY McCREEVEN: He's actually -- he's not escrowing with our company --

REP. LARSON: Your software provider --

KIMBERLY McCREEVEN: -- our company enables the escrow to occur. So, all's we're doing is funding an account. Are you asking why we wouldn't fund the State of Connecticut?

REP. LARSON: No. My understanding is, is that the small business has a software transaction through you, right? You enable him to escrow funds and put money into a certain account, you're --

KIMBERLY McCREEVEN: Correct.

REP. LARSON: -- from a credit card transaction, that goes into his bank somewhere.

KIMBERLY McCREEVEN: Correct.

REP. LARSON: So, to the point of why do we have to make this law, does the state not have the ability to -- can't you

just fund -- instead of going to his bank, can't you fund directly to the state?

First Data testifies that in 2013 that the only barrier preventing credit card processors from remitting sales tax funds directly to the state are the card brand association contracts

KIMBERLY MCCREEVEN: We cannot. So, in the merchant processing world, MasterCard, Visa, American Express and Discover as the card brand associations, require that at the end of the day, merchant processing be settled to the merchant of record.

REP. LARSON: Okay. All right. Thank you very much. Thank you, Madame.

REP. WIDLITZ: Thank you. Senator Fonfara.

SENATOR FONFARA: Thank you, Madame Chair. Good morning. This is a question for Mr. Pavlidis. Am I pronouncing your name right?

PETER PAVLIDIS: Yes, yes.

SENATOR FONFARA: In the beginning of your testimony -- your written testimony, you speak to -- that you fell behind in your sales taxes because you had other pressing bills. But, if you had a system in place such as this or something like this, then you'd be fine. So, is it your -- specifically to your issue, your company, if you -- if that money were taken immediately, you wouldn't have it to use for other purposes, is that your experience?

PETER PAVLIDIS: Correct, correct, sir.

# ATTACHMENT D

A First Data White Paper

# Merchant Cash Advances Provide Key Financing

Merchants Can Tap Processors When Traditional Funding Dries Up



# Introduction

Merchants with poor credit or lack of a credit history typically have a hard time getting financing through traditional means, such as a loan, line of credit, or credit card. Fortunately, merchant cash advances can help small businesses get the critical financing they need in order to achieve goals such as building inventory or making capital improvements. The key is finding the right provider, and the first stop should be checking to see what acceptance services are offered by your bank, acquirer or independent service organization.

To be sure, not all merchant cash advance providers are the same. Many providers have gone out of business in recent years, while other vendors have unscrupulous practices. Small businesses must do their homework in order to land the right provider.

The answer often is simple. Merchants can tap their own processor to provide merchant cash advances, with compelling advantages: it's a known relationship, and the processor's financial stability provides funding ability. By choosing their own processor, merchants stand a better chance of getting financing since a transaction history from credit and debit card acceptance probably already exists. This paper explains merchant cash advances and how they function. It also offers eight considerations when looking for a provider, and highlights the differences between loans and cash advances. The report is designed to take the mystery out of product, showing merchants an alternative way to get financing.

### Merchant Cash Advances: Convenient, Fast, Effective

Regardless of financial institution participation, there is strong demand for merchant cash advances, thanks in part to the conservative lending practices that now predominate. Underwriting standards for loans have tightened considerably in recent years, with traditional small-business lending sources virtually drying up in the wake of the financial crisis. Meanwhile, regulatory scrutiny in the subprime arena has dampened enthusiasm for helping out merchants with poor credit history.

Merchant cash advances are a viable alternative for many businesses because they provide needed capital that may not be available through traditional channels. Cash advances are not subject to lending regulations because they are “factoring products,” whereby a business sells a portion of its future receivables in exchange for upfront cash. In structuring the product as a sale of future receivables, the provider buys these receivables at a discount, and gives a lump-sum cash payment to the merchant in return. A small, fixed payment or percentage of the merchant’s daily credit card sales is remitted to repay the cash advance.

### How it All Works

In a typical cash advance, merchants receive a lump-sum payment of one to four times their average monthly card volume. The provider and merchant agree on a percentage of daily card sales or a fixed daily payment that will be collected from the merchant as repayment for the advance.

Usually, cash advance providers require merchants to have a minimum monthly card volume of \$5,000 a month, a good standing with their landlord, and no unresolved bankruptcies. There is minimal documentation required, typically consisting of processing statements, bank statements, and a copy of the property lease or mortgage statement. Bottom line, a cash advance requires substantially less documentation than a loan or credit line application.

Remittances are made in various ways, depending on the provider. **Split funding offers ease and convenience**, while escrow accounts and direct debit are more cumbersome to administer and give less control to the merchant. Here’s a breakdown of how the three methods work:

- **Split Funding:** With split funding—or batch splitting—the merchant authorizes its processor to forward the agreed-upon amount of the merchant’s daily settlement dollars to the provider’s account and remit the balance to the merchant’s account. Split funding is the preferred structure because it takes less time and is less risky. It offers the most convenient option for merchants, since it makes it easier for the merchant to manage its payback activity.
- **Escrow Account:** Daily settlement amounts are deposited by the processor and the provider debits the agreed-upon percentage from the escrow account as an Automated Clearing House (ACH) transaction. Thereafter, the remaining funds are transferred to the merchant’s account. This causes a delay in receipt of the funds (typically a day). Additionally, the merchant has less control over its funds, since a third party is given access to all the funds to debit the amount before they are released to the merchant.
- **Direct Debit:** The merchant cash advance company directly debits the daily payment—based on the agreed-upon percentage—from the merchant’s bank account through ACH. This also means less control to the merchant, and ACH debits frequently cause the merchant to overdraw.

### Overcoming Concerns

Merchants must take care in their choice of a provider. Some providers went out of business after the financial crisis a few years ago, when the industry went through a steep contraction. Merchants must also look for a fair price. While costs to the merchants are certainly higher than loans, the pricing of the advances takes into account that the provider has no collateral or guarantees associated with the product. Merchant cash advance providers hold all the risk in the event that a merchant goes out of business, and the pricing must take this into account. Despite the higher cost, providers that have a strong history and knowledge of the merchant will support those businesses that have a favorable chance of succeeding.

Clearly, merchant cash advances can provide the vital funding small businesses need to grow and thrive. We discuss eight key things to consider when comparing providers, so that you know you are getting into the best situation.

### Eight Things to Look for in a Provider

Again, choosing the right provider is critical to your strategy of getting financing. With so many cash advance providers in the industry, it pays to carefully scrutinize your options. Here some guidelines to go by:

**An Existing Processing Relationship.** Look first at the capabilities of your existing processor. Your processor is already linked to your card acceptance process and should have the financial strength to take on the risk of the funding small-business merchants.

**Minimum Documentation.** Using a provider that handles your merchant processing makes the whole process easier. Your merchant processor holds existing processing history documentation, which helps streamline the application process considerably. In this scenario, you should typically only need to provide two months of bank statements, a copy of a lease or mortgage statement, and a driver's license.

**Flexible, Efficient Approval Standards.** A strong provider will have not only solid approval standards, but also a higher approval rate than others in the industry. A processor can offer efficiencies not found elsewhere. Small merchants, with processing volume ranging as low as \$18,000 a year, can tap their existing processor to get funding.

**Speed in Funding.** Cash advance vendors report taking a few days to two weeks to provide funding, but often it runs on the higher range since they may be dependent on getting financing themselves through their private equity partners. Well-funded providers can supply funding in as little as three to five days. Ask for references to help find out how long it took to get them to get funding.

**Split Funding.** The way providers collect funds has often been a challenge for merchants. Agents have complained that cash advance companies have not mastered distribution and support of the product. Often clients are asked to set up joint accounts or lockboxes with the provider, making the process clunky and harder to manage. **Split funding, or batch splitting, takes less time and is less risky.**

**Flexible Repayment.** Look for a provider that allows repayment to change according to the ebb and flow of revenues. Repayment should be tied to the performance of the business, so if the merchant has a slow month, it pays a little less; if it has a great month, it pays more. Merchants should not be obligated to pay a certain fixed amount each month, regardless of business flow.

