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**Sent:** Wednesday, November 02, 2016 1:36 PM

**To:** Springer, Darren; Martin, Trey; Allen, Susan; London, Sarah; Pallito, Andy

**Subject:** Priv & Conf: Negotiations

I have gotten permission from Amazon to discuss their offer to enter into a Voluntary Compliance Agreement to start paying income tax and collecting sales tax in Vermont.

Revenue -the bottom line first. They provided an estimated annual sales figure of \$172M – that is before exemptions. So ceiling would be \$10M, but we would expect that given our exemptions, particularly on clothes and food, it could be less than half that amount. Rebecca and team are diving into a reasonable estimate.

Timing – original offer was to start income tax in Jan (return date depends on their fiscal year) and sales tax collection on May 1 (first return in June). Although there are different nexus standards (easier to trigger corporate tax), when we pushed that the discrepancy was hard to explain they agreed to move sales tax to Feb 1 (4 mos of returns in '17). Feb 1 may be defensible on our side and they cited “code freezes” in busy months of Dec, Nov and Jan (tho acknowledged that Jan softer freeze). We could think about pushing some more if we thought it made sense.

Why are they doing this? They say it is because of anticipated activity in VT to get to ever quicker delivery. They assure us that they have no triggering activity as of yet, and we are working on some recitals to that effect. They point out they are publicly traded, and are so confident of their ability to gate stop any activity that would trigger nexus that they do not carry any reserve for sale tax collection.

Public reports show that they are using their own trucks and planes, and also opening both full and pop-up brick & mortar stores, so this could be the anticipated business activity.

Without disclosing who VT was dealing with, I did check in with Commissioners who have entered into deals with Amazon. Early on, Amazon was pushing for deals that pushed tax beyond date of actual presence – not what we are presented with. Commissioners also are confident that a sophisticated retailer is not inadvertently triggering nexus (although Texas managed to find a warehouse within its borders several years back that it argued belonged to an affiliate). The conventional wisdom is starting to form that Quill physical presence may be mooted by the rush to faster delivery by the big boys before the feds ever manage to act. And a company that thinks collection everywhere is inevitable might choose the next state truly because of anticipated activity – or to minimize what little risk they may have in states with affiliate nexus (they have severed all their VT affiliate ties, unless they missed one) or reporting requirements (starting in July, vendors who don't collect in VT will need to report sales – unless they successfully get an injunction to litigate first, as in CO).

What does VT get? Amazon did represent in negotiations that it would make short term business decisions based on the VCA. So without the VCA, we may be foregoing collection of sales tax for some period of time (until Amazon acts or Quill is overturned).

What does VT give up? Any action against Amazon or affiliates for income/sales tax liability for periods prior to collection. From the discussion above, it appears unlikely we ever would have a successful audit

and claim against them for these earlier periods (and the chances of Quill being overturned retroactively would seem slight).

If you are in agreement with a VCA, we anticipate we could have a signed agreement in a couple weeks. Amazon already has removed its confidentiality clause, and acknowledged that the contract will be subject to FOIA.

Decision Points:

Whether to do the deal.

Whether to push harder for Jan 1.

When to announce.

Let me know your thoughts.

Mary