COST
COUNCIL ON STATE TAXATION

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Via MyMGA

Delegate Vanessa E. Atterbeary, Chair
Delegate Jheanelle K. Wilkins, Vice-Chair
Maryland General Assembly
House Ways and Means Committee

Re: Opposition to H.B. 1014, "Fair Share for Maryland"

Dear Chair Atterbeary, Vice-Chair Wilkins, and Members of the Committee:

On behalf of the Council On State Taxation (COST), I respectfully submit this testimony in opposition to House Bill 1014, the "Fair Share for Maryland Act of 2025", which would, among other things, repeal Maryland's current corporate income tax system and impose mandatory worldwide unitary combined reporting on Maryland corporate taxpayers. With one narrow exception, no other state or country in the world currently utilizes mandatory worldwide combined reporting to calculate corporate income.[1] Because mandatory worldwide combined reporting would have an unpredictable (and possibly negative) effect on State revenue, would impose significant administrative burdens on both businesses and the State, and would place Maryland at a huge competitive disadvantage among the states it should again be rejected by Maryland as it was last session.

About COST

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 500 major corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multistate and multijurisdictional business entities. Many COST members have operations in Maryland that would be negatively impacted by H.B. 1014.

Mandatory Worldwide Combined Reporting Rejected by Other States

In the past eight years, several states have rejected the move to mandatory worldwide combined reporting. In 2017, Indiana decided to forego mandatory worldwide combined reporting, with the observation that, though it might increase tax revenues,

1 Alaska is the only state that mandates worldwide combined reporting, but only for oil companies that either explore and produce or own a pipeline interest in the state.

in the short term, those gains were almost certain to be fleeting and result in no net gain over the longer term.[2] A 2023 Minnesota bill that would have adopted mandatory worldwide combined reporting passed the House but died in the Senate without a hearing or discussion in any Senate committee. In 2023, the New Hampshire Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax rejected mandatory worldwide combined reporting stating that "WWCR is a grossly overbroad remedy for concerns that transfer pricing is misused for tax advantage, as it sweeps all foreign profits into the base, regardless of whether any transfer pricing has been used, or its extent, or its alleged misuse."[3] Subsequent to the release of the report, New Hampshire House Bill 121 of 2024 and House Bill 502 of 2025, both of which would have implemented mandatory worldwide combined reporting, were heard in the New Hampshire House Ways and Means Committee and determined to be "inexpedient to legislate."

Finally, in 2024 in this State, both a House bill and a Senate bill that would have implemented mandatory worldwide combined reporting did not advance beyond the first committee in which they were heard and an amendment to implement mandatory worldwide combined reporting that was added late in the session to the Budget Reconciliation and Financing Act of 2024 was not included in the final version of the bill.

Worldwide Unitary Combined Reporting: Historical Context

Worldwide combined reporting is not a new concept; nearly a dozen states imposed the filing methodology by the early 1980's. In a series of actions beginning in 1984 and accelerating over the next ten years all those states moved away from mandatory worldwide combined reporting, granting taxpayers the right to file (or elect to file) using the water's-edge methodology. This position has held fast in the states over the last 40 years.

Pressure against mandatory worldwide combination had been building through the 1970s and early 1980s among both foreign governments and foreign and domestic multinational business enterprises, threatening to instigate an international tax war. In particular, the British and Japanese governments threatened retaliatory tax measures against the U.S. to counter the trend toward mandatory worldwide combined filing.

Although the U.S. Supreme Court upheld the constitutionality of California's imposition of mandatory worldwide combined reporting for domestic multinational corporations in 1983, pressure from the international community continued to build, spurring President Ronald Reagan to convene the Worldwide Unitary Taxation Working Group in 1984. The Working Group was led by Treasury Secretary Donald Regan and comprised representatives of the federal government, state governments, and the business community. Although the Working Group found it difficult to reach an agreement on several issues, it did agree on a set of principles designed to guide the formulation of state tax policy. Among those principles was a

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2 Office of Fiscal and Management Analysis, Indiana Legislative Services Agency, *A Study of Practices Relating to and the Potential Impact of Combined Reporting*, Oct. 1, 2016.

3 *Final Report of the Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax* RSA 77-A:23-b (HB 102, Chapter 12, Laws of 2022)

recommendation that states only enact "water's-edge" unitary combination for both U.S. and foreign-based companies.

Under the water's-edge method, only the income and the apportionment factors derived from operations within the domestic United States (i.e., up to the "water's edge") are used to calculate state corporate income tax liability. That principle has held to the current day. No state has returned to a mandatory combined reporting regime for all business corporations and even the Multistate Tax Commission's model combined reporting statute includes a water's-edge election.

Global Profit Shifting and State Corporate Tax Revenues

Proponents of mandatory worldwide combined reporting assert that the filing method recoups tax revenues lost to states through profit-shifting by U.S.-based multinational entities. However, international initiatives to significantly limit profit-shifting are currently underway on a global basis.

Over the last few decades, many countries lowered their corporate income tax rates to incentivize businesses to locate and expand there. As the disparity between corporate tax rates imposed by various countries grew, policy makers at the international level became concerned with the increased use of global profit shifting – the artificial shifting of income and activity from high-tax jurisdictions to low-tax jurisdictions.

