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April 4, 2017

Chair John W. Fonfara  
Chair Jason Rojas  
Chair L. Scott Frantz  
Finance, Revenue and Bonding Committee  
Connecticut General Assembly

**Re: Retroactive Tax Provisions in Secs. 2, 3, and 13 of Raised Bill No. 7312**

Dear Chair Fonfara, Chair Rojas, Chair Frantz, and Committee Members:

On behalf of the Council On State Taxation (COST),<sup>1</sup> I am writing to oppose retroactive tax changes concerning gross earnings subject to tax (Sections 2 and 3) and concerning the right to a refund of tax (Section 13) contained in Raised Bill No. 7312.

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, seeking to assert retroactive tax changes as a bar to taxpayer remedies in tax disputes, litigation, and even appeals. Such legislation undermines taxpayers’ perception of fair and impartial tax administration.

In COST’s most recent Scorecard on Tax Appeals & Procedural Requirements,<sup>3</sup>

<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).

<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>.

COST included retroactive legislation as one of its objective criteria for grading the states. In the current COST Scorecard, Connecticut is not cited for enacting any retroactive tax legislation. However, Raised Bill No. 7312 contains blatant and excessively retroactive provisions, expanding the scope of “gross earnings” subject to tax (Sections 2 and 3), as well as establishing new restrictions on the right to a refund of tax (Section 13). For Sections 2 and 3, the changes would apply “to all open tax periods.” For Section 13, the changes would apply to any “pending” refund claim.

Attempting to negate taxpayer rights in current controversies is not only Constitutionally suspect but also is a violation of the separation of powers and of taxpayer trust. The statutory language taxing gross earnings this legislation seeks to expand has remained unchanged since 2007. The statutory language restricting refund claims would be entirely new law (not amending current statutory language) overturning the Department of Revenue Services’ longstanding policy.<sup>4</sup> In either case, it is unclear how the General Assembly would be acting with a “legitimate legislative purpose” and “promptly,” imposing “only a modest period of retroactivity.”

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 the proposed retroactive application of provisions found in Sections 2, 3, and 13 of Raised Bill No. 7312.**

Respectfully,



Ferdinand Hogroian

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

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<sup>4</sup> See Connecticut Department of Revenue Services, Policy Statement 98(5), Oct. 21, 1998.