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June 4, 2020

The Honorable Tani Gorre Cantil-Sakauye,
Chief Justice, and Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

RE: Letter of Amicus Curiae Council On State Taxation (COST) in Support of
Appellant's Petition for Review

To the Honorable Chief Justice and Associate Justices of the California
Supreme Court:

The Council On State Taxation (COST) respectfully requests this Court grant the Appellant's Petition for Review in *HGST, Inc., v. County of Santa Clara*, No. S261885 ("*HGST*"). The *HGST* case is a property tax case, and the Court of Appeal's decision in this case significantly changed the landscape of judicial review of property tax cases by upsetting the long-established standard of review applicable to challenges of valuation methodology. Thus, this Court should grant Appellant's Petition for Review to clarify that the standard of review for such cases is still *de novo*.

COST is a nonprofit trade association based in Washington, D.C. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce. Today, COST has grown to an independent membership of approximately 550 major corporations engaged in interstate and international business representing every industry doing business in every state. COST members employ a substantial number of California citizens, own extensive property in California, and conduct substantial business in California. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities—a mission it has steadfastly maintained since its creation.

Sound tax policy demands clear and consistent rules to provide taxpayers predictability. This is especially important to multijurisdictional taxpayers that must comply with hundreds to thousands of local property tax jurisdictions valuation procedures. And, although there are many areas of state and local tax that are currently in flux, the standard of review for challenges to valuation methodology in California has been well established for decades. Specifically, *Bret Harte Inn, Inc., v. City and Cty. Of San Francisco*, (1976) 16 Cal.3d 14, established a *de novo* standard of review would apply in such situations. The Court of Appeal's decision in this case without any change in the State's property tax laws, however, upends this well-established framework that taxpayers have been relying on.

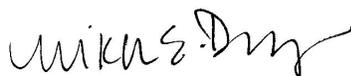
As laid out by the Appellant in its Petition for Review as well as its prior briefing in this case, the *Bret Harte de novo* standard of review has been in place since the 1970s and the standard of review impacts almost all local property taxes that are appealed from a county assessment appeals board to the state court.

COST members are concerned that without this Court's acceptance of Appellant's Petition the standard of review will be determined by each court on a case-by-case basis, resulting in inconsistent resolution of property tax valuation disputes throughout the state. In other words, the Court of Appeal's decision, imposing a substantial evidence standard of review, upsets the long-established *de novo* standard of review. Thus, at best it is unclear which standard of review any given court will apply when it analyzes a property tax case involving challenges to valuation methodology. The lack of a consistent standard of review is extremely troublesome for multijurisdictional businesses with properties throughout the State that seek to rely on longstanding rules, which they must depend on to make sound business decisions. This case should be reviewed to eliminate this type of uncertainty. Businesses are unfairly put in a situation where they can no longer rely upon the *Bret Harte* review standard and will be faced with the uncertainty of which standard of review a court may apply.

In addition, COST is concerned with the standard of review—the substantial evidence standard—used by the Court of Appeal. If the substantial evidence standard, which places a greater burden on taxpayers, becomes the new default standard it will make it more difficult for taxpayers to appeal property tax valuation methodology challenges. Requiring taxpayers to meet this higher burden of proof will add to the already tense business climate in California that could have a chilling effect on taxpayers who have a valid claim to challenge the property tax valuation methodology.

For these reasons, COST respectfully urges this Court to grant Appellant's Petition for Review of *HGST*.

Sincerely,



Nikki E. Dobay

CC: COST BOARD OF DIRECTORS
DOUGLAS L. LINDHOLM, COST EXECUTIVE DIRECTOR