**Program Length.** Most common merchant cash advance programs range from three to 12 months. Often providers retain the right to collect remaining funds at the end of that period, which can impair cash flow for a small business. Look for a provider that does not set a time limit to the program length, but instead bases collections on processing volume. The provider should offer a wide range of programs to suit varying merchants' needs and markets.

**Financial Strength.** Choose a provider that has a long track record working with merchants and knows the processing industry, since knowledge of both is necessary for establishing an efficient program for customers. These providers have the financial wherewithal to get capital in the hands of customers quickly.

### How Merchant Cash Advances Differ From Loans

Merchant cash advances are classified as commercial transactions, not loans. Here are the distinguishing characteristics of merchant cash advances:

- **No Fixed Terms.** Providers estimate the term for repayment based on the business' sales history. The customer is charged a set fee—referred to as a factor—and there are no interest charges.
- **Cash Advances Are Unsecured.** The provider does not require any collateral or guarantees, assuming all of the risk of the client possibly going out of business.
- **Minimum Documentation.** A client can simply provide two months of bank statements, a copy of a mortgage statement or property lease, and a driver's license.
- **No Fees.** There are no late fees or penalties attached to the product.
- **Fast Approval and Funding.** Most cash advance providers can approve and fund an application in 10 to 15 business days. But if you partner with a merchant processor that handles transactions, approval can come in three to five days.
- **Daily Repayment.** This varies according to the volume of the merchant, and varies according to the business cycle. The provider receives a set percentage of the merchant's daily card settlement batch.

### Conclusion: Look First at Your Processor's Capabilities

Keep in mind, when financial institutions take a pass on lending to you, it's not the end of the road. It's imperative that merchants team up with a reliable partner to get the financing they need. Look first at your current processor, which should have the capability to offer merchant cash advances. It's a known relationship, and the processor has the ability to fund the transaction. Overall, working with your processor makes strong business sense, giving the cash you need to help grow your business.



For more information, please contact  
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## Clearent Announces Split Funding Capability

*Split Funding Saves Time and Delivers Faster Access to Payments by Automating Funds Transfer*

Clayton, MO – January 20, 2015 – Clearent, one of the nation's fastest growing credit card processing companies, announced its new Split Funding service which enables Clearent to automatically make daily payments directly to merchant cash advance providers. The addition of Split Funding enables sales professionals to easily integrate merchant cash advances with Clearent's payment processing services.

The market for alternative small business lending has experienced dramatic growth in recent years. Many business owners are frustrated with traditional banks due to low approval rates and the lengthy, cumbersome process of obtaining a traditional bank loan. These problems became even worse in the aftermath of the Great Recession of 2008 as banks became more conservative in their lending practices.

Alternative financing such as merchant cash advance has stepped in to address these underserved businesses. Merchant cash advance is an attractive alternative to traditional loans because it offers faster approval decisions and faster access to working capital. In 2013, businesses received \$3 billion in merchant cash advances, and experts forecast continued growth in the industry.

Clearent's Split Funding service enables its customers to take advantage of merchant cash advances to help them grow their business. Whenever Clearent generates an ACH transfer for merchant deposits, Split Funding will transfer the appropriate amount directly to the merchant cash advance provider's bank account, saving them time and giving them faster access to funds. Merchant cash advance providers prefer split funding over other funds transfer methods such as direct debit and lockbox payments.

Clearent's Split Funding service stands apart because it's extremely fast and easy for new merchant cash advance providers and merchants to get set up on Clearent's proprietary payments platform. Clearent also provides detailed reporting on Split Funding activity through its Compass online reporting system, which saves merchants and providers valuable time. Activity also is clearly displayed on Clearent's merchant statement, which is known for being the most clear and detailed in the industry.

Moreover, merchant sales professionals who specialize in merchant cash advance can now take advantage of Clearent's proprietary payments platform. By delivering unique benefits such as flexible merchant pricing options, accurate residuals, and graphical, online reporting tools, Clearent makes it easier for its sales partners to do business and become more profitable.

Moolah, a registered ISO/MSP and Clearent partner, is excited about the addition of Split Funding. "Clearent's new Split Funding service enables Moolah to target this profitable market that is looking for an alternative to direct debit and lockbox payments," said Mark Rasmussen, managing partner of Moolah.

"We've had a great response to Clearent's new Split Funding capability," said Dan Geraty, CEO of Clearent. "Our partners who sell merchant cash advance can now obtain the benefits of our proprietary processing platform for these customers along with the rest of their portfolio."

### About Clearent

Clearent is a complete [payment processing solution](#) that leverages its proprietary payments platform to make doing business easier and more profitable for its sales partners. Clearent's commitment to honesty and transparency has made it one of the most trusted companies in the payments industry. Clearent is one of the fastest-growing credit card processing companies, processing \$7 billion in annual transaction volume for 23,000 businesses nationwide. To learn more, visit [www.clearent.com](http://www.clearent.com) or call 866.205.4721.

# PayFac Payout Solutions

PayFacs who service large portfolios of merchants have a challenge: How do I make sure my customers reap the benefits of my service and get funded in a timely fashion?

We offer two distinct payout solutions to address these challenges:

- **Dynamic Payout:** Controls the distribution of funds using flexible, customized instructions defined by the PayFac
- **Managed Payout:** Automatically directs the distribution of funds using pre-configured instructions.

Feature Support	Dynamic Payout	Managed Payout
Method of payments supported	Visa, MasterCard, Discover acquired*, American Express conveyed or acquired**, and eChecks  *For Discover, transactions cannot be settled as conveyed transactions. Vantiv must be the acquirer. **For American Express, if conveyed, you must process all transactions through Vantiv.	Visa, MasterCard, Discover acquired, American Express acquired and eCheck
Timeframe	Payout possible within 1 day of funds availability	2 days, 1 day possible with Risk approval
Platforms supported	eCommerce & Vantiv Core	eCommerce
Split platform processing supported	Yes	No
PayFac's name on merchant bank statements	Yes	Yes
Control Over: Funding Frequency Managed Reserves Funding Delays	Yes	No
Supports complex funding structures	Yes	No
Supports tiered billing structure	Yes	No
Single settlement formula supported	No. All formulas supported.	Yes
Ability to split payment for each merchant across multiple bank accounts	Yes	No
Funding failures handled inside of our system	Yes	No
Ability to hold a reserve on merchants (handled inside of our system)	Yes	No
Allows partial portfolio funding	No. With Dynamic Payout, all of your merchants processing on Vantiv must be paid out for all methods of payment.	Yes. PayFac has the ability to fund a sub-set of their merchants using Managed Payout.
Funding Reports in iQ	Yes	Yes

Our payout solutions provide a closed loop transaction lifecycle from payment to payout. With one connection for payments and payouts, our solutions reduce a PayFac's dependency on other vendors, minimizing cost associated with PCI and reducing scope.

Managed Payout is a self-contained service whereas Dynamic Payout is a solution platform. With Managed Payout, a PayFac can "set and forget" — never having to write a line of code. Dynamic Payout is dependent upon the PayFac submitting instructions each time a payout is required.

- **Dynamic Payout:**

- › PayFac calculates the fee they want to charge for rendering service(s) to sub-merchants. Hence, PayFac can use any formula or tiered billing structure.
- › PayFac can fund merchants on a fixed or irregular schedule, such as daily, weekly or monthly.
- › PayFacs may even choose to delay funding based on contractual or risk related issues.

