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Nikki E. Dobay
Senior Tax Counsel
(202) 484-5221
ndobay@cost.org

March 13, 2018

Idaho House of Representatives

Via E-mail

Re: COST's Support H.B. 684, Providing a "Transition Tax" Deduction

Dear Representatives of the House:

The Council On State Taxation ("COST") is submitting these comments in support of H.B. 684, which attempts to fix what appears to be an oversight created in an earlier passed conformity bill (H.B. 355). COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 550 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

During the current legislative session, the Legislature passed H.B. 355 and H.B. 463 to address conformity with certain provisions of the recently passed Federal Tax Cuts and Jobs Act. With H.B. 355 (signed by the Governor on February 9), the Legislature addressed 2017 conformity issues, which included the federal "transition tax" on a deemed repatriation of previously earned foreign source income. H.B. 355 provided for conformity to I.R.C. § 965, which includes the transition tax, while specifying that amounts deducted under I.R.C. § 965 (effectively lowering the tax rate on the "transition tax") must be added back to Idaho taxable income. H.B. 463 (delivered to the Governor on March 6) contained similar provisions to H.B. 355, but also addressed 2018 conformity issues.

Although the Legislature's intent in passing H.B. 355 was to conform Idaho to the new federal tax reform transition tax provisions, it altered the way the federal provisions would work at the State level. Specifically, H.B. 355 updated Idaho's tax laws to specifically conform to I.R.C. § 965, as amended by the federal tax reform, resulting in the deemed repatriated amounts being treated as subpart F income under Idaho law. Historically, Idaho has taxed either 15 or 20 percent of a taxpayer's subpart F income, depending on whether a taxpayer provides certain information with its tax filings (the generally applicable deduction is 85 percent, assuming taxpayers provide such information). However, the legislation failed to take into account the I.R.C. § 965(c) deduction (and effective lower tax rate) being applied at the federal level for this deemed repatriation income.

H.B. 684 attempts to fix this unintended consequence created by H.B. 355. H.B. 684 allows taxpayers to take the I.R.C. § 965(c) federal deduction for the purpose of

determining their Idaho corporate income tax. Thus, H.B. 684 provides the true conformity to the federal transition tax provision that H.B. 355 intended to accomplish, consistent with the State's historic treatment of subpart F income.

For the reasons discussed above, COST urges the Committee to support H.B. 684.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikki Dobay". The signature is fluid and cursive, with the first name "Nikki" written in a larger, more prominent script than the last name "Dobay".

Nikki Dobay

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