

State of New Hampshire

GENERAL COURT

CONCORD

MEMORANDUM

DATE: November 1, 2018

TO: Honorable Chris Sununu, Governor
Honorable Chuck W. Morse, President of the Senate
Honorable Gene Chandler, Speaker of the House
Honorable Paul C. Smith, House Clerk
✓ Honorable Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Senator Regina Birdsell, Chairman

SUBJECT: Final Report of the Commission to Study the Apportionment of Gross Business Profits Under the Business Profits Tax
(SB 16, Chapter 106:1, Laws of 2017)

Pursuant to SB 16, Chapter 106:1, Laws of 2017, enclosed please find the final report of the Commission to Study the Apportionment of Gross Business Profits Under the Business Profits Tax.

Should you have any questions or comments regarding this report, please do not hesitate to contact me.

I would like to thank those members of the commission who were instrumental in this study. I would also like to acknowledge all those who testified before the committee and assisted the committee in our study.

Sincerely,

A handwritten signature in cursive script that reads "Regina Birdsell".

Senator Regina Birdsell, Chairman

**Commission to Study the Apportionment of Gross Business
Profits Under the Business Profits Tax
SB 16, Chapter 106:1, Laws of 2017**

**FINAL REPORT
November 1, 2018**

Senator Regina Birdsell, Chairman
Senator Lou D'Allesandro
Representative Norman Major
Representative Patrick Abrami
Representative Patricia Lovejoy
Christopher Sullivan
Al Letizio, Jr.
Scott Harris
Karl Heafield
Christopher Way
Lindsey Stepp
Christopher Marshall

Introduction

The committee established by Senate Bill 16 to study apportionment of gross business profits under the business profits tax met eight times since 2017.

Charge of Commission

I. To the extent possible, the membership of the commission to study apportionment of gross business profits under the business profits tax, under section 1 of this act, should be reappointed or redesignated from the membership of the prior commission established in 2016, 153.

II. To the extent possible, the membership of the committee to study the process by which business names are authorized by the secretary of state, under section 3 of this act, should be reappointed from the membership of the prior committee established in 2016, 315.
106:5 Effective Date.

Meeting Summaries

Friday, December 8, 2017

The Commission reviewed a conversation that Senator Birdsell and Christopher Sullivan had regarding Market Based Sourcing (MBS) with Douglas Lindholm, Executive Director of the Council on State Taxation (COST). We reviewed COST and discussed the history and position on taxation issues. When we started 18 states used MBS and now 25 states have implemented MBS or Single Sales Factor (SSF) or combination of the two. By New

Hampshire not embracing FFS or MBS it may be discouraging businesses from moving to New Hampshire.

Monday, January 29, 2018

The Commission discussed the Impact of the recent federal tax reform in handouts and discussed the key tax law changes on the Tax Cuts and Jobs Act;

- Lowering individual income and corporate tax rates
- Base broadening in order to pay for the subsequent revenue loss
- International Tax Reform

We discussed in more detail international tax law changes including the appropriate moment to enact other reforms to other tax changes. We reviewed North Eastern States Tax Officials Association (NESTOA). The presentation encompassed Apportionment and MBS by 2009 or earlier between 2010 and 2015, 12 states had it, plus the District of Columbia, Chris Sullivan pointed to Oregon and Montana adopting the Multi-state Tax Commission (MTC) model of MBS during the 2017 legislative session. He also mentioned that Connecticut adopted unitary reporting and MBS in 2016. Some legislation had been recently proposed in other states but failed. There feeling was there are pros and cons no matter how it's done; there are none that are just right. Some businesses will benefit and others who will lose.

It was decided to bring Doug Lindholm of COST and Professor Richard Pomp, Professor of Law at UCONN in April.

Friday, April 13, 2018

A teleconference was initiated with Doug Lindholm of COST and Professor Richard Pomp, Professor of Law at UCONN. Doug Lindholm discussed how a lack of broad base income tax makes New Hampshire very attractive and Professor Pomp discussed how there is little evidence which shows that changing an apportionment formula is the key to economic growth. He discussed the history of apportionment and the problems emerging with states using different apportionment methods. He explained that market based sourcing is very complicated and how the state's interpretation of it was all over the place.

Doug Lindholm was in agreement with Professor Pomp and stated single sales keeps existing companies from leaving, as it doesn't penalize people from investing in payroll and property. He stated as more and more states go to single sales factor they almost have to go to destination sales. When asked if there are any specific states where they have experienced losses going to market based? Doug Lindholm stated he was not aware of states with losses. Professor Pomp discussed revenue estimates and how looking at states that have implemented at least three years prior is important to get an accurate picture.

After the presentation it was discussed that DRA would need to increase staff if we went to an apportionment based system in order to find businesses that previously didn't need to file. It was also discussed that it would be challenging, even three years out, as we have had 39 changes to the business tax in the last several years. As always, the biggest concern was the lack of data in our current systems.

Monday, April 30, 2018

The discussion centered around the fact there is no way to tell if this will be a plus or minus with regards to revenue. You can look at other states, but explained there are too many factors. A best guess is needed as to whether this will be a positive or negative for the state.

Doug Lindholm and Professor Pomp remarks from last month were discussed that suggested the biggest winners would be the businesses that tended to be bigger taxpayers and the losers tended to be smaller taxpayers, which could give us pause. However, members of the Commission felt this wouldn't be the case.

Some of the Commission member's clients have not been treated fairly as more states move to MBS, business owners are questioning why they are having to pay taxes to other states as more and more states are demanding payment for non-tangible services.

Lack of data is still an issue and we need to be careful of the changes we make as we rely heavily on business taxes. It is also believed there is an emerging conformity not at the federal level but at the state level of moving to single sales factor and MBS.