- **Managed Payout:**

- › PayFac establishes pre-configured settings and assigns those settings to specific merchants.
- › Transactions processed by those merchants are treated according to the associated funding parameters.
- › PayFac can configure a fee profile to contain any of the following fees, or combination of fees, for approved and declined transactions for Visa, MasterCard, Discover, and eChecks:
  - **For Approved Transactions:**
    - Deposits - flat rate and/or a percent rate for each method of payment.
    - Chargebacks - flat rate for first chargebacks and refund chargebacks for each credit card payment type.
    - eCheck Returns - flat rate.
    - Refunds - flat rate for each method of payment.
    - Authorizations - flat rate for authorizations and authorization reversals for each method of payment.
  - **For Declined Transactions:**
    - Deposits - flat rate and/or a percent rate for each method of payment.
    - Refunds - flat rate for each method of payment.
    - Authorizations - flat rate for authorizations and authorization reversals for each method of payment.
- › Vantiv calculates the funds disbursements to the PayFac and their merchants as follows:
  - **Merchant Funds Disbursement Calculation:**  
Deposits – Refunds – Chargebacks – PayFac Fees = Net Settlement<sup>1</sup>
  - **PayFac Funds Disbursement Calculation:**  
PayFac Fees – Vantiv Fees – Pass-through Fees +or- Merchant payout failures = **Net Settlement**

**Contact us to learn more: [PayFac@Vantiv.com](mailto:PayFac@Vantiv.com)**

<sup>1</sup> Note that the refunds and chargebacks in this formula are the actual amount of the refunds and chargebacks. The fees that you may charge the sub-merchant for chargebacks and refunds are included in the 'PayFac Fees' portion of the settlement formula.

# ATTACHMENT E



## BANK CARD MERCHANT AGREEMENT

This Bank Card Merchant Agreement is made among VANTIV, LLC ("Processor") having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384, the Member Bank and the Commonwealth of Massachusetts ("Merchant" or "Commonwealth") having its principal office at \_\_\_\_\_ Processor, Member Bank and Merchant hereby agree as follows:

I. Processor and/or Member Bank participates in programs affiliated with MasterCard, VISA, Discover, and Other Networks which enable holders of Cards to purchase goods and services from selected merchants located in the United States by use of their Cards.

II. Processor provides sponsorship and settlement services to businesses accepting credit cards and debit cards and other similar transaction cards for the sale of goods or services.

III. Processor is a transaction processor and provides certain processing services in connection with the acceptance of credit cards and debit cards and other similar transaction cards for the sale of goods or services.

IV. Merchant wishes to participate in the MasterCard, VISA, Discover, and the Other Networks systems at its United States locations by entering into contracts with Cardholders for the sale of goods and services through the use of Cards and to contract with Processor for sponsorship and settlement and other services to be provided by Processor to Merchant in connection with the sale of goods or services through the use of Cards (including credit cards and debit cards, travel and entertainment cards and other similar transaction cards).

V. Processor wishes to provide sponsorship and settlement and other related services to Merchant.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the parties agree as follows:

### 1. Definitions.

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

Account shall mean an open checking account at Fifth Third Bank or its affiliate, or at another financial institution acceptable to Processor which Processor or its agent can access through the ACH system.

Account Change means a change in the Account or the financial institution where the Account is located.

ACH shall mean the Federal Reserve's Automated Clearing House ("ACH") system.

Agreement means this Bank Card Merchant Agreement, the Merchant Price Schedule, and each exhibit, schedule, and addendum attached hereto or referencing this Agreement, as well as all documents and other materials incorporated herein by reference.

Association means VISA, MasterCard, Discover, or any Other Network, as the same are defined herein.

Rules Summary means the Bank Card Merchant Rules and Regulations, which are incorporated into this Agreement by reference.

Cards shall mean MasterCard, VISA, Discover and Other Network cards, account numbers assigned to a cardholder, or other methods of payment accepted by Processor, for which pricing is set forth in the Agreement.

Cardholder shall mean any person authorized to use the Cards or the accounts established in connection with the Cards.

Data Incident shall mean any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of Card or Cardholder information, regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Card information resides, passes through, and/or could have been compromised.

Discover shall mean Discover Financial Services, LLC.

Event of Default shall mean each event listed in Section 13.

Float Event shall mean a circumstance where Processor, for whatever reason, advances settlement or any amounts and/or delays the assessment of any fees.

Force Majeure Event shall mean fires, telecommunications, utility or power failures, equipment failures, labor strife, riots, wars, acts of God, or other causes over which the respective party has no reasonable control and could not foresee and take reasonable measures to mitigate.

Initial Term shall mean the term outlined in the Commonwealth's Standard Contract Form.

Member Bank shall mean a member of VISA, MasterCard and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, the Member Bank shall be Fifth Third Bank, an Ohio banking corporation.

Option Term shall mean two one-year options to extend the term of the Bank Card Merchant Agreement exercisable at the sole discretion of Merchant.

Service Delivery Process means Vendor's then standard methods of communication, service and support, including but not limited to communication via an online Merchant portal, email communication, statement notices, other written communications, etc.

Merchant Supplier shall mean a third party other than Processor or Member Bank used by Merchant in connection with the Services received hereunder, including but not limited to, Merchant's software providers, equipment providers, and/or third party processors.

MasterCard shall mean MasterCard International, Inc.

Operating Regulations means the by-laws, operating regulations and/or all other rules, policies and procedures of VISA, MasterCard, Discover, and/or Other Networks as in effect from time to time.

Other Network shall mean any network or card association other than VISA, MasterCard, or Discover that is identified in the Merchant Price Schedule and in which Merchant participates hereunder.

PCI shall mean the Payment Card Industry Data Security Standard.

Service shall mean any and all services undertaken by the Processor to process, store, transmit and settle Cardholder information on the Merchant's behalf described in, and provided by Processor pursuant to, this Agreement, including, but not limited to, providing authorization, routing, electronic draft capture, submission of transactions to Associations, access to Processor's online reporting tool for Merchant originated Cards and provision of Processor's Merchant activity file.

VISA shall mean VISA USA, Inc.

Other defined terms and Services applicable to this Agreement will be contained in a "General Services Addendum" as described herein.

**2. Rules Summary; Operating Regulations; General Services Addendum.** Merchant acknowledges receipt and review of the Rules Summary, which are incorporated into this Agreement by reference. Merchant agrees to fully comply with all of the terms and obligations in the then current Rules Summary, as changed or updated by Processor from time to time, at Processor's sole reasonable discretion with notice in accordance with the Service Delivery Process. The Rules Summary is a summary of key Operating Regulations that govern this Agreement. In the event there is a change in the Rules Summary by Processor that is not related to or based on a corresponding Association rule or requirement, such provision will not be binding on Merchant. Merchant agrees to participate in the Associations in compliance with, and subject to, the Operating Regulations. Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), VISA, MasterCard, Discover, and/or Other Networks, including but not limited to PCI, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or

without the prior written consent of the other party, which consent will not be unreasonably delayed or withheld, and any purported assignment contrary to the terms hereof shall be of no force and effect. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors, transferees and assignees. Merchant will remain liable for any amounts owed under this Agreement after an unauthorized transfer or assignment by Merchant, even if Processor continues to provide Services to such transferee or assignee. This Agreement is for the benefit of, and may be enforced only by, Processor and Merchant and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party.

**17. Notices.** All notices, requests, demands and other communications to be delivered hereunder unless specified otherwise herein shall be in writing and shall be delivered by nationally recognized overnight carrier, registered or certified mail, postage prepaid, to the following addresses:

(i) if to Processor: Vantiv, LLC, 8500 Governors Hill Drive, Mail Drop 1GH1Y1, Symmes Township, OH 45249-1384, Attention: General Counsel/Legal Department;

(ii) if to Merchant:  
Howard Merkwitz, Deputy Comptroller  
Office of the Comptroller  
One Ashburton Place  
9<sup>th</sup> Floor  
Boston MA 02108  
By Fax 617-973-2555

or to such other address or to such other person as either party shall have last designated by written notice to the other party, such as the Standard Contract form, amended.

Notices, etc., so delivered shall be deemed given upon receipt or upon failure to accept delivery.

**18. Unenforceable Provision.** If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

**19. Payment.**

Credit Interchange Fees, Dues & Assessments, Processing Fees, Communication Fees, Debit Interchange Fees and other applicable fees will be billed without any mark-up or surcharge and will be billed on a monthly basis. Payment for fees may not be netted by Processor from gross proceeds at settlement or on a monthly basis unless subject to the chargeback terms set forth in Section 6, Exception Items. Processor shall provide a monthly invoice, written in a user-friendly language, for each chain for any and all fees and other amounts due Processor under this Agreement.

