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February 6, 2017

Oregon State Legislature  
Senate Finance and Revenue Committee

*Via E-mail*

**Re: COST Opposes S.B. 30**

Dear Chairman Hass and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing to oppose S.B. 30, which would amend ORS § 317.705. COST sees this bill as an ill-advised effort by the Department of Revenue (DOR) to expand to the scope of includable entities incorporated in listed jurisdictions pursuant to ORS § 317.716 (“Tax Haven Law”). Rather than aid in the administration of the Tax Haven Law (which COST opposes), this bill would make determining which corporations are part of a unitary group more difficult. We urge this Committee to abandon any such efforts to expand the scope of the Tax Haven Law, especially provisions which increase compliance costs and uncertainty.

COST is a nonprofit trade association consisting of approximately 600 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.

**S.B. 30 Would Likely Expand the Scope of Oregon’s Tax Haven Legislation**

ORS § 317.705 currently provides certain definitions related to Oregon’s combined filing requirements. Specifically, for purposes of making a unitary determination, ORS § 317.705(c) limits the scope of corporations considered to be doing business to those subject to federal taxation. This was not an issue prior to the passage of tax haven legislation because the starting point for an Oregon combined filing group was the federal consolidated group. In late 2015, the DOR attempted to promulgate regulations broadening its ability to pull in affiliates for purposes of the Oregon’s Tax Haven Law. COST and others successfully opposed the DOR’s efforts, pointing out the regulation did not conform to ORS § 317.705(c)’s statutory prohibition. The DOR is now attempting to remove that prohibition—S.B. 30 would allow “any corporation that is owned or controlled directly or indirectly” to be considered to determine whether there is a unitary relationship. This greatly expands the reach of Oregon’s Tax Haven Law. Rather than expand the scope of Oregon’s Tax Haven Law, this Committee should look to ways to limit or eliminate the provision. As provided in COST’s formal policy statement:

*State “tax haven” designations are arbitrary and overly broad, reflect a discarded “worldwide” approach to state taxation, and are inappropriate to address income shifting or other tax avoidance concerns. Punitive treatment of multinational businesses with affiliates in countries designated by states as “tax havens” interferes with the U.S. Government’s ability to “speak with one voice” on foreign affairs and is constitutionally suspect. States should limit their income tax base to the domestic “water’s-edge” and not tax foreign income with little or no connection with the United States.<sup>1</sup>*

Expanding the Oregon’s Tax Haven Law would not only perpetuate this bad tax policy, but would make compliance and enforcement more difficult for both taxpayers and the DOR, respectively. COST’s formal policy statement<sup>2</sup> and research<sup>3</sup> note the complexity of the unitary group determination. COST notes:

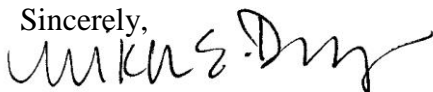
*The concept of a “unitary business” is uniquely factual and universally poorly defined. It is a constitutional (Due Process) concept that looks at the business as a whole rather than individual separate entities or separate geographic locations. In order to evaluate the taxpayer’s determination of a unitary relationship, state auditors must look beyond accounting and tax return information. Auditors must annually determine how a taxpayer and its affiliates operate at a fairly detailed level to determine which affiliates are unitary.*

The application of the unitary concept to certain affiliates located in purported “tax haven” jurisdictions has already resulted in uncertainty and spawned disputes, according to the testimonials of COST member companies doing business in Oregon. The proposed expansion of the unitary business inquiry under S.B. 30 to foreign parent/subsidiary structures further challenges taxpayers trying to comply. Oregon’s Tax Haven Law is already quite unique (only Montana also lists “tax haven” jurisdictions). It is also unclear how the DOR’s auditors will be able to effectively examine the entire operations of foreign affiliated groups to determine their unity with domestic companies under U.S. Constitutional standards that are themselves nebulous and require detailed factual inquiry.

### Conclusion

For the reasons discussed above, COST urges this Committee to vote “no” on S.B. 30.

Sincerely,



Nikki E. Dobay

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

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<sup>1</sup> COST’s Policy Statement on State “Tax Haven” Designation is available at: [http://cost.org/uploadedFiles/About\\_COST/Policy\\_Statement/COST%20State%20Tax%20Haven%20Policy%20Statement%20Final%204%2016%2015.pdf](http://cost.org/uploadedFiles/About_COST/Policy_Statement/COST%20State%20Tax%20Haven%20Policy%20Statement%20Final%204%2016%2015.pdf). See also COST’s research on this issue, available at: <http://www.cost.org/WorkArea/DownloadAsset.aspx?id=92483>.

<sup>2</sup> See [http://www.cost.org/uploadedFiles/About\\_COST/Policy\\_Statement/Mandatory%20Unitary%20Combined%20Reporting.pdf](http://www.cost.org/uploadedFiles/About_COST/Policy_Statement/Mandatory%20Unitary%20Combined%20Reporting.pdf).

<sup>3</sup> See <http://www.cost.org/WorkArea/DownloadAsset.aspx?id=70000>.