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March 29, 2017

Senator John Braun, Chair  
Members of the Senate Ways & Means Committee  
Washington State Legislature

*Via E-mail*

**Re: Testimony in Support of Substitute Senate Bill 5866**

Dear Chair Braun and Members of the Ways & Means Committee:

On behalf of the Council On State Taxation (COST),<sup>1</sup> I am writing to support Substitute S.B. 5866 and the Washington business community in its continued efforts to establish an independent tax dispute forum in the State.

As part of the COST Scorecard on State Tax Appeals and Procedural Requirements, COST evaluates each state on whether it has a fair, efficient, and independent appeals system. With respect to whether a state possesses an independent tax appeals forum, the Scorecard requires:

- The state must have a truly independent forum to which taxpayers may appeal their tax disputes;
- The independent forum must be dedicated to handling tax disputes;
- The forum's judges must have sufficient tax expertise; and
- The hearing before the forum must be *de novo* and establish the record for further appeal.

While the COST Scorecard notes that the Washington Board of Tax Appeals functions as an independent tax appeals forum, the Board has significant shortcomings, including insufficient tax expertise for Board judges. Further, Board decisions lack precedential effect upon which other taxpayers can rely.

Under Substitute S.B. 5866, a Tax Court would replace the Board of Tax Appeals and would provide an independent judicial forum for appeals of excise taxes, property taxes, estate taxes, and adverse rulings from a tax authority or the superior court. The Tax Court would have two departments: the Commissioners Department, in which commissioners would be required to have at least three years of relevant work experience, and the Main Department, in which judges would be required to be a

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<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.

licensed attorney with at least five years of experience in Washington state and local tax law. Proceedings before the Tax Court are original, independent proceedings and will be *de novo*. The Main Department's decisions are precedential, and, although Commissioners Department decisions are not precedential, they must be published. It is COST's opinion that Substitute S.B. 5866 creates an independent tax appeals forum meeting the standards set out in COST's Scorecard.

There are, however, other areas of the Scorecard that COST urges the Washington State Legislature to address, including "pay to play" and the time period allowed for appeals. COST's position is that no prepayment or bonding requirement should apply throughout the appeals process, unless the State establishes that its assessment is otherwise in jeopardy of not being collected. Although Substitute S.B. 5866 does not require prepayment of taxes, penalties, and interest or posting of a bond for appeals to the Tax Court in all situations, it does require prepayment in many situations regardless of whether a particular tax assessment is in jeopardy. For example, the fact that an assessment exceeds \$100,000 and the taxpayer chooses not to obtain a final determination through the department of revenue's administrative process has no bearing on whether the State is at risk of not collecting the tax. Further, COST believes that a reasonable protest period is at least 60 days, and preferably 90 days, as provided under the American Bar Association's Model State Administrative Tax Tribunal Act. Under Substitute S.B. 5866, taxpayers generally must file their notice of appeal with the Tax Court within 30 days from the date of issuance of the tax determination, decision, or order being appealed.

In conclusion, while COST believes that Substitute S.B. 5866 has some room for improvement to meet certain elements of the Scorecard, COST nevertheless supports Substitute S.B. 5866 as a substantial step forward in improving the State's fairness in tax appeals and consequently the State's business climate. Please contact me with any questions regarding this testimony or if COST can be of further assistance regarding its research in this area.

Respectfully,



Nikki E. Dobay

cc: COST Board of Directors

Douglas L. Lindholm, COST President & Executive Director