Merchant shall maintain annual budgeted accounts with sufficient funds to meet its obligations under this Agreement. All amounts due Processor under this Agreement shall be paid without set-off or deduction, and shall be due from Merchant payable within forty-five (45) days of its receipt of a monthly invoice unless such amounts may be offset against amounts due Merchant.

In the event Merchant fails to compensate Processor, Processor shall have all rights and remedies available to Processor in this Agreement, including but not limited to exercising the rights and remedies of Processor in Section 13.

**19A. Funding.**

The following table outlines the Expedited Funding Schedule for all transactions settled prior to 2:00 a.m. EST for Visa, MasterCard and Discover for any Commonwealth Merchant that meets the requirements:

Expedited Funding Schedule Electronic Merchant Deposit (EMD) File Processing -- Visa®/MasterCard® Transactions 2:00 a.m. ET EMD Transmission Deadline				
Monday	Tuesday	Wednesday	Thursday	Friday
Friday Sales	Monday Sales	Tuesday Sales	Wednesday Sales	Thursday Sales
Saturday Sales				
Sunday Sales				

Example:

Monday's sales that are settled via an EMD file transmission received prior to 2:00 AM EST on Tuesday can be processed during the early morning settlement processing windows of Visa® and MasterCard® and these transactions will be funded to the Processor's clearing account on Tuesday. The transfer of these funds to the Merchant's account will be initiated on Tuesday. The transfer of these funds to the Merchant's account will be initiated via ACH or FedWire on Tuesday. The availability of these funds is controlled by the method of funds transfer (ACH vs. FedWire) and the funds availability policy of the Merchant's depository account. Standard ACH transfers have a one-day clearing time frame, so an ACH item initiated on Tuesday would be received by the Merchant's depository bank on Wednesday morning. The receiving depository institution would control the availability of these funds.

For any Commonwealth Merchant that cannot meet the expedited settlement submission timeframes outlined above, the Processor offers a standard settlement processing cut-off time frame of 5:00 p.m. ET on the next business day following the transaction date (e.g. Monday transactions must be received by 5:00 p.m. ET on Tuesday in order to be processed according to the Processor's Standard Funding Schedule). EMD files received by this time are processed by the Processor's systems and will be included in late morning, early afternoon or late night clearing file transmissions to Visa and MasterCard. The funding of these transactions is one business day longer than the Expedited Funding schedule outlined in the previous schedule. The Processor will not initiate funding for any transactions not funded by Visa and MasterCard if these processing windows are not met. The Processor's Standard Schedule of Funding and Sample Processing Schedule are outlined in the following table:

Standard Fund Schedule Electronic Merchant Deposit (EMD) File Processing -- Visa®/MasterCard® Transactions 5:00 p.m. ET EMD Transmission Deadline				
Monday	Tuesday	Wednesday	Thursday	Friday
Thursday Sales	Friday Sales Saturday Sales Sunday Sales	Monday Sales	Tuesday Sales	Wednesday Sales

Example:

Monday's sales that are settled via an EMD file transmission received after 2:00 AM EST on Tuesday. These transactions are processed during the Tuesday and the transactions will be funded to the Processor's clearing account on Wednesday. The transfer of these funds to the Merchant's account will be initiated on Wednesday. The transfer of these funds to the Merchant's account will be initiated via ACH or FedWire on Wednesday. The availability of these funds is controlled by the method of funds transfer (ACH vs. FedWire) and the funds availability policy of the Merchant's depository account. Standard ACH transfers have a one-day clearing time frame, so an ACH item initiated on Wednesday would be received by the Merchant's depository bank on Thursday morning. The availability of these funds would be controlled by the receiving depository institution.

The Processor will accept an auto-close time for each batch for each merchant identification number. Once the batch auto-closes, the next transaction will open a new batch and those transactions will process the following business day.

American Express will dictate its own settlement funding schedules.

**20. Reserve.** As a specifically bargained for inducement for Processor to enter into this Agreement with Merchant, Processor at its option reserves the right to i) establish from amounts payable to Merchant hereunder, and/or cause Merchant to pay to Processor, a reserve of funds satisfactory to Processor to cover actual or anticipated fees, liabilities, chargebacks, returns and any other applicable assessments. Processor represents to Merchant that it has no intention of requiring a reserve immediately upon execution of this Agreement. Processor will not require a reserve hereunder unless Processor, in its commercially reasonable judgment, believes its exposure under this Agreement is outside of Processor's normal risk standards.

In the event Merchant fails to establish, for any reason whatsoever, a reserve as required above, Processor shall have all of the rights and remedies available to Processor in this Agreement, including but not limited to exercising the rights and remedies of Processor in Section 13. In the event Processor exercises its right to establish a reserve pursuant to this Section, Merchant may, subject to the following provisions, terminate the Agreement upon 30 days advance written notice to

authorized officers and agents, shall retain control of Processor's management, operations, and affairs, including but not limited to: (i) the hiring and firing of Processor's employees, their hours, rates of pay and conditions of employment; and (ii) the manner in which the business of Processor is conducted during the term of this Agreement in connection with the Services described in this Agreement and in other services rendered to others by Processor during the term of this Agreement.

MERCHANT LEGAL NAME: Commonwealth of MA

By: \_\_\_\_\_

Name: Jeffrey Shapiro

Title: Deputy Comptroller / COO

Date: 9/2/15

**47. Non-Liability of Board Members.** No member of the Board of Directors of the MBTA shall be liable personally under or by reason of this Agreement or any of its covenants, articles, or provisions.

**48. Interest of Members of or Delegates to Congress.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

**49. Political Activity Prohibited.** None of the Services shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

**50. Insurance.**

a. **Commercial General Liability Insurance.** Processor shall carry and maintain Commercial General Liability Insurance for personal injury, bodily injury, and property damage, with limits not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in aggregate, covering all work and services performed under this Agreement. Such insurance shall include all operations of the insured, shall include contractual liability covering this Agreement, and shall be written on an occurrence basis.

b. **Umbrella Liability Insurance.** Processor shall carry and maintain Umbrella Liability Insurance with limits not less than Five Million Dollars (\$5,000,000) per occurrence and annual aggregate, covering all work and services performed under this Agreement. Such insurance shall be written on an occurrence basis.

c. **Workers' Compensation Insurance.** Processor shall carry and maintain Workers' Compensation Insurance, including Employers' Liability Insurance as provided by state law applicable to Processor, covering all work and services performed under this Agreement.

d. **Financial Institution Bond.** Processor shall carry a Financial Institution Bond with limits of not less than Fifty Million Dollars (\$50,000,000). To the extent Processor's insurer is not automatically including coverage for client's property coverage, Processor shall provide evidence of such coverage for the MBTA and shall provide an endorsement evidencing such proof.

e. **Errors and Omissions Liability Insurance.** Processor shall carry Errors and Omissions Liability Insurance with limits not less than Twenty-five Million Dollars (\$25,000,000). Such insurance shall be provided by Processor in a Bankers' Professional Liability Form or equivalent.

The required insurance coverages hereinbefore specified shall have a Best's rating of B+ or better; shall be taken out before work under this Agreement is commenced and be kept in full force and effect throughout the Term; and shall be primary to and non-contributory to any insurance or self-insurance maintained by Merchant. All such required insurance shall be written on an occurrence basis form as opposed to a claim made basis form, except for the Financial Institution Bond, which is only written on a discovery basis.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers as of the dates set forth below.

VANTIV, LLC

By: \_\_\_\_\_

Name: Brian Keasane

Title: Director Contracts Management

Date: 9.9.2015

Approved as to Form:

\_\_\_\_\_

STAC Media, LLC  
Public Comments submitted to Massachusetts Department of Revenue  
In support of implementation of Governor Baker's Sales Tax Modernization Initiative

# ATTACHMENT F

# Section 6050W of the Internal Revenue Code

October 2012

The following materials pertain to the information reporting rules under Internal Revenue Code section 6050W. The materials were prepared based upon the specific facts and circumstances for First Data Corporation and its affiliates. Generic, hypothetical facts and circumstances also have been used. We do not make any warranty or representation as to the completeness or accuracy of this information, nor assume any liability or responsibility that may result from reliance on such information. The information contained herein is not intended as legal or tax advice and readers are encouraged to seek the advice of a competent tax professional where such advice is required. We recommend that you consult with your own legal and tax advisors when evaluating how the subject matter of these materials might affect you.

