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March 17, 2017

Chair Greg Davids  
Taxes Committee  
Minnesota House of Representatives

Chair Roger C. Chamberlain  
Taxes Committee  
Minnesota Senate

**Re: Retroactive “Erroneous Refund” Provisions in H.F. 1226 and S.F. 1219, Sec. 29**

Dear Chair Davids, Chair Chamberlain, and Committee Members:

On behalf of the Council On State Taxation (COST),<sup>1</sup> I am writing to oppose retroactive tax changes concerning the definition and statute of limitations for assessing “erroneous refunds” contained in Section 29 of the tax “policy, technical, and clarifying” bills, H.F. 1226 and S.F. 1219.

The COST Board of Directors has adopted a formal policy position<sup>2</sup> regarding retroactive tax legislation:

*Legislation imposing new or increased tax liabilities attributable to prior periods is fundamentally unfair and in some cases unconstitutional and thus must be avoided. Under no circumstance should legislation imposing new or increased tax liabilities be applied to any periods beginning prior to the date the legislation was enacted.*

Retroactive tax legislation potentially violates due process under the U.S. Constitution. Pursuant to the U.S. Supreme Court decision in *U.S. v. Carlton*, 512 U.S. 26 (1994), retroactive legislation is appropriate and will survive a due process challenge only where a legislature has acted with a “legitimate legislative purpose” and “promptly,” imposing “only a modest period of retroactivity.” States have increasingly attempted to sweep these Constitutional requirements aside, even waiting until after appellate courts have issued final decisions in tax disputes before reversing the courts’ decisions. Such legislation undermines taxpayers’ perception of fair and impartial tax appeals.

<sup>1</sup> COST is a nonprofit trade association consisting of approximately 600 multistate corporations engaged in interstate and international business. COST’s objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

<sup>2</sup> Available at:

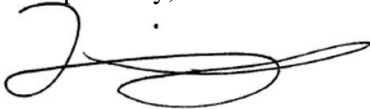
[http://cost.org/uploadedFiles/About\\_COST/Policy\\_Statement/RetroactiveTaxLegislation.pdf](http://cost.org/uploadedFiles/About_COST/Policy_Statement/RetroactiveTaxLegislation.pdf).

In COST’s most recent Scorecard on Tax Appeals & Procedural Requirements,<sup>3</sup> COST included retroactive legislation as one of its objective criteria for grading the states. In the current COST Scorecard, Minnesota is not cited for enacting any retroactive tax legislation, and indeed, the State scores well overall, at “B+.” However, H.F. 1226 and S.F. 1219, Sec. 29, contain blatant and excessively retroactive provisions, applying a law change regarding “erroneous refunds” retroactively “to all refunds issued on, before, or after” final enactment, but not applying the law change to the refunds at issue in *Connexus Energy, et al. v. Commissioner of Revenue*, 868 N.W.2d 234 (Minn. 2015). The legislation seeks to limit the class of taxpayers subject to the shorter “erroneous refunds” statute of limitations and to apply this limitation retroactively to all affected taxpayers except the sole taxpayer involved in the case.

To wait for a decision of the State’s highest court before changing the rules for all prior years – and in this case, opening otherwise closed years for assessment – is not only Constitutionally suspect but also is a violation of the separation of powers and of taxpayer trust. In this case, the statutory language the legislation seeks to “clarify” has remained unchanged since 1990. It strains credibility that the Legislature can discern and clarify the intent of the legislators enacting these provisions almost 27 years ago.

Retroactive tax legislation is one of the most corrosive elements undermining our voluntary state tax compliance system today, fostering a lack of trust in the tax system, which reduces voluntary compliance because taxpayers fear that the law will not be fairly applied. **COST strongly urges the Committee to reject any proposed retroactive application of this provision.**

Respectfully,



Ferdinand Hogroian

cc: COST Board of Directors  
Douglas L. Lindholm, COST President & Executive Director

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<sup>3</sup> The Best and Worst of State Tax Administration: COST Scorecard on Tax Appeals & Procedural Requirements, Council On State Taxation, December 2016, available at: <http://cost.org/WorkArea/DownloadAsset.aspx?id=94726>.