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General Assembly of Maryland
House Ways and Means Committee

Re: COST's Opposition to House Bill 229, "Throwback" of Sales for Corporate Income Tax

Dear Chair Kaiser, Vice Chair Washington, and Members of the Committee:

Thank you for the opportunity to provide written testimony today on behalf of the Council On State Taxation (COST) in opposition to House Bill 229, which would impose a "throwback" rule for sales by Maryland corporate taxpayers. Under this rule, taxpayers would see their Maryland tax liability increase as their income would be assigned (apportioned) to Maryland based not only on their Maryland sales, but also on sales to customers in other states where they are not taxable. This rule violates fundamental tax principles, levying the wrong tax at the wrong rate in the wrong state.

It also penalizes manufacturers for investing and producing goods in Maryland. This is augmented by the additional challenges manufacturers already face from the COVID-19 pandemic. Manufacturers have additional costs from pandemic-related production stoppages, supply chain disruption, and workforce dislocation. Imposing a throwback rule augments these hurdles.

States that do not impose throwback rules are also more attractive for location and expansion. None of Maryland's neighboring states impose such a rule. COST urges the Committee to reject this measure.

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 Maryland that would be negatively impacted by this legislation.

COST's Position on "Throwback" Rules

The COST Board of Directors has adopted a formal policy statement on throwback and related "throwout" rules. COST's policy position is:

Throwback and throwout laws seek to require companies to pay tax in

one state on income that another state has chosen not to tax or is legally unable to tax. A company’s tax liability in one state should not be measured by its tax in another state. Throwback and throwout rules also discourage investment in a state. Such rules must not be adopted and must be repealed where they presently exist.

Problems with “Throwback” Sales Apportionment Rules

Generally, throwback rules require a company, when calculating its tax in a state, to include income earned in another state if that other state chooses not to tax that income or is prohibited from taxing that income by the U.S. Constitution or by federal law.

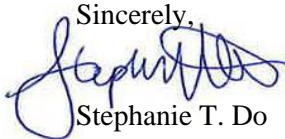
A paper by three leading state tax economists addressed the case for and against these laws.¹ They cite two frequent claims made in favor of such policies but note that “the validity of each is questionable.” The first claim proponents make is that throwback laws discourage tax planning. The authors conclude, however, that such laws fail to accomplish this goal and are in fact potentially damaging to the state’s economic climate “because firms are discouraged from locating in throwback states.”

The second claim proponents of throwback laws make is that such laws ensure that all corporate income is taxable in some state. The authors of the paper note that throwback laws do not accomplish this goal and argue that there is “little practical reason why any state’s tax policy should be based on ensuring that out-of-state activity is properly included in some state’s tax base.” A corporation’s correct measure of tax in a state is determinable without reference to the tax a corporation pays in other states. Throwback laws tax income that is, by definition, earned outside of the state, and such laws tax that income at the wrong rate and direct the resulting revenue to the wrong state. Missouri became the most recent example of a state repealing its throwback law, beginning on or after January 1, 2020.²

Conclusion

COST appreciates the opportunity to provide this Committee with testimony opposing “throwback” and urges members of the committee to please vote “no” on House Bill 229.

Sincerely,



Stephanie T. Do

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

¹ See Fox, Luna and Murray, “How Should a Subnational Corporate Income Tax on Multistate Businesses Be Structured?”, National Tax Journal, March 2005, pp. 153-5.

² See Missouri Senate Bill 884 (2018).