## New Reporting Requirements

Section 6050W of the Internal Revenue Code and the implementing Treasury Regulations contain transaction reporting and withholding requirements. Obligated reporting entities must report merchants' payment card and third party network transactions, based on tax identification numbers and tax filing names. In addition, **these entities must support withholding of merchant settlement dollars based on IRS backup withholding guidelines.**

At the end of each calendar year, obligated reporting entities will file an information return with the IRS reporting the gross amount of that merchant's transactions for the year and will provide a corresponding Form 1099-K to the merchant.



## Executive Summary

The Housing Assistance Tax Act of 2008 included the enactment of Section 6050W of the Internal Revenue Code, an important measure that requires obligated reporting entities to report the gross amounts of their merchant customers' payment card and third party network transactions to the Internal Revenue Service (IRS). As a result of these requirements, which applied to transactions beginning on January 1, 2011 (with required reporting that began in 2012), merchants are obligated to provide their tax identification number (TIN) and tax filing name. If a merchant fails to provide its TIN or if the IRS notifies the reporting entity that there is a discrepancy between the information provided by the merchant and the IRS records, the reporting entity will be required to withhold tax on the merchant's future funding amounts. Backup withholding, which is currently 28 percent, will start in 2013.

A payment settlement entity is typically a merchant acquiring bank. However, other businesses can be classified as payment settlement entities as well. If a payment settlement entity uses a third party to assist with payment processing, the reporting burden may shift to the third party, known as an electronic payment facilitator.

The first 1099-Ks were distributed by January 31, 2012 for the 2011 tax year.

## Merchant Information

In order to perform these reporting and withholding functions, each payment settlement entity must have the correct TIN and tax filing name for each merchant. Merchants will be contacted by their merchant acquirer to provide updated tax information (if current information does not match the IRS database) or to confirm validated tax information on file.



## Backup Withholding

In addition, amounts reportable under Section 6050W are subject to backup withholding requirements.

If a merchant fails to provide its payment settlement entity with its TIN or if there is a discrepancy between the merchant's TIN and the associated information in the payment settlement entity's records and the IRS' records, the payment settlement entity will be required to perform backup withholding from merchant funding by deducting and withholding income tax from reportable transactions in 2013.

## Key Definitions:

**Participating Payee:** A person or governmental unit who accepts a payment card or accepts payment from a third party settlement organization in settlement of third party network transactions.

**Payment Settlement Entity:** A merchant acquiring entity for a payment card transaction; a third party settlement organization for a third party network transaction.

**Merchant Acquiring Entity:** A bank or other organization with the contractual obligation to make payment to participating payees in settlement of payment card transactions.

**Third Party Settlement Organization:** An organization that has the contractual obligation to make payment to participating payees of third party network transactions. Third party settlement organizations are exempt from reporting transactions for a payee whose aggregate transactions do not exceed \$20,000 or 200 transactions.

**Payment Card Transaction:** A transaction in which a payment card is accepted as payment. For the purposes of Section 6050W, payment cards may include but are not limited to credit cards, debit cards, and stored-value cards (including gift cards). Acceptance of an account number associated with a payment card is treated as the acceptance of the payment card. However, use of a convenience check, use of a payment card to obtain a loan or cash advance and use of private label cards that can only be used at one merchant or within a group of related merchants are not considered payment card transactions for this purpose.

**Third Party Network Transaction:** A transaction that is settled through a third party payment network.

**Third Party Network:** An agreement or arrangement that involves the establishment of accounts with a central organization by a substantial number of persons who are unrelated to that organization and who have agreed to settle transactions for the provision of goods or services. A third party payment network provides standards and mechanisms for settling transactions and guarantees that those who provide goods or services as part of the agreement will be paid. A third party payment network transaction does not include any agreement or arrangement that provides for the issuance of payment cards.

Backup withholding will be based on the current IRS withholding regulations (currently 28 percent) and will be subtracted from the merchant's daily deposits. The withholding is based on the merchant's gross amount of sales.

## State Requirements

Some states have announced similar requirements. Obligated reporting entities will be required to provide federal reporting information for merchants identified as payees in New York and Hawaii. California will require reporting entities to provide federal reporting information for merchants identified as payees in that state. Additionally, California will require an additional withholding of 7 percent in cases where a reporting entity is required to perform backup withholding for a California merchant payee.

## Update Your Information

Merchants were contacted by their merchant acquirer in late 2010 or early 2011 with instructions for updating or confirming their TIN and tax filing name.

## Additional Information

For more information about Section 6050W, visit <http://www.firstdata.com/section6050w>.



Electronic Payment Facilitator: A party that makes payments in settlement of reportable payment transactions on behalf of the payment settlement entity. In cases involving a processor, the processor doesn't need to have any agreement or arrangement with the merchant to qualify as an electronic payment facilitator, nor does the payment need to come from the facilitator's account. The facilitator submits instructions to transfer funds to the account of the participating payee in settlement of the reportable payment transaction. The electronic payment facilitator is responsible for filing the information returns required under Section 6050W.

### Example A

*Bank Alpha is a merchant acquiring entity with the contractual obligation to make payments to participating merchants to settle certain credit card transactions. Alpha enters into a contract with Processor Bravo. Pursuant to this contract, Bravo prepares and submits instructions to move funds from Alpha's account to the accounts of participating merchants to settle credit card transactions. Bravo is making payment on Alpha's behalf in settlement of payment card transactions pursuant to a contract between Bravo and Alpha. Therefore, Bravo is an electronic payment facilitator and must file the information returns required with respect to credit card transactions settled by Bravo. Alpha has no reporting obligation with respect to payments made by Bravo on Alpha's behalf.*

### Example B

*In this second example, the basic facts are the same as the previous example except that Bravo merely prepares the instructions to move the funds to the accounts of participating merchants, and the instructions are actually submitted by Alpha. Alpha, not Bravo, is making payment in settlement of payment card transactions. Therefore, Alpha retains the obligation to file the information return required with respect to credit card transactions settled by Alpha.*

Designation: The party with the obligation to file the annual information return may designate by written agreement a different party to report on its behalf. A designation does not relieve the party with the



reporting obligation from liability for any reporting failures. The party with the obligation to file the annual information return remains liable for any applicable penalties if requirements are not satisfied.

**Aggregated Payee:** A person who receives payments from a payment settlement entity on behalf of one or more participating payees and distributes such payments to one or more participating payees. An aggregated payee is treated as the participating payee with respect to the payment from the payment settlement entity and as the payment settlement entity with respect to the participating payees to whom the person distributes payments.

**Gross Amount:** The total dollar amount of aggregate reportable payment transactions for each participating payee without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts.

# ATTACHMENT G

# Sales tax modernization piloted in MA

## Actual Real Time Split Funded MA Merchant Account on First Data platform

- NO changes made to the POS System
- Bifurcation can be accomplished at a processor level with ease

Total Batch Amounts

Sales	Returns	Net
\$11,047.43	\$0.00	\$11,047.43

Net Credit/Debit Amount

Merchant sales amount sent in real time to merchant account

Bifurcated amount for sales tax collection sent in real time to secondary account

### Payment Summary

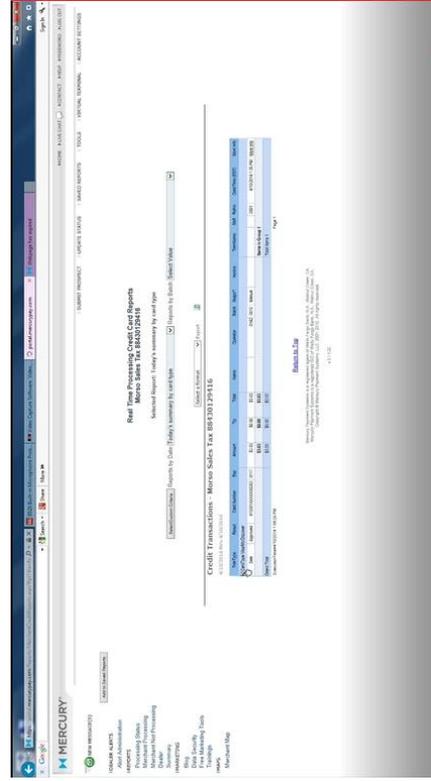
530960620102442 : TONY C'S SPORTS GRILL (11/28/2016 - 12/1/2016)

