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Ferdinand Hogroian

Senior Tax & Legislative Counsel
(202) 484-5228
fhogroian@cost.org

March 6, 2018

The Members of the Georgia General Assembly
State Capitol Building
Atlanta, Georgia 30334

Re: COST's Support for Legislation to Decouple from Taxation of "Global Intangible Low-Taxed Income" ("GILTI")

Dear Members of the Georgia General Assembly:

On behalf of the Council On State Taxation (COST), representing approximately 550 corporations engaged in interstate and international business, I congratulate you on the thoughtful and bold leadership of Georgia in enacting legislation (H.B. 918) that offsets some of the potentially negative (and unintended) impacts on state income taxpayers of conformity with federal tax reform. However, I want to highlight one more important issue left unresolved in that legislation that could undermine Georgia's competitiveness for business investment and job creation. This issue is the taxation of foreign source income not previously taxed in Georgia, which would be particularly felt by Georgia-based businesses that compete internationally. I respectfully request your support of legislation to repeal conformity to the taxation of this previously untaxed foreign source income – the so-called Global Intangible Low-Taxed Income, or "GILTI."

As with most states, Georgia has traditionally not followed the approach taken by the federal government in taxing foreign source income earned by U.S. Corporations on a deferred or a current basis. Over the last 30 years, states have generally limited their corporate income tax base to the waters' edge – that is, to income earned in the U.S. With federal tax reform, the federal government is moving from the taxation of "deferred" foreign source income to the taxation of a portion of current foreign source income primarily to achieve two objectives that either do not apply to the states or cannot legally apply to the states.

First, Congress is raising \$324 billion over 10 years from international tax reform to help pay for \$654 billion over 10 years in other business tax reform cuts. The states, by contrast, do not conform to the federal corporate tax rate cuts and therefore have no reason to expand their tax base to make up for the lost revenue. Quite the contrary, conformity to federal tax reform represents an estimated 12% corporate base expansion nationwide.¹ Georgia has made great strides, via House Bill 918, to ensure

¹ See *The Impact of Federal Tax Reform on State Corporate Income Taxes*, by Ernst & Young LLP for the State Tax Research Institute (an affiliate of COST), March 2018, available at: <http://cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/the-impact-of-federal-tax-reform-on-state-corporate-income-taxes.pdf>.

that conformity to federal tax reform does not represent a massive tax increase for Georgia taxpayers. However, conformity to the GILTI provisions represents a selective conformity that harms a segment of Georgia businesses competing internationally, without advancing any compelling tax policy goal for the State.

Second, the new taxation of foreign source income and related provisions is intended to shift the U.S. tax laws toward favoring domestic commerce over foreign commerce. While this may be a permissible goal for the federal government, states are limited by constitutional provisions such as the Foreign Commerce Clause that make it impermissible to favor domestic commerce over foreign commerce. Thus, while conformity to GILTI provisions may represent a modest short-term revenue boost (selective tax increase), this revenue will be subject to extensive litigation and may need to be refunded to taxpayers at a later date. In the meantime, taxpayer planning and complexity of administration will distort business decisions and unduly burden the State Department of Revenue.

For these reasons, I respectfully request your support of legislation to decouple Georgia from the federal "GILTI" provisions. Such legislation would cement Georgia's reputation as having done the right thing when faced with an inadvertent and unintended tax increase resulting from the State's conformity to the federal Code.

Thank you for your consideration, and please contact me with any questions regarding COST's position on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'F. Hogroian', with a stylized flourish extending to the right.

Ferdinand Hogroian

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