

Massachusetts Tech Tax Repealed

On Friday afternoon, the tax attorneys at Gesmer Updegrove, its clients, and much of the Massachusetts business community breathed a collective sigh of relief, as Governor Deval Patrick signed a bill repealing the nascent “Tech Tax.” Widely derided as a tax that would hamper the Commonwealth’s innovation economy and drive away area businesses, the sales and use tax was intended to generate more than \$160 million in revenue on a broad range of software-related services.

The tax was also criticized as vague and confusing. Since its passage on July 24, 2013, the Massachusetts Department of Revenue has issued two Technical Information Releases, a working draft of a Technical Information Release, and answers to 55 frequently asked questions regarding the Tech Tax. Even with this guidance, software service providers complained that it was overreaching and would be impossible to apply consistently.

Businesses organized a campaign to eliminate the tax, and the legislature proved open to their pleas. On September 25, 2013, the Massachusetts House of Representatives voted overwhelmingly (156-1) to repeal the Tech Tax. The following day, the Senate voted unanimously (38-0) in favor of the repeal. Governor Deval Patrick, who said that he supported the repeal but was concerned about a revenue shortfall, nonetheless signed the legislation into law on September 27, immediately repealing the tax retroactive to its July 31 effective date.

The repeal of the Tech Tax raises obvious question for vendors who have already collected the tax from their customers, or remitted payment to the state. The new law provides that any person or business that collected the Tech

Tax but did not yet remit it to the Massachusetts Department of Revenue must make reasonable efforts to return that money to the customers from whom it was collected. Anyone who collected the Tech Tax and remitted it to the Massachusetts Department of Revenue may file an application for abatement on a form to be specified by the Department of Revenue for that purpose. The abatement forms will be made available within 30 days and any person receiving an abatement is required to refund the full amount of the abatement to the customers who paid the Tech Tax within 30 days of receiving the abatement. All applications for abatement of the Tech Tax must be filed with the Massachusetts Department of Revenue **by December 31, 2013.**

The legislation repealing the Tech Tax also provides that no person who failed to collect the Tech Tax and no person who failed to pay the Tech Tax shall be subject to fines, penalties or fees. This provision in the legislation provides added comfort to the innovation economy that the Tech Tax is truly history.

If you would like to discuss abatements or refunds to purchasers as related to the Tech Tax, please contact David Moran or Jeff Groshek at (617) 350-6800 or email us at david.moran@gesmer.com or jeff.groshek@gesmer.com.