Report Date	Deposit Date	Routing #	DDA #	# Deposits	Deposits	# Debits	Debits	Net Deposit
12/01/2016	11/30/2016	xxxx3097	xxxx0200	1	\$10,725.97	0	\$0.00	\$10,725.97
12/01/2016	11/30/2016	xxxx3097	xxxx0200	1	\$662.85	0	\$0.00	\$662.85
11/29/2016	11/28/2016	xxxx3097	xxxx0200	1	\$0.06	0	\$0.00	\$0.06
11/29/2016	11/28/2016	xxxx3097	xxxx0200	1	\$0.94	0	\$0.00	\$0.94

EXPORT

# morso two year successful test sales tax modernization Restaurant Bar Cafe

- We have not seen any evidence from the 2 years of testing and application that the sales tax modernization initiative would impose additional burdens on merchants — especially small ones.
- In fact, from our experience it appears that it lessens the burden on the small business owners as it reduces the 2-3 days a month spent trying to determine the proper sales tax payments.



# ATTACHMENT H

Payment Acceptance  
Prepaid

**Global Information & Analytics**

Advanced Solutions & Innovation  
Network Solutions  
Consumer & Commercial Payments

# REPORTING SOLUTIONS

First Data takes you beyond with reporting solutions designed to provide you with real-time information that helps you make knowledgeable business decisions.



# GO BEYOND REPORTING SOLUTIONS

The ways your customers buy goods and services evolve daily and you need sophisticated reporting tools to keep pace. Accessing up-to-date transaction data is crucial in order to manage your business effectively.

At First Data, our global payments experience provides unique marketplace insights which allow us to develop the innovative and comprehensive solutions merchants need to leverage more value from every transaction.

First Data Reporting Solutions provides a comprehensive, easy-to-use reporting suite. From merchant statements and alerts to our next-generation Business Track<sup>SM</sup> online portal and dashboard, we offer a full spectrum of reporting and business management solutions.

# HARNESS THE POWER OF YOUR DATA

## Anytime Access

An innovative suite of online tools enables robust access to payments metrics dashboards and detailed querying from the web, providing access virtually anywhere and anytime.

## Centralized Information

Run your business more efficiently with one-stop access to processing activity, popular applications and useful resources through a consolidated interface.

## Simplicity at Your Fingertips

Enjoy an at-a-glance view of your processing information and easy-to-use features to conveniently manage your account.

## Flexible Data Management Options

A wide variety of user-defined options, multiple reporting packages and the ability to download data provide the flexibility to meet your needs.

## Timely Communication

Know what's happening with your business transactions through email alerts announcing key deposit, dispute and reconciliation events.

# OUR BUSINESS TRACK<sup>SM</sup> REPORTING SOLUTION

The screenshot shows the Business Track reporting solution interface for 123 Bank. The interface includes a navigation menu with Home, Applications, and User Preferences. The main content area is divided into several sections:

- Card Processing Summary:** A bar chart showing Net Sales by month from 12/1/2011 to 12/7/2011. The total net sales for the period is \$126,750.00. The chart shows sales in USD, Canada (CAD), Euro (EUR), and Yen (JPY).
- SpendTrend:** A line chart showing Dollar Volume Growth by Industry for April 2011. The chart indicates that dollar volume growth was steady at 8.0% in April despite rising gas prices.
- Alerts:** A section for registering for email notifications of key account information.
- Statements:** A section for accessing electronic statement copies for the previous five years.
- Disputes:** A table showing the total count and amount for outstanding Retrievals and Chargebacks.
 

Disputes (12)	Count	Amount
Chargebacks	6	\$162.84
Retrievals	6	\$461.55
- Account Maintenance:** A section for making changes to the account, including updating contact information.
- Data File Manager:** A section for scheduling data files through the Data File Manager's easy-to-use self-service features.
- Resources:** A section for accessing support materials, including Gift Card Reporting Support Materials, Business Glossary, Industry News, and Training Demos.
- What's New:** A section for learning more about the new, improved layout of the reporting solution.
- Contacts:** A section for displaying bank contact information, including Customer Service (1-800-555-5555), Authorization Assistance (1-800-555-5555), and Terminal Help Desk (1-800-555-5555).

Callouts from the image describe the following features:

- Applications:** access applications unique to your user profile
- Card Processing Summary:** displays seven day summaries for Net Sales and Expenses
- SpendTrend:** quickly understand monthly consumer spending by industry
- Alerts:** email notification of key account information
- Statements:** electronic statement copies for the previous five years
- Disputes:** displays total count and amount for outstanding Retrievals and Chargebacks, with hyperlinks to eIDS
- Account Maintenance:** make changes to your account
- Data File Manager:** customize the data you want, when you want it
- Contacts:** displays bank contact information

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# FIRST DATA REPORTING SOLUTIONS

Simple, accurate, accessible reporting tools to manage your business.

SOLUTION	FIRST DATA ADVANTAGE	BENEFITS
<b>Business Track<sup>SM</sup></b>	Access and manage all processing data through a consolidated, user-friendly web portal.	Save time and efficiently manage your business with a convenient, easy-to-use interface that prominently features frequently-accessed applications.
<b>ClientLine<sup>®</sup> Reporting*</b>	Analyze payment processing with an easy-to-use online reporting tool for greater insight and better time management.	Get a broad range of standard reports that are fast and easy-to-run for either immediate review or delivered according to your specifications.
<b>Data File Manager*</b>	Flexible, self-service tool that gets you the data you need when you need it.	Create, test, manage and generate raw data files where you control the set-up and delivery.
<b>Dispute Manager (eIDS<sup>SM</sup>)</b>	Designed by merchants for merchants, our system streamlines the dispute resolution process.	Our automated process will help you track and resolve disputes quickly.
<b>Merchant Alerts*</b>	Receive timely notifications of reconciliation and dispute events that have bottom-line impact.	Merchant Alerts help to run your business by notifying you of issues quickly, giving you time to react to any issues before the deadline expires.
<b>Merchant Statements*</b>	Merchant statements provide a comprehensive report of submissions, chargebacks, interchange rates, funding information and associated fees.	Information and key data points are presented in an easy-to-read format, allowing you to quickly view the information that is most important to you.
<b>Payments Tax Manager</b>	Merchants with multiple locations can view, update and manage store-level tax information from a centralized online tool.	Clear reconciliation of gross reportable sales from store-level to the TIN-level data on your 1099-K report.

## RELATED FIRST DATA SOLUTIONS

SOLUTION	FIRST DATA ADVANTAGE	BENEFITS
<b>Advisory Solutions</b>	Experienced First Data Advisors enable you to apply payments data to grow your business by delivering actionable, in-depth performance and revenue analyses based on our proprietary SpendTrend <sup>®</sup> Solutions data.	Deep, meaningful data dives into your business help uncover hidden issues and opportunities.
<b>Analytics Solutions</b>	SpendTrend <sup>®</sup> Solutions, offered via our Analytics Solutions, provides timely, accurate insight and analysis of U.S. consumer buying behavior that helps facilitate better market forecasting, benchmarking and business decisions.	More accurately forecast sales and assess your business position nationally, regionally and at the ZIP level.

\*May not be available on all platforms. Check with your sales representative for details.





