COST
COUNCIL ON STATE TAXATION

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August 1, 2024

VIA EMAIL
Senator Lou Ann Linehan, Chairperson
Senator R. Brad von Gillern, Vice Chairperson
Nebraska Revenue Committee
Nebraska Legislature

Re: COST Opposes Mandatory Worldwide Combined Reporting Proposal in LB 40

Dear Chairperson Linehan, Vice Chairperson von Gillern, and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing in opposition to the proposed adoption of mandatory worldwide combined reporting for Nebraska's corporate income taxpayers. With one partial exception, no other state or country in the world currently utilizes mandatory worldwide combined reporting to calculate corporate income.[1] Mandatory worldwide combined reporting would have an unpredictable (and possibly negative) effect on Nebraska's revenue, would impose significant administrative burdens on both businesses and the State, and would place Nebraska at a huge competitive disadvantage among states. Nebraska should reject this approach.

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 approximately 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 conduct operations in Nebraska that would be negatively impacted by tax legislation proposed in this extraordinary session.

Worldwide Combined Reporting: A Misguided Concept

Worldwide combined reporting is not a new concept; nearly a dozen states imposed the filing methodology during the early 1980s. In a series of actions beginning in 1984 and accelerating over the next ten years, all those states moved away from mandatory worldwide combined reporting, despite its approval by the U.S. Supreme Court. Taxpayers in combined unitary filing states are now granted the right to file (or elect to file) using the water's-edge methodology, a position that has held fast in the states for over 40 years. Indeed, the problems created by worldwide combined reporting are still present today, and include the following:

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[1] Alaska is the only state that mandates worldwide combined reporting, but the State imposes the method only on oil companies with exploration and production facilities or ownership of a pipeline interest in the state. For a thorough discussion of the difficulties and uncertainties created by mandatory worldwide combined reporting, including adverse foreign policy implications, see "*Mandatory Worldwide Combined Reporting: Elegant in Theory but Harmful in Implementation*" by Douglas L. Lindholm and Marilyn A. Wethekam, available at https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/wwcr-article---final.pdf.

- Uncertain Revenues: Because of the nature of the shifting global economy, revenues from the proposal are far from certain. Some taxpayers will pay more in taxes, some taxpayers will pay less, depending on the profitability of foreign and domestic subsidiaries. Proponents' revenue estimates are derived from a flawed and uncertain study.

- Global Efforts to Combat Profit Shifting Are Ongoing: The OECD is developing a global approach to combating profit shifting by seeking to impose a global minimum tax of 15% to ensure a minimum tax is paid in all taxing jurisdictions. It is gaining the approval of the international community and has the support of the U.S. government. Efforts to combat profit shifting should be made on an international level, and not by individual states.

- Multinational Companies Do Not Gain a Tax Advantage: Proponents argue that small and family-owned businesses are at a disadvantage because they cannot shift income out of the country. However, most small businesses are organized as pass-through entities and do not pay any corporate income tax at all. Although Nebraska essentially imposes the same rate on individuals and corporations, corporate income taxpayers are subject to tax twice – at the corporate level and at the shareholder level. Small businesses, as pass-through entities, avoid this double tax.

- Compliance with Mandatory Worldwide Combined Reporting is Extremely Complex: Taxpayers must determine how much of a company's global income should be apportioned to a specific state. This must be undertaken in the face of differing domestic and foreign accounting principles, exchange rate fluctuations, inflationary differences, differing levels of profitability, and numerous other domestic/foreign distinctions that can only be resolved through "best guess" scenarios. Unfortunately, the arbitrary nature of these calculations undermines the requisite certainty and predictability of effective tax statutes, and of the ensuing audits of companies under those statutes.

- Foreign Policy Implications: Mandatory Worldwide Combined Reporting in the 1980s provoked severe criticism and outcry from many of our largest international trading partners. Indeed, President Reagan's Secretary of State, George Schultz, noted that in his tenure at the State Department few issues have provoked so broad and intense a reaction from foreign nations. Enactment of the methodology would have a negative impact on direct foreign investment in Nebraska and would send a signal that the State is hostile to business expansion and development.

Conclusion

Mandatory worldwide combined reporting is contrary to the approach to taxing corporate profits currently employed by all other states and nations with corporate income taxes. Its adoption would have an unpredictable (and possibly negative) effect on State revenue, would impose significant administrative burdens on both taxpayers and the State, and would place Nebraska at a huge competitive disadvantage among states; its enactment would send a warning signal to multinational businesses that Nebraska is a hostile environment for business expansion and relocation.

Respectfully,

Patrick J. Reynolds

cc: COST Board of Directors