Testimony Summary of Chris Sullivan, Esq.
Rath, Young, and Pignatelli, P.C.
to Vermont House Ways and Means Committee
February 11,2019

I. Introduction
- Attorney that Focuses on Multi-State Tax matters
- Admitted in New Hampshire, Vermont and Massachusetts
- Firm—Rath, Young and Pignatelli, P.C. is a member of the Vermont Chamber of Commerce
- Member of the Vermont Tax Advisory Board
- Appointed by Senate President in NH to Study Committee on Apportionment
- Founder of the New England State and Local Tax Forum
  - Vermont DOT a strong participant at the Forum
  - Vermont DOT good reputation and responsive in addressing issues
- Represent many companies in audits and appeals in New England states
- Testifying in my personal capacity only and not for any current or past clients
- Offering perspective on small state competitiveness in New England landscape
- Handout for Committee on New England Combined Filing Guide (October 2017)

II. Significant Changes Occurring in State Tax Systems Across the Country and in New England
- Combined Reporting (versus "Separate Company" Reporting)
  - 2003—just New Hampshire and Maine in New England
  - 2006—Vermont becomes first state in more than 20 years to adopt Combined Reporting
  - 2020—all New England states are combined reporting states
- Market Based Sourcing (for sales of services)
  - 2007—just Maine
  - 2020—Vermont MBS passed in 2019 and effective in 2020
  - By 2021—all New England states (New Hampshire last to enact)
- Single Sales Factor or Heavier Weighting of Sales Factor (for sales of Tangible Personal Property)
  - 2014—just Maine and Massachusetts (for some industries)
  - By 2022—all
    - Maine, Connecticut and Rhode Island all have single sales factor
    - Massachusetts for some industries
    - if Vermont moves to triple weighting
    - if NH follows through with Single Sales Factor

III. Cautionary Note for Vermont and New Hampshire

- Vermont and New Hampshire have good opportunities to attract business to their states, but must be careful in policy choices to ensure we remain competitive
- Robust economic future dependent, in part, on:
  - retaining youth population that grows up (and stays or returns) here
  - recruiting entrepreneurs from other states that are attracted to outdoor lifestyle, less traffic, great place to raise a family and participate in community
  - mix of home grown jobs and industries as well as some "big hitters"
  - significant opportunities for Vermont and New Hampshire but must be careful to choose correct tax policy mix to ensure competitiveness
- Vermont and New Hampshire cannot afford to be significant outliers on issues that will harm the ability to attract some large companies to have significant operations in our states

IV. Specific Comments on Corporate Tax Discussion Draft

- Section 1 of the Draft--Triple-Weighting of Sales Factor
  - Would align with other New England states with whom you compete
  - Consistent with national trend to over-weight sales factor
  - Good for current Vermont businesses
    - Eliminates disincentive to invest in people and property in-state and allows Vermont businesses to grow locally without being penalized
  - Good for economic development and recruiting larger companies to Vermont, since locating jobs and property will not automatically increase tax
    - Vermont benefits in lots of ways—PIT, Sales Tax, Property Tax, higher home values, etc.

- Section 2 of the Draft--Elimination of "80/20" rule
  - Current law—companies with 80% of property and payroll outside the U.S. are not included in the "Water's Edge" Group
  - Rationale—while incorporated in U.S., income is being earned in foreign jurisdictions—tax income where economic activity occurs and not place of incorporation.
  - Vermont and NH tax income when a dividend is paid to "Water's Edge" group.
  - Vermont (and NH) already have the broadest corporate income tax bases in the entire U.S.

- Vermont most aggressive taxation of "GILTI" in U.S.
- Current proposal would include all U.S. incorporated companies in the "Water's Edge" Combined Group
- Vermont largely already taxes this income—revenue may be limited
    - Inclusion of 80/20 in group eliminates the foreign dividend from same company—just timing and different apportionment
- Only New England state with proposed rule--Massachusetts
- Vermont (and NH) aggressively tax foreign source income in ways that are not competitive with our New England neighbors
    - $100 of foreign earnings paid back to U.S. group
        - Vermont taxes $100 (with factor rep)
        - NH taxes $100 (with factor rep)
        - Mass taxes $5
        - Connecticut taxes approximately $10
        - Rhode Island taxes between $0 and $30
        - Maine taxes approximately $50 (with factor rep)
- Vermont (and NH to a lesser extent) benefited regarding corporate income tax from immediately conformity to TCJA
    - In exchange for corporate rate reductions going forward (35% to 21%), taxation of decades of foreign source income.
- Strong risk going forward that larger companies will be reluctant to locate or expand in Vermont and New Hampshire because we aggressively tax foreign source income in ways that are not competitive with our New England neighbors.
- This risk is compounded for larger in-state companies with foreign operations if Section 1 of the bill is not enacted.

V. Questions?