# First Data Monthly Merchant Statement

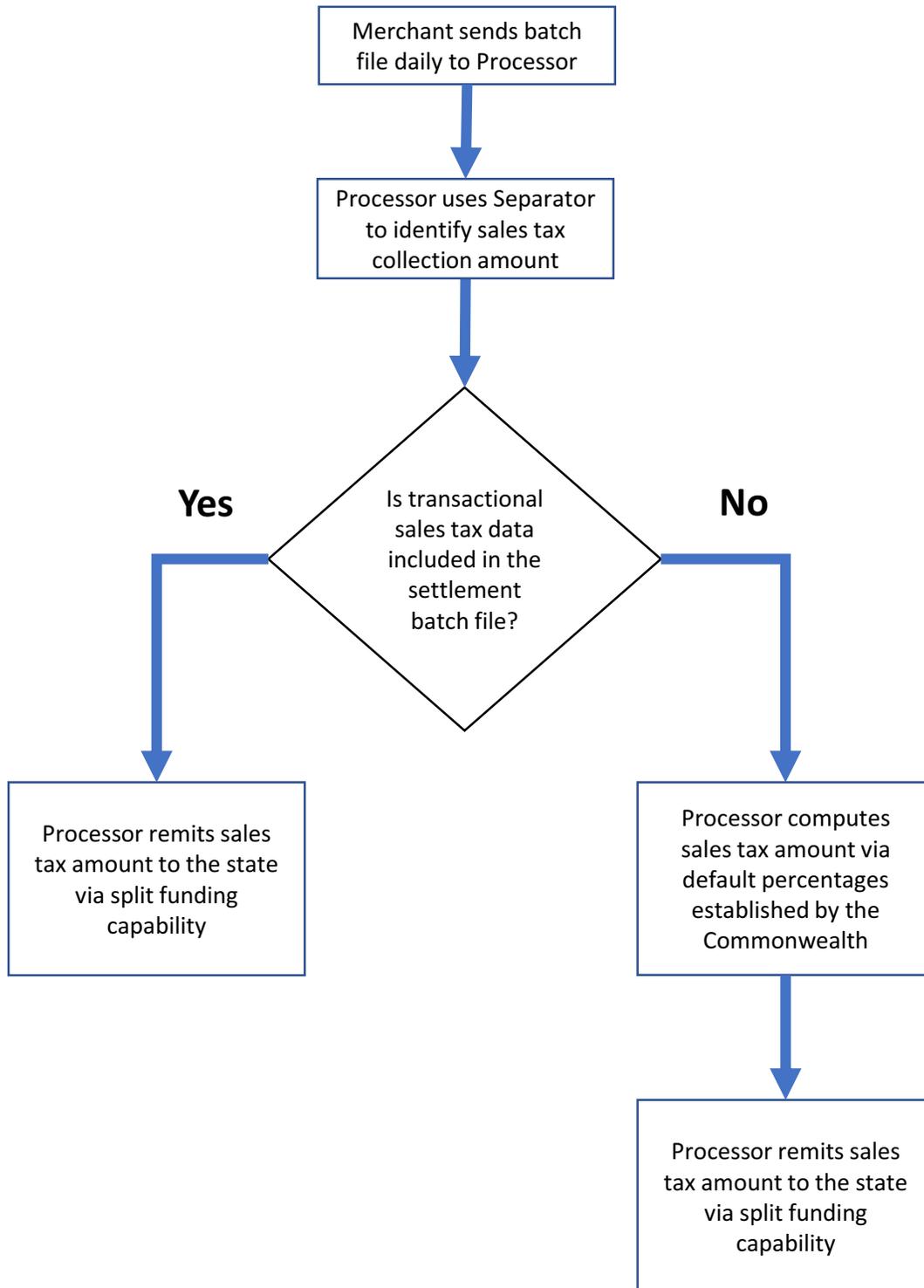
- Standard Monthly Merchant Statement
  - Please note that this not only reports the Gross Reportable Sales (1099) but also YTD
  - Processors can adopt the same strategy for sales tax modernization reporting

TAX GROSS REPORTABLE SALES BY TIN		Total
Month	Description	
July	GROSS REPORTABLE SALES-TIN#####0327	\$153,461.35
2016 YTD Gross Reportable Sales		\$1,299,168.29

Total dollar amount of aggregate reportable payment card transactions funded and third party network transactions, for each participating payee, without regard to any adjustments for credits, cash equivalents, discount amount, fees, refunded amounts, or any other amounts per respective tax identification number.

# ATTACHMENT I

# MASSACHUSETTS SALES TAX MODERNIZATION INITIATIVE COLLECTION MANDATE IMPLEMENTATION FRAMEWORK BASED ON INDUSTRY PRACTICE AND STANDARDS



The following submission(s) were added to this document after its initial creation. These submissions were received by the Department of Revenue within the targeted time-frame and were among the materials reviewed and considered during the process.

1. Comments of AT&T, Sprint, T-Mobile US, and Verizon - added November 2, 2017

**Comments of AT&T, Sprint, T-Mobile US, and Verizon**  
**on**  
**Daily Sales Tax Collection by Third Party Payment Processors**

September 28, 2017

These comments are respectfully submitted by AT&T, Sprint, T-Mobile, and Verizon (the “telecommunications providers”) on the question of whether it is cost effective to establish daily sales tax collection by third party payment processors. Under the provisions of Sections 94 and 95 of House Bill 3800, the Commissioner must determine whether it is cost effective and feasible to implement such a system by June 1, 2018. If not, the law requires the Commissioner not implement such a system.

These comments address the costs specific to the proposed daily sales tax collection and remittance system for sales made by telecommunications providers operating in Massachusetts where the payment is remitted by a third party payment processor. As discussed in detail below, just the four telecommunications providers filing these comments estimate that their cost of implementation of the daily sales tax collection and remittance system would be \$95-\$102 million in non-recurring costs and \$6-\$8 million in recurring annual costs. Other telecommunications providers would have additional costs of their own.

In addition to the very significant costs involved, telecommunications providers do not believe it would be possible to test and implement a system by June 1, 2018 due to the amount and complexity of programming required, the complex billing and accounting changes required, and the new procedures necessary for compliance, audit, and record retention. Therefore, we respectfully request that the Commissioner find that it is not cost effective or feasible to implement a daily sales tax collection system in the Commonwealth under the provisions of House Bill 3800.

September 28, 2017

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### Overview of Major Issues

Here is a summary of the key issues specific to the telecommunications industry that are in addition to the broader concerns about the proposal that retailers, payment processors, and banks may have with the proposed system.

- **Enterprise System Costs.** New systems and system enhancements would need to be created to separate Massachusetts sales taxes from the rest of the billed charges, including the Massachusetts 911 fee and other taxes, fees, and surcharges – and to address the various complexities described below.
- **Multiple Billing Systems.** Communications providers have multiple billing systems and platforms due to our historic growth through mergers and acquisitions, as well as the multiple channels used to sell our products and services. Implementing changes across these multiple systems exponentially increases the cost of implementing a daily sales tax collection system across these multiple platforms. For example, the telecommunications providers have approximately 125 different billing systems and each of the billing systems would need to be substantially modified to implement the proposed system. If each third party biller uses different software, each billing system would need to accommodate each different interface.
- **Separate Tracking of Transactions.** For audit and compliance purposes, systems would need to be developed to track payments from customers paying with a credit card or other instrument subject to the provisions of the law separately from remittances from customers that pay by check, direct debit from bank accounts, or with other prepaid financial instruments. Currently, companies do not reconcile these two separate remittance sources so systems would need to be created for compliance and audit purposes. Reconciliation would need to occur across multiple billing systems and multiple credit card companies and payment processors. In other instances, it is unclear how tax would be remitted (and later audited) in a split tender scenario, e.g., split cash/credit card(s), multiple credit cards, or gift card/credit card(s). This would further complicate reconciliation of any tax that was remitted.

- **Disconnect Between Sales and Payments.** The payment for services is not always directly correlated to a sale so the precise Massachusetts sales tax amount may not be known at the time of payment. The disconnect can occur in a number of instances:
  - Payments are made to an account, rather than paying a specific amount due on a transaction, and payments may be partial or cover multiple transactions.
  - An account may be comprised of taxable and non-taxable goods and services provided to subscribers both within and outside of Massachusetts.
  - The retail sale does not occur until the billing cycle occurs, which is when the services are fixed and determined, thus the retail sale can occur well before or after payment is made.
  - The billing cycle may occur before, after or on the same day as the payment, and this may vary month-to-month.
  - Customers may change their services at any time, causing prorated charges or adjustments that impact the amount due, including the tax calculated. This may affect the amount of payment that is subsequently due, and subsequent payment may be made by means other than a 3rd party payment processor, disassociating the original remittance of tax from the actual liability.

