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March 20, 2019

The Honorable Paul Marquart, Chair  
The Honorable Dave Lislegard, Vice-Chair  
The Honorable Greg Davids, Ranking Member  
House Committee on Taxes  
Minnesota Legislature

#### VIA EMAIL

#### Re: COST's Opposition to H.F. 1849 (Tax Haven Blacklist)

Dear Chair Marquart, Vice Chair Lislegard, Ranking Member Davids, and Committee Members:

On behalf of the Council On State Taxation (COST), I am writing to oppose H.F. 1849, which would use a list of purported "tax haven" countries that have been singled out for inclusion in Minnesota's corporate income tax base. COST has a long-standing policy position in opposition to state tax haven legislation. The tax haven blacklist approach is arbitrary and misleading and fraught with Constitutional infirmities.<sup>1</sup> While this legislation seeks to address the issue of profit shifting, which has been a concern both in the U.S. and abroad, the tax haven blacklist approach to this problem has not been adopted by the U.S. government (including its most recent 2017 federal tax reform legislation) or other nations. Moreover, in 2018, Oregon repealed its tax haven provisions, which included a blacklist, leaving one state, Montana, as the only state to maintain such a list. In light of the rejection of the blacklist approach by the U.S., other nations across the world and Oregon's recent move away from its tax haven provisions, COST urges you to reject H.F. 1849.

#### About COST

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, and today has an independent membership of approximately 550 major corporations engaged in interstate and international business representing every industry doing business in every state. 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. COST members conduct substantial business in the state of Minnesota, employ a substantial number of Minnesota citizens, and own extensive property within the State.

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<sup>1</sup> See Frieden and Hogroian, *State Tax Haven Legislation: A Misguided Approach to a Global Issue*, issued February 2016; available at: <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/state-tax-haven-legislation--a-misguided-approach-to-a-global-issue.pdf>.

**H.F. 1849 is Out-of-Step With the Trends for Taxing Foreign Source Income**


This legislation represents yet another attempt by a state to impose an ill-advised “tax haven” country list. Tax haven provisions raise three significant concerns: 1) there is no clear evidence that profit shifting to tax havens is eroding the state and local tax base; 2) state tax haven blacklists are arbitrary and unmanageable; and, 3) states adopting tax haven legislation risk losing investments and jobs and face constitutional challenges.<sup>2</sup>

With respect to the first concern, state tax revenues received from businesses are not decreasing. Rather, the overall state and local taxes paid by businesses has remained stable, within approximately 1 percentage point of 45 percent, since COST began tracking it in 2000.<sup>3</sup> Further, the branding of specific nations as “tax havens” is punitive and will likely result in double taxation of legitimate business activities. In fact, the blacklisting approach has been almost universally rejected as a means of dealing with tax avoidance strategies: of the few states that have any “tax haven” provisions, only Montana utilizes the mandatory “blacklist” approach.<sup>4</sup> It is also important to note that Oregon, during its 2018 legislative session, repealed its tax haven provisions completely, and created a credit for taxpayers previously subject to tax haven provisions to avoid double taxation.<sup>5</sup> Finally, it is instructive that the California Legislature conducted an extensive examination of such a “tax haven” approach and rejected it.<sup>6</sup> Because of the inherent flaw in the state tax haven approach, COST respectfully urges this Committee reject this effort to further target U.S. trading partners.

**Conclusion**

COST urges you to reject H.F. 1849. This legislation would create uncertainty and disincentivize international business to invest in the State, leading to a potentially negative impact on Minnesota’s economic growth.

Respectfully,



Fredrick J. Nicely

cc: COST Board of Directors

Douglas L. Lindholm, COST President & Executive Director

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<sup>2</sup> *Id.* at p. 6.

<sup>3</sup> See COST/EY Total State and Local Business Tax Burden Study for Fiscal Year 2017, issued August 2018. Available at: <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/FY16-State-And-Local-Business-Tax-Burden-Study.pdf>.

<sup>4</sup> COST recognizes that five other states (including Alaska, Connecticut, Kentucky, Rhode Island and West Virginia) in addition to Montana continue to maintain tax have provisions in their state tax laws. Each of those states, however, have rejected the blacklist approach and instead utilize a criteria approach.

<sup>5</sup> See Oregon S.B. 1529 (enrolled) here:

<https://olis.leg.state.or.us/liz/2018R1/Downloads/MeasureDocument/SB1529/Enrolled>.

<sup>6</sup> See the California report here:

[http://caleuropeantrade.senate.ca.gov/sites/caleuropeantrade.senate.ca.gov/files/Waters\\_Edge\\_CA\\_Jobs\\_and\\_International\\_Investment\\_Opportunities\\_5-19-2010.pdf](http://caleuropeantrade.senate.ca.gov/sites/caleuropeantrade.senate.ca.gov/files/Waters_Edge_CA_Jobs_and_International_Investment_Opportunities_5-19-2010.pdf).