COST
Council On State Taxation

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New York State Department of Taxation and Finance
Building 9, W.A. Harriman Campus
Albany, NY 12227

Via email: federal.tax.response.comments@tax.ny.gov

Re: Discussion Draft of an Unincorporated Business Tax

Dear Sir or Madam:

On behalf of the Council On State Taxation (COST), I am writing in response to the Department's request for input regarding the Department's Bill Discussion Draft for an Unincorporated Business Tax (UBT). Because of the reasons cited below, COST believes the most critical change needed for the draft is to make the proposed UBT optional (elective) for each unincorporated business entity subject to the UBT regime.

About COST

COST is a nonprofit trade association consisting of approximately 550 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 member companies generally are organized as C corporations, but many employ pass-through entities as some part of their corporate structure.

Potential Unintended Consequences of a New York UBT

The Department's Summary Document notes, "This discussion draft puts forward a statewide UBT that could preserve federal income tax deductibility for individuals on certain non-wage income while maintaining revenue levels for the State." At the outset, it should be noted that S corporation owners may also benefit from preserving federal income tax deductibility, in addition to partnerships, and therefore the draft should be expanded to include other pass-through entities.

However, C corporation owners of pass-through entities are not benefited by the proposal, and therefore either 1) the UBT should be elective, or 2) income flowing through to C corporation partners (either directly or indirectly) should be excluded from the UBT base. Because the intent of the tax is to preserve a federal tax benefit, applying the UBT to entities owned either directly or indirectly by C corporations imposes unneeded complexity and exposes C corporations doing business in New

York to potential additional liability solely due to their ownership of interests in pass-through entities.

For example, as noted in the letter submitted July 5, 2018 by the State Taxes After Reform (STAR) Partnership, the availability of the UBT credit under the draft could provide insufficient relief, or even no relief, for C corporation owners. Further, for many C corporations, the UBT (subject to three-factor allocation) will result in a much larger liability than otherwise would be due by the C corporation under Article 9-A. Unless the C corporation restructures its corporate group in response to the proposed UBT regime, there is a substantial risk the UBT credits may never be fully utilized.

The UBT credit is also provided at less than 100%, apparently to preserve New York revenues, whereas C corporation owners will see no benefit from the application of the UBT. As a result, for C corporations, even those that can utilize the UBT credit fully, the application of the UBT as proposed would amount to a tax increase.

To avoid unintended consequences of imposing an unincorporated business tax in New York State to mitigate the impact of limits on federal deductibility of individuals' state and local taxes, COST urges the Department to amend its draft to make the UBT elective.

Respectfully,

Ferdinand S. Hogroian

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