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March 16, 2023

Senator Christian McDaniel, Chair
Senate Appropriations & Revenue Committee

Representative Jason Petrie, Chair
House Appropriations & Revenue Committee

Kentucky General Assembly

Re: COST’s Comments on H.B. 360 – Taxation of Business Inputs

Dear Chair McDaniel, Chair Petrie, and Members of the Conference Committee:

On behalf of the Council On State Taxation (COST), we encourage you to remove certain provisions from H.B. 360 which would substantially increase the State’s taxation of business inputs under the State’s sales and use tax. Kentucky businesses already bear 43 percent of the State’s sales and use tax burden, and that figure does not include any increases as a result of the enactment of H.B. 8 last year.¹

About COST

COST is a nonprofit trade association consisting of over 500 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. COST has a significant number of members that own property, employ workers, make substantial sales, and are incorporated in Kentucky.

Increased Tax Burden on Businesses That Advertise

H.B. 360 would expand the definition of telemarketing services to include text messages and “various forms of social media.” This represents a large tax increase on all Kentucky businesses, large and small, using these methods to advertise. We do not generally oppose legislation that expands the sales tax base to consumer purchases; however, this tax on business-to-business transactions would have a negative impact on economic development in the State. The expansion of the sales tax base to services which are predominantly purchased by businesses creates inefficiencies through “pyramiding” of the tax, runs counter to the notion of taxing

¹ See COST/EY’s “Impact of Imposing Sales Taxes on Business Inputs,” published March 2019 based on FY 2017 revenue figures. It is available at: https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/1903-3073001_cost-ey-sales-tax-on-business-inputs-study_final-5-16.pdf.

household consumption, and makes the tax less transparent to consumers and legislators.

Limitation of Kentucky Supreme Court Decision

H.B. 360 would also legislatively limit the Kentucky Supreme Court’s holding in *Century Aluminum of Kentucky v. Department of Revenue* “to appellant and shall only apply to November 2010 to May 2015.” While the General Assembly may certainly change the tax law prospectively, legislatively restricting the outcome of a specifically named Kentucky Supreme Court case raises serious concerns regarding the retroactive imposition of a tax for similarly situated taxpayers, erodes taxpayers’ trust in a fair tax system, and could lead to protracted litigation over its constitutionality.

Conclusion

For the foregoing reasons, we encourage you to remove the expansion of the definition of “telemarketing services” and Section 36 in their entirety.

Respectfully,



Patrick J. Reynolds

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