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My testimony today is made in my personal capacity and not on behalf of any present or past clients.

I. My Background

A. State tax attorney – 20+ years' experience, 15 of which have been in New England.
B. Represent business clients in New Hampshire, Vermont and Massachusetts.
C. Member, Vermont Tax Advisory Board under Commissioner Peterson (2012-2017).
D. Vermont Chapter Author, American Bar Association's Sales and Use Tax Deskbook.
E. Vice-President, New England State and Local Tax Forum, a non-profit formed in 2012 dedicated to education in the state and local tax field.

II. Overarching Tax Policy Considerations

A. Shifts in corporate income tax sourcing have occurred over the last 5-10 years.
B. All 6 New England states have enacted market-based sourcing (MBS) for services.
C. All 6 New England states but for Vermont have enacted single sales factor (SSF).
D. Vermont, like New Hampshire, has small state challenges that require a balanced mix of tax policy considerations to support the labor force and economy:
   a. Cannot afford to be an outlier on significant tax issues.
   b. Must create a business climate to attract and retain a mix of businesses.
   c. Ensure that the tax structure is balanced for both small and large businesses.
   d. Make decisions to attract and retain a young, skilled workforce in VT.
   e. Remember that it's easy for a corporation to move an hour or two away – e.g., your neighbor (NH) has no personal income tax, no sales and use tax, and a top business tax rate of 7.6%.

III. Comments on S. 53

A. Section 3 – Repeal of Overseas Business Organization (OBO) Provisions

   1. Origin of 80/20 provisions: even though a corporation is incorporated in the U.S., the income is being earned in foreign jurisdictions, so the income should be taxed where economic activity occurs (and not place of incorporation).
   2. VT already taxes 80/20 income - VT and NH presently have some of the most aggressive provisions to tax foreign source income.

a. VT excludes OBOs but taxes apportioned foreign dividends.
b. Most states provide for generous dividends received deductions (DRDs).

3. S. 53 proposes to tax foreign-source income in a different way – it eliminates taxation of the foreign apportioned dividend from domestic 80/20s and instead includes domestic 80/20s in the group, taxing their foreign income over domestic apportionment.

B. <u>Section 4 – Increases to Minimum Tax Amounts</u>

1. S. 53 proposes significant increases in flat minimum amounts.
   a. Only a handful of states impose a flat tax at this level.
   b. Compare NH's Business Enterprise Tax – 0.55% rate.
2. Punitive for loss companies and start-ups.
3. Potential to be arbitrary – not necessarily representative of state benefits.
   a. Imposed on Vermont Gross Receipts (received from VT sources).
   b. Market-Based Sourcing impact
   c. Concern with a gross receipts-based tax that doesn't take into consideration the value added
   d. Is there a potential federal Constitutional issue?
4. Contrary to economic development initiatives.

C. <u>Section 5 – Single Sales Factor (SSF)</u>

1. All 6 New England states have SSF but for VT (NH shifted in 2022).
2. SSF has been the trend across the country.
3. SSF is consistent with MBS – both look to the market instead of the traditional factors of production (property and payroll).
4. Modern approach – reflects an increasing mobile workforce and economy.
5. Good for economic development – encourages in-state migration of companies (because not penalized for having offices or employees in VT).
6. Other benefits result not capable of precise measurement – migration of workforce to VT, increased tax revenues (personal income tax and sales/use tax), increases in property tax values, etc.

D. <u>Section 5 – Repeal of Throwback Rule</u>

1. Throwback penalizes in-state companies, particularly smaller ones that do not have nexus in all states of destination.
2. Throwback does not fairly reflect a business' activities in VT – the correct measure of tax on a VT business should be made without regard to whether the business is subject to tax in another state.
3. Throwback is inconsistent with SSF and MBS, which look to the market and not the factors of production.

4. Proponents of throwback base their position on a "full apportionment" position (100% taxation), but sound tax policy supports a consistent approach that accounts for where income is earned, not whether it reaches 100%.
5. Businesses can be discouraged from moving into throwback states – throwback factors into the cost of doing business.

E. <u>Sections 6/7 – Shift from *Joyce* to *Finnigan* Method</u>

1. *Joyce* – every member is an individual taxpayer.
   a. Inbound sales of out-of-state members with no nexus are not included in the numerator.
   b. Outbound sales are subject to throwback if the individual member is not taxable in the state of destination, even if other members are.
2. *Finnigan* – entire group is one taxpayer.
   a. Inbound sales of out-of-state members with no nexus are included in the numerator.
   b. Outbound sales are not subject to throwback if other members of the group are taxable in the state of destination, even if the individual member is not.
3. Question as to whether *Joyce* aligns better with VT's "separate unitary" combined reporting system.
4. *Finnigan* may result in an increase in tax liability for in-bound sales but a reduction in tax liability if throwback is retained.