Implementation of the proposed system may uncover additional issues not discussed here. The lack of connection between sales and payments would require new systems, processes, and procedures to reconcile sales tax billings, collections, and remittances by retailers and payment processors.

- **Audit Process Changes and Traceability/Reconciliation Concerns.** Audit processes would have to be completely revamped to account for the fact that tax remittances would be distributed among multiple parties and traceability would be virtually impossible. It is not clear whether the retailer, payment processor, or financial institution would be liable for unpaid taxes upon audit.

- **Refund Procedures.** It is not clear how a credit card refund would be handled. Procedures would need to be established to determine how customers who pay with a credit card would seek refunds of erroneously collected taxes. It is unclear whether they would they seek refund directly from the Department of Revenue, from the payment processor, or from the provider.
- **Increased opportunity for errors.** The third party payment processor could remit the wrong amount of tax, code the wrong taxpayer subsidiary ID number, or have errors in its reports filed with the Department of Revenue or with the carriers. The State may not properly code or reconcile the taxes received to the right taxpayer. The carriers may not be able to properly reconcile the reports received by the third party processor and will over or under-remmit the taxes due.
- **Timing concerns.** Note the following example: A customer has a bill for recurring monthly service, dated July 31. The carrier currently would pay tax to Massachusetts on that bill on August 20, without knowing whether the customer has paid their bill and without knowing the form of payment. With payment terms of 30 days (some business customers have longer), that customer may choose to pay by credit card on August 31. The credit card company would settle with the carrier and remit taxes to MA within 48 hours of the transaction, or by September 2. They would submit a monthly report to the state and the carrier by October 15<sup>1</sup> of the taxes remitted. Now the carrier must reconcile the double amounts remitted on this transaction and request a refund. This reconciliation is impossible when the credit card company does not need to include transaction level detail in its reports. Obviously with different billing cycles and terms of payment, there will be many variations of this problem, many where the credit card company will remit tax to the state later than the current process.

#### Estimated Enterprise System, Billing System, and Return Filing Costs

A daily sales tax collection system is not currently operational in any state, so it is not entirely clear how such a system would work and how it would be funded. The estimates contained in this submission are based on the best estimates from the telecommunications

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<sup>1</sup> Note the legislation does not specify the due date of the third party payment processors' monthly returns, nor of the monthly reports it must provide to carriers.

September 28, 2017

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providers' tax departments based on their experience with other major systems integration projects.

Currently, all sales taxes collected from customers are treated the same way regardless of the method of payment. Carriers journalize sales tax payments in the month when bills are rendered and remit taxes the following month on the schedule proscribed by the Department. When taxes are remitted, the carriers do not have insight as to whether the customer has paid their bill or the method of payment. If a customer pays by credit or debit card, a single charge for total amount of services, taxes, and fees is submitted to the payment processor and debited from the customer's bank account. Taxes and fees are not broken out as separate charges in credit or debit card transactions.

The telecommunications providers have approximately 125 different billing systems that would need to be integrated with payment processor systems. Adding further complexity is that there are approximately 60 legal entities filing returns in Massachusetts. Some of these billing systems are relatively modern, while others are legacy systems that would be even more costly to upgrade. The large number of billing systems that are utilized across multiple legal entities – all of which must be integrated with the systems of payment processors – significantly increases costs associated with implementing the system.

Estimates of the one-time costs for upgrading these billing systems range between \$250,000 and \$700,000 per system. The total cost estimate for all billing systems and legal entities is \$95 - \$102 million. The following is a potential list of issues that will need to be addressed to update telecommunications providers' enterprise, billing and tax filing systems:

- Segregating credit card/debit card transactions from ACH, gift card, check, and other transactions not subject to daily sales tax collection requirements.
- Updating interfaces with payment processing systems that segregate those transactions requiring daily remittance into separate transactions for sales taxes and all other charges for products, services, and other fees like 911 fees.
- Updating interfaces between billing systems when products are billed out of multiple billing systems.
- Updating interfaces between internal billing and payment systems.
- Storing data for tax payments, credits, reversals, and charge backs by type of transaction.

September 28, 2017

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- Developing data files to allow processing of daily accounting of tax payments. (Currently, not all billing systems journalize on a daily basis.)
- Creating systems to “true up” tax remittances not subject to daily remittance requirements with those subject to daily remittance requirements.
- Creating interfaces to data repositories to support audit data requirements.
- Developing adjustment processes that integrate company billing systems with payment processor systems for overpayments, refunds, credits, and other adjustments that result in changes to sales tax liability.
- Updating Sarbanes-Oxley control processes in accounting and compliance systems.

In addition to the costs above, the telecommunications providers anticipate that approximately \$6-\$8 million in recurring compliance and other costs would be incurred as well:

- Additional staffing needed to manage reconciliation of payments by multiple third party payment processors.
- Additional staffing to maintain audit trail of payments made on behalf of telecommunications providers by multiple third party payment processors.
- Additional staffing for more complicated and time consuming audits due to the additional complexity involved in reconciling tax payments subject to daily collection system and traditional filing deadlines.
- Ongoing modifications and updates to enterprise, billing, and filing systems to address issues that arise from making the significant systems changes discussed above.

### Implementation Timetable

The telecommunications providers are very concerned that given the complexity of the systems changes discussed above, it would not be possible to have systems developed, tested, and operational by June 1, 2018. This concern is based upon telecommunications providers’ extensive experience with integrating accounting and billing systems over the past decade.

As discussed above, there are a number of discrete tasks that would need to be completed for each of the telecommunications company billing systems and legal entities. One carrier estimates that some of the upgrades could be completed in as little as four months, while others would take at least 22 months. Another telecommunications company reported

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that fully completing, testing, and operationalizing the system across all billing and filing systems would take approximately three years.

Therefore, even if it were cost effective to implement the system – and the preceding discussion shows that it would not be cost effective – it is nearly impossible that it could be done within the timeframe suggested in House Bill 3800. This places both telecommunications providers and the Commonwealth at risk of failing to comply with the provisions of the law in a timely manner.

#### Additional Issues to Consider

- **Massachusetts Already Receives Payment in Advance or Contemporaneously in Some Instances.** Massachusetts is already receiving sales tax in advance of customer payment in some situations, which means the proposal may actually delay remittance. Telecommunications providers sell a mix of goods and services sold on various credit terms, including: 1) installment plans where goods are financed and all sales tax is remitted upon initiation, although the customer pays for goods over 1-2 years (monthly credit card payments would have no sales tax because it has already been paid); 2) services that are paid in advance, meaning the State likely receives sales tax concurrent with the payment but before the service is provided and the revenue is fully recognized; and 3) services that are billed in advance of the bill cycle or concurrently with the first day of the bill cycle and subsequently paid on standard Net 30 day terms; however, under accrual basis accounting, the State receives sales tax potentially before the company ever receives payment.
- **Payment Processors May Lack Nexus.** There may be constitutional issues with requiring certain credit card companies that do not have sufficient nexus with the state of Massachusetts to take on the burden of remitting sales tax to the state on a daily basis, particularly when considering the costs associated with technology, ongoing reporting and compliance, and any potential burdens or responsibilities on audit.
- **Budgetary Implications.** The risk that the system would not be operational by June 1, 2018 could leave the Commonwealth at risk of not meeting the budgetary targets in House Bill 3800.

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### Recommendation

For the reasons discussed above, the telecommunications providers respectfully request that the Commissioner find that it is not cost effective or feasible to implement a daily sales tax remittance system in the Commonwealth. Such a system would upset established industry practices and cost telecommunications providers over \$100 million without providing significant corresponding benefit to the Commonwealth in terms of acceleration of sales tax payments from consumers of telecommunications services. It would also introduce material operational risk into the existing sales tax compliance procedures and systems of both taxpayers and the Commonwealth.

*This report was prepared by Scott Mackey, Economist and Managing Partner at Leonine Public Affairs in Montpelier, VT. Information from the telecommunications providers was aggregated into a single submission to protect confidentiality and facilitate the submission of comments. For additional information, please contact the following company representatives:*

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