



State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

The Honorable Senator Tim Ashe, Chair
Senate Committee on Finance
State House, Room 6
115 State Street
Montpelier, VT 05633 -5301

Dear Senator Ashe:

The House of Representatives recently passed H. 873, An act relating to making miscellaneous tax changes. The bill originated with the Administration's proposals in the House Committee on Ways and Means, and, as always, we thank the legislative committees for their hard work. Below are some comments on the bill as passed for the Senate Committee on Finance to consider as you take up the bill.

Our comments are divided into technical provisions, revenue provisions, and provisions related to internet sales and lodging platforms.

Technical Provisions

We appreciate that the Ways & Means Committee adopted the technical provisions to improve tax administration that we put forth (Secs. 1-16 and 18-21). We would particularly highlight the change in Sec. 10 to require employers to provide the Department of Taxes with copies of W-2 withholding statements at the same time as they are due to employees, January 31. Moving up this date will significantly aid in the Department's efforts to combat refund fraud and brings us in line with many other states' W-2 submission policies.

We do ask that the Committee consider a technical change to the first part of Sec. 10 as it relates to the filing frequency for the quarterly and monthly withholding taxpayers. The intent behind our request in Sec. 10 would have businesses file their state withholding tax with the same filing frequency they use at the federal level (biweekly, monthly, or quarterly). The underlying statutory language uses dollar threshold to achieve this parity, but the thresholds have become outdated, resulting in some Vermont businesses facing different filing frequency at the state and federal level. The language we originally provided did not quite achieve the intended change. Therefore, we would appreciate the support of the committee in using the updated language (attached) in place of the underlying Sec. 10.

The House Committee on Ways and Means made a change to one of our other requested changes in Sec. 8 of the underlying bill. Our original request changed a "shall" to a "may" around a hearing officer visually inspecting a property during an appeal. Ways and Means included language that allows a homeowner to request an inspection.





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We think this language should be reciprocal, allowing either party in the appeal to request a visual inspection. The Vermont Association of Listers and Assessors supports this change (attached). There are also a few changes to the effective dates that we would ask for the committee to include in their version of H.873.

One provision that we included in our introduced version of the miscellaneous tax bill was the estate tax language that passed the Senate last year (S.55). The Ways and Means Committee considered including that language in this bill but ultimately chose to move S.55. We have changed the language to make it revenue neutral and fix an issue that was discovered when we translated the law to a form. Attached is the language we have provided to Ways and Means and Legislative Council, should this committee choose to include the language in its version of the miscellaneous tax bill.

Revenue Provisions

The initial bill as proposed by the administration included a provider tax on independent physicians and dentists. This was an annual assessment at 2.35% on the physician's and dentist's net patient revenues. Both of these assessments would be administered by the Department of Vermont Health Access.

The bill as passed the House does not contain either of these provider assessments but instead raises revenue from an increase in the bank franchise tax, an increase in the fuel gross receipts tax, a provider tax on ambulatory services, and a tiered employer assessment.

Internet Sales and Lodging Rental Platforms

The Ways and Means Committee added two provisions to address sales tax on sales in Vermont made by vendors without a physical presence in the state, as well as one provision to address private short term lodging rentals booked on online platforms. The Administration shares the concern that all like transactions be taxed on a level playing field regardless of the seller or medium used to conduct business. Below are some considerations for the Senate Finance Committee as you look at the particular measures proposed by the House.

Internet Sales

The Supreme Court has not reconsidered the *Quill* decision that holds that a state cannot require a vendor to collect its sales tax unless the vendor has a physical presence nexus in the state. Nor in the intervening decades has Congress accepted the *Quill* court's invitation to reverse this result by statute, despite the fact that internet sales have exploded, states including Vermont have collaborated with the Streamlined Sales Tax Agreement to simplify tax





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laws, and technological solutions make compliance ever easier. The Marketplace Fairness Act, which is the real solution, continues to languish.

In the face of federal inaction, states are considering a variety of measures to skirt or challenge Quill nexus in the hopes of forcing reconsideration by the Court and/or action by Congress. Vermont should applaud and support these very bold moves by states. However, below are some issues that Vermont needs to consider before it too wades into landmark litigation in this area.

Sec. 22-23: Reporting Requirements: Colorado has been a pioneer in imposing significant reporting requirements on vendors with \$100,000 of in-state sales who do not collect sales tax, and the House bill adopts similar requirements in Section 22-23, with a lower threshold of \$50,000 (effective July 1, 2016). The Colorado law has not been enforced during protracted litigation. The U.S. Court of Appeals for the 10th Circuit just last month ruled the law constitutional; tax experts widely expect the case will go back to the U.S. Supreme Court. It is unclear what advantage Vermont gains by entering the legal fray at this time. If the Senate agrees that it wants to show support for this effort, it should consider adopting the same sales threshold as Colorado, and set an effective date for after a controlling court decision or federal legislation upholding reporting requirements.

Sec. 24: Economic Nexus: More recently, the Alabama Department of Revenue has launched a direct attack on *Quill* by adopting a rule that eliminates the physical presence requirement for a vendor with \$250,000 of in-state sales. South Dakota recently passed a bill mimicking the Alabama rule with even lower thresholds of \$100,000 or 200 sales transactions, and an unusual procedural provision that suspends enforcement for a fast track determination of constitutionality. The House bill's Section 24 adopts the South Dakota thresholds, effective January 1, 2017, unless there is an earlier controlling court decision or legislation that eliminates the physical presence requirement. Another course would be to adopt the Alabama threshold and drop the July 1, 2017 effective date, retaining only the second half of the effective date language around a controlling court decision or federal legislation.

Sec. 18a: Private Short Term Lodging Rentals on Internet Platforms

The House proposal purports to mandate that the Department enter into a contract with "any person who provides a platform for the short-term rental of property for occupancy." As my testimony on March 30th indicated, there are legal, practical, and definitional problems with this approach. The definitional problems raise issue with the Department attempting to interpret the legislation since the platforms as loosely described would appear to include everything from online newspapers, to hotel booking sites, to sharing economy sites.

In any event, there is one company, Airbnb, which has entered into tax collection agreements with several jurisdictions (to date, 7 states have these agreements). Airbnb acknowledges that state and local lodging taxes may





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be due on the full amount charged to “guests” to rent from “hosts” on its site. It asserts that the hosts are responsible for remitting such taxes, but since it handles payments, it will agree to collect and remit itself if jurisdictions make certain concessions. The Department has received a draft proposal from Airbnb, and is analyzing the terms. Important issues that need to be considered and/or resolved include the impact of any forgiveness for past liability and confidentiality of host names. In the evolving lodging market, an agreement with just one platform has consequences when many hosts use numerous sites, some of which do not handle payments. Also important is the impact of any terms on the Department’s ability to continue its voluntary compliance program “Room with a View,” supplemented by regular audit activities that have yielded approximately \$750,000 in the past 3 years.

Finally, outside of tax administration, the impact of any agreement terms on the ability of the state or localities to examine zoning, health, safety or other regulatory matters relating to these rentals has to be considered. Regardless of any legislation, the Department will continue exploring the possibility of entering into an agreement, seeking the best possible balance of all these issues for the state.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Peterson".

Mary Peterson
Commissioner

cc:

John Campbell, Senate President pro tempore
Shap Smith, Speaker of the House
Justin Johnson, Secretary of Administration
Andy Pallito, Commissioner of Finance and Management
Stephen Klein, Legislative Chief Fiscal Officer
Representative Janet Ancel, Chair of the House Committee on Ways and Means