If we were to move to an MBS, the same rules apply to all. We also learned DRA is also about to begin a 3-year modernization project called RIMS, so implementation of MBS 3-years down the road would be simpler. DRA feels with the new system, they will also be able to capture more information and be able to analyze it better. However, we need to keep in mind there will always be unknown businesses and there will still be information gaps. The RIMS systems will be live for business taxes in 2020.

The Commission decided they did not want to add MBS into the mix while RIMS is in the process of implementation. It was suggested that MBS wouldn't change BPT by very much, it might move BET, but not by much either. MBS is the trend of the country and we don't want our service industries to be taxed up to 180%.

Friday, June 8, 2018

DRA presented an overview of the changes to the tax system through RIMS. The start of the implementation is August 2018 and the rollout schedule would be; Meals and Rentals Tax (M&R) will be in Rollout Phase 1, Business (BS) and Interest & Dividends (I&D) Taxes will be in Rollout Phase 2, All other taxes will be in Rollout Phase 3.

The Commission agreed a rollout of MBS and RIMS at the same times is not appropriate. Again, there was a great deal of concern brought up surrounding the lack of data. DRA was asked if there was a way they could get additional data and Commissioner Stepp suggested there were two ways. The first would be to have an informal questionnaire that is optional, but the feedback would be minimal at best. Her preferred way would be to have a legislative proposal. DRA said they would present an idea of what a legislative proposal at our next meeting.

Monday, August 20, 2018

The meeting began with a discussion of the Rhode Island DOR and the steps they took when they moved to SSF and MBS. Additional discussion on New Hampshire's lack of sales and income tax leaves New Hampshire with no cushion when we move to an MBS

system. DRA did present draft legislation as requested at the June meeting, but was met with concern due to the significant burden on businesses.

Thursday, September 27, 2018

The Commission discussed the draft legislation from the previous meeting and it was agreed it would be a large burden on businesses and the commission was not confident it would provide the data we would need to make a determination. The Commission felt strongly that New Hampshire needs to change with the time, we don't want to be the last state standing and we would like to work on implementing MBS. We discussed what the timeline would look like. We would draft a bill in 2018, put it forth in 2019, through the Senate, the House would create a study committee in 2019, pass it out of the House in 2020 to take effect in 2022. Therefore, it would give taxpayers plenty of time to weigh in, it would not be implemented in a budget year, and DRA would already have RIMS implemented.

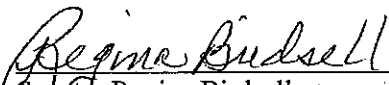
Thursday, October 18, 2018 The Commission reviewed and revised the Final Report.


Recommendations

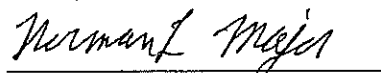
When this Commission started there were 18 states that had implemented an MBS/SSF system. To date, there are 25 states that have moved to one or both of those systems and we are fairly certain there will be more to follow because it is becoming a nationwide trend. We believe, it is not an if, but a when, that NH will need to make the move in the long term to change over the business tax system otherwise our businesses will be at a distinct disadvantage.

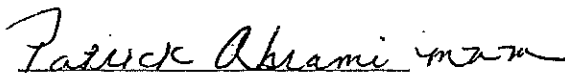
The Committee is leaning towards recommending Market Base Sourcing, but not ruling out Single Sales Factor. As stated above, we would draft a bill in 2018, put it forth in 2019 through the Senate. The House would create a study committee in 2019, pass it out of the House in 2020 to take effect in 2022. Therefore, it would give taxpayers plenty of time to weigh in, it would not be implemented in a budget year, and DRA would already have RIMS implemented. We will also put legislation in to continue the Commission in order to review changes as it goes through the legislative process.

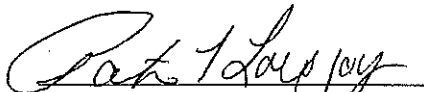
Respectfully Submitted,



Senator Regina Birdsell
Chairman, Senate District 19

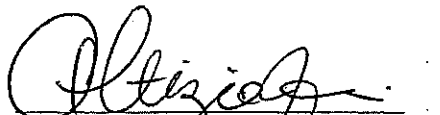

Senator Lou D'Allesandro
Senate District 20

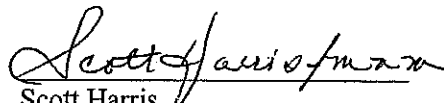

Representative Norman Major
Rockingham – District 14

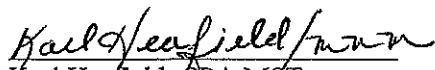

Representative Patrick Abrami
Rockingham – District 19

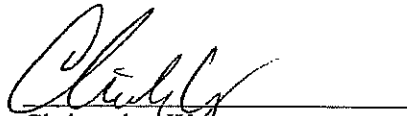

Representative Patricia Lovejoy
Rockingham – District 36

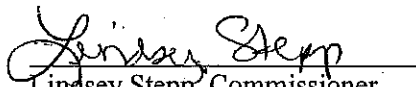

Christopher Sullivan
Business Community,
Appt. by the Senate President

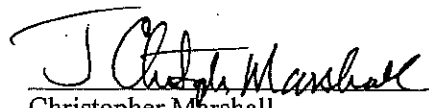

Al Letizio, Jr., Business Community
Appt by the Speaker of the House


Scott Harris
NH Bar Association


Karl Heafield, CPA MST
NH Society of CPA


Christopher Way
DRED, Designee


Lindsey Stepp, Commissioner
Dept. of Revenue Administration


Christopher Marshall
Attorney General Designee