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April 26, 2023

Representative Bruce W. Bannister, Chair
Representative Gilda Cobb-Hunter, 1st Vice Chair
Representative William G. “Bill” Herbkersman, 2nd Vice Chair
House Ways and Means Committee
South Carolina Legislature

Re: Support of Senate Bill 298

Dear Chair Bannister, Vice Chair Cobb-Hunter, Vice Chair Herbkersman, and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing in support of Senate Bill 298, which would impose common sense and commonly used standards – identical to those used in North Carolina – on both the Department of Revenue and corporate taxpayers to determine when combined reporting can be used to calculate South Carolina’s Corporate Income Tax.

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 over 500 major corporations engaged in interstate and international business. COST’s objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. Many COST members have operations in South Carolina and support this legislation.

Combined Reporting vs. Separate Entity Reporting

Every state with a corporate income tax uses either separate entity reporting or combined reporting to tax multistate taxpayers. The South Carolina Legislature, like those in all Southeast states, has chosen separate entity reporting, which requires each entity to calculate its income separately. The combined reporting method, which is required by other states (including California), requires a group of related entities to calculate income by eliminating intercompany transactions and treating the group as one entity. Regardless of which method a state chooses, the same method should apply to all taxpayers.

The Department of Revenue, however, is forcing select taxpayers to file on a combined basis when it results in more tax, but preventing other taxpayers from filing on a combined reporting basis when it results in less tax. No state currently uses this approach,

and those that have were halted by the courts (*e.g.*, Indiana) or the legislatures (*e.g.*, North Carolina). S.B. 298 ensures that the Department and taxpayers play by the same rules.

What S.B. 298 Does and Does Not Do

S.B. 298 would impose the same standards on the Department and corporate taxpayers with respect to determining the legitimacy of intercompany transactions. If the Department finds that a taxpayer's intercompany transactions lack a business purpose and economic substance, the Department may impose an alternate filing method. Using the same standards, taxpayers whose corporate structures and intercompany transactions reflect a business purpose, arm's-length fair-market value, and economic substance, are protected from forced combination. North Carolina adopted a similar standard in 2011 with positive results.

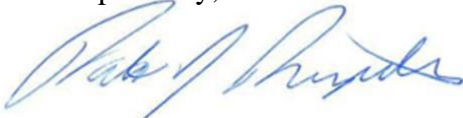
S.B. 298 would *not* take away the Department's ability to combine corporate entities with a corporate structure that lacks business purpose or economic substance, or whose intercompany transactions are not at arm's-length.

Conclusion

For too long, South Carolina's reputation as a fair and efficient state in which to do business has been jeopardized by the Department's forced combination audits that lack a recognizable standard for forcing combination. This bill would restore certainty and predictability for large multi-entity taxpayers seeking to do business in South Carolina – two attributes that are essential considerations in any decision to expand or relocate within the State.

For all of these reasons, COST urges you to pass S.B. 298.

Respectfully,



Patrick J. Reynolds

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