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Susanne R. Young, Secretary

April 12, 2017

The Honorable Ann Cummings, Chair
Senate Committee on Finance
State House, Room 6
115 State Street
Montpelier, VT 05633 -5301

Dear Senator Cummings:

The House of Representatives recently passed H. 516, an act relating to making miscellaneous tax changes. The bill originated with the Administration's technical correction 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.

We applaud the work done by the House to pass a miscellaneous tax bill without new taxes or fees. Directing the Department of Taxes to use existing tools for better compliance helps protect Vermonters from new taxes while ensuring a level playing field for all businesses and Vermonters that are in good standing with the Department. Additionally, emphasizing education and outreach for voluntary compliance around the use tax is a preferred approach over raising the rate of the hold harmless table to increase revenue.

Technical Provisions

We appreciate that the Ways and Means Committee adopted the technical and policy provisions to improve tax administration that we put forth (Secs. 1-8, 11, 20). We would particularly highlight the change in Sec. 20 that changes the percentage used to calculate an individual's use tax liability on the IN-111 from 0.2 percent of AGI to 0.1 percent. The Department believes this is a more accurate amount of use tax liability for taxpayers considering the trends in sales tax collection by online retailers. Additionally, allowing for a cap on the amount that is paid by an individual using the table, coupled with the reduction in the percentage creates a 'safe-harbor' option that is a fairer reflection of the average taxpayers use tax liability. Combined with a thorough outreach and education campaign, we anticipate these changes will dramatically increase use tax compliance.

Sec. 11 of H.516 (Personnel Security Program) needs to be replaced with language that will allow all impacted Departments¹ to comply fully with the Internal Revenue Service safeguard requirements, as put forward in Publication 1075. The consequences of not complying with IRS requirements may include suspension or termination of the Departments' access to federal tax information (FTI), which is essential information for the Departments to carry out their programs and functions.

The following technical provisions were not included in H.516 and we ask the Committee to consider adding to the Senate-passed version of the bill.

- Repeal of 32 V.S.A. § 5930z (business solar energy tax credit). This is technical clean up to the solar tax credit. The portion for C-Corporations has expired, but there was existing language in Title 32 that caused confusion to taxpayers in looking at the law. We would ask to clarify this section of law as no longer in effect.
- Repeal of 32 V.S.A. § 8661 (taxation of electrical generating plants). This was put forward in H.205 this year and is supported by the Department. There are no current taxpayers subject to this tax. The tax was only ever paid by one taxpayer. It is a tax on the kilowatt hours for electric generating plants with a name-plate capacity of 200,000 kilowatts or more. The last payment of the tax type was the first quarter of 2015. We would recommend repealing it to avoid confusion by having it remain current law.

Policy Provisions

The Administration offers further considerations for the Senate Finance Committee as you look at the sections of H.516 as passed by the House outlined below:

Sec. 18. Move to Adjusted Gross Income (effective TY2018)

Sec. 18 changes the flow and format of the Vermont individual income tax computation and forms, without changing any individual's income tax liability. The Department emphasized to the Ways and Means Committee that the effective date should be no sooner than tax year 2018 and we appreciate the Committee responding by having the change effective January 1, 2018. We are certainly able to reallocate existing resources to implement such a change for TY2018. However, there are some valid concerns coming from the tax preparer community that we heard in Ways and Means testimony and subsequent to the bill's passage out of the House. Those concerns include: implementation costs to the Department, perception that this is a tax increase, and risks over software companies programming this incorrectly. Furthermore, these risks are borne without making the individual income tax any simpler in Vermont. We would recommend that Senate Finance hear from the practitioner community about some of their concerns.

Sec. 23. Notice Requirements for Noncollecting Vendors

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. 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

¹ Department of Children and Families, Department of Labor, Department of Taxes, Department of Vermont Health Access.

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 laws, and technological solutions make compliance ever easier.

Furthermore, the Tax Department is committed this year to conducting an education and outreach campaign focused on informing Vermonters of their use tax liability, much of it being incurred due to purchases online. However, we believe this section should be removed from the bill.

The legislation passed last session in Act 134 requires noncollecting vendors to report to their Vermont purchasers a notice if they have made more than \$500 in purchases from the noncollecting vendor in the previous calendar year. Additionally, vendors are required to inform purchasers that tax may be due on their purchases. 32 V.S.A. § 9712. These sections will be effective July 1, 2017, due to the effective date being tied to Colorado's implementation of similar legislation. While these sections continue to have potential legal risk, they do not raise the same privacy concerns as Sec. 23 of H.516.

This section was removed from what would become Act 134 of 2016 due to concerns over privacy due to the nature of the data the Department would be receiving from this proposal. Instead of anonymous, aggregate sales data from our forms, the Department would now be seeing reports about how much someone bought from specific retailers. If a vendor has a limited product line, the new report would reveal personal purchasing habits of Vermonters. To use the data for use tax audits, we would need to probe even further into sensitive data to identify taxable and exempt items.

Lastly, it is a comfort to Vermont to have the Tenth Circuit Decision, but since we are in the Second Circuit, passing this is not without litigation risk. If the committee decides to move forward with this section, we would ask for a technical change to the effective date.

Sec. 27. Repeal of Property Transfer Tax Surcharge

The Administration is working towards finding a long-term plan for clean water funding. The Governor's Capital and Transportation budgets commit the full \$50 million the Treasurer recommended for the two-year plan. This plan gives the Legislature time to fully review the financial tools and existing revenue sources to fund clean water. Consistent with that timeline, we recommend not repealing the sunset of the property transfer tax surcharge and instead only extend it to 2019.

Tax Credit Captive Insurance

Vermont is home to the world's largest captives, making it difficult to convey the message that we welcome smaller captives as well. A tax credit was proposed by the Department of Financial Regulation in H.85 that addresses this by expanding the new captive tax credit from \$7,500 to \$10,000 – but split over the captive's first two years of operations (i.e., \$5,000 in year one and \$5,000 in year two). The proposed credit would: (1) make Vermont more comparable in cost to its competitor jurisdictions; (2) help mitigate some of the upfront costs of choosing a Vermont domicile; and (3) help make Vermont more attractive to smaller captives for which upfront costs may be a greater concern.

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The total fiscal impact is \$2,500 less in new revenue per company, however, any reduction would be more than covered if just one or two new captives locate to Vermont as a result. Further, because the credit is pushed out over two years, there is actually a positive revenue impact for FY18.

Thank you for considering the Administration's comments. Please feel free to contact me for further information.

Sincerely,



Susanne R. Young
Secretary of Administration

cc: Tim Ashe, Senate President pro tempore
Mitzi Johnson, Speaker of the House
/ Representative Janet Ancel, Chair of the House Committee on Ways and Means
Kaj Samsom, Commissioner of Tax
Andy Pallito, Commissioner of Finance and Management
Stephen Klein, Legislative Chief Fiscal Officer