Efforts to combat global profit shifting have been underway at the Organization for Economic Cooperation and Development (OECD) for many years, culminating in its Base Erosion and Profit Shifting (BEPS) project recommending measures to address tax avoidance by multinational entities, improve the coherence of international tax rules, and ensure a more transparent international tax environment. During its initial deliberations, the OECD considered the use of mandatory worldwide combined filing but ultimately decided not to move forward with this approach. Similarly, the current OECD Pillar 1 and 2 proposals for reforming international taxation steer clear of any consideration of mandatory worldwide combined filing.

Among the solutions that specifically address global profit shifting is a 15 percent global minimum tax (GMT) on the income of large multinational entities in every country in which they operate. According to the January 9, 2024, OECD Taxation Working Paper, because the 15 percent GMT significantly reduces the incentive to shift profits, global profit shifting will be reduced by nearly 50 percent. More importantly, the percentage of profits in low-tax jurisdictions (those with tax rates below 15 percent) is expected to fall by two-thirds, with a concomitant increase in global corporate income tax revenues of nearly $200 billion.

Additionally, in 2017 the U.S. Government adopted sweeping tax reform with the passage of the Tax Cuts and Jobs Act (TCJA) that sharply curtailed the incentive to shift profits outside the United States by implementing a federal rate reduction from 35 to 21 percent, a tax on global intangible low-taxed income (GILTI), a base-erosion and anti-abuse tax (BEAT) specifically targeting profit shifting, and a 15 percent alternative minimum tax on financial statement (book) income.

Several economic studies, issued prior to the adoption of the GMT, attempted to quantify the global impact of profit shifting. Not surprisingly, the results of these studies vary dramatically, and each study contains disclaimers regarding the complexity, difficulty, and uncertainty of its conclusions. A 2019 report by a progressive-leaning think tank seized on the high point of these studies and extrapolated that number to individual states through a series of heroic assumptions and estimates. It then presented those numbers to the states as "money left on the table," and there for the taking if the state would only enact the discredited and still-controversial filing method known as mandatory worldwide combined reporting. The report makes no effort to customize its estimates to reflect the laws of the individual states (including state efforts to combat profit shifting such as add-back statutes), does not make adjustments to reflect recent changes in national and international corporate income tax laws, and fails to account for the global economy by not acknowledging that income is earned from operations outside the U.S. Additionally, the underlying data upon which the report relied for its estimates has been revised downward by approximately two-thirds.

The report was written before the adoption and implementation of the GMT and uses data from tax years prior to the effective date of the TCJA and has not been adjusted to account for the resulting sharp reductions in profit shifting and low-taxed income. The report fails to acknowledge the unknown amount of foreign income or losses that would be included in the expanded tax base under the worldwide combined reporting method or the dilutive impact on the apportionment factor for assigning corporate income, as foreign sales would now be included in the denominator of the sales factor for all multinational businesses.

Practical Problems with Mandatory Worldwide Combined Reporting

In addition to the foreign policy implications, states have also rejected the worldwide combined reporting approach because of the inequities among taxpayers and imbedded compliance complexities. Compliance burdens vary from taxpayer group to taxpayer group depending on several group-specific factors, such as the international location of subsidiaries, the composition of the unitary group, merger and acquisition activity, company software systems, and income producing activities. For many multinational corporate groups, often comprising hundreds of subsidiaries, the compliance requirements are expensive and time consuming.

Typical hurdles to overcome include: (1) a unitary analysis for each affiliate to determine the composition of the unitary group; (2) a combined calculation of worldwide apportionable income (in U.S. dollars) for all affiliated entities, many using different international accounting standards, and without the benefit of a federal taxable income figure for foreign subsidiaries; (3) application of the state apportionment formula, which entails several policy choices that can be second-guessed by audit teams; and (4) administrative and corporate governance issues to be addressed when combining foreign and domestic subsidiaries. The audit burdens imposed on a company will be equally difficult for state tax administrators who must invest significant resources to manage and evaluate best-guess scenarios when seeking reasonable approximations for the worldwide combined return.[4]

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4 For more information on the practical implications of imposing mandatory worldwide combined reporting, see *Mandatory Worldwide Combined Reporting: Elegant in Theory but Harmful in Implementation* by Douglas L. Lindholm and Marilyn A. Wethekam, STRI, March 2024.

Although proponents are quick to point out that some corporate groups elect to file on a worldwide basis in the minority of states that provide such an election, that decision requires an assessment of the administrative burden including compliance costs and availability of the required data. This will differ from company to company and is often dictated by a weighing of compliance costs and tax savings achieved by including foreign-based loss companies in the combined return.

Conclusion

Mandatory worldwide combined reporting is contrary to the approach to taxing corporate profits currently employed by all other states and nations with corporate income taxes. Its adoption would have an unpredictable effect on state revenue, impose significant administrative burdens on both the taxpayers and the State, and most importantly would place Maryland at a huge competitive disadvantage among states by sending a warning flag to multinational businesses that the state is a hostile environment for business expansion and relocation.

For these reasons, COST urges members of the committee to vote "no" on H.B. 1014.

Respectfully,

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CC: COST Board of Directors
Patrick J. Reynolds, President and Executive Director