COST
COUNCIL ON STATE TAXATION

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House Committee on Revenue
Oregon State Legislature

VIA EMAIL

Re: COST's Letter in Support of H.B. 2101 (Conformity with Centralized Partnership Audit Rules)

Dear Chair Nathanson, Vice-Chair Findley and Members of the Committee:

I am writing on behalf of the Council On State Taxation (COST) in support of House Bill No. 2101 (H.B. 2101) with certain technical amendments. If passed, H.B. 2101 would allow the Oregon Department of Revenue (Department) to assess tax on certain pass-through entities following an audit at the federal level where there was a change to Oregon tax. Over the past two years, COST has worked with the MTC and several other organizations, including the Tax Executives Institute (TEI), the Association of International Certified Professional Accountants (AICPA), the American Bar Association's State and Local Tax Committee (ABA SALT), the Institute for Professionals in Taxation (IPT), and the Master Limited Partnership Association (MLPA) (hereinafter collectively referred to as the "Interested Parties")) on a model statute that focuses on the reporting requirements at the state level following a partnership audit under the new federal partnership audit regime. We commend the Department for using this MTC model statute as the basis for H.B. 2101 and we welcome the opportunity to continue to work on certain technical corrections to this bill.

In addition, we also urge the legislature to consider closer adoption to the entire MTC model which also addresses other aspects of all taxpayers reporting federal tax audit adjustments to improve the process of reporting those changes to the State. This is discussed in more detail below.

About COST

COST is a nonprofit trade association based in Washington, D.C. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce, and today COST has an independent membership of approximately 550 major corporations engaged in interstate and international business representing every industry doing business in every state. COST has a significant number of members that own property, have employees, and make substantial sales in Oregon. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities—a mission it has steadfastly maintained since its creation.

H.B. 2101 (with Technical Amendments) Will Provide Efficiency for the Reporting of Federal Partnership Audit Adjustments and Promote Uniformity

As mentioned above, COST and the other Interested Parties have worked with the MTC over the past two years on a model statute that addresses the federal audit changes for partnerships that went into effect January 1, 2018 (returns filed in 2019). The Department's use of that model as a starting point for H.B. 2101 is commendable and COST is supportive of those efforts. The use of the MTC model addresses the significant complexity the new federal partnership audit process at the state level in an efficient way and demonstrates Oregon's commitment to uniformity on multistate tax administration issues. We see 2019 as the year in which many states are likely to address this and we are confident other states will also use the MTC model legislation to conform to the new federal procedures.

Although COST is supportive of the Department's efforts and H.B. 210, we agree with the Department that technical corrections are needed. Specifically, the following issues should be addressed:

- Define "final determination date" or clarify the meaning of "the date of the audit report" which is the language used in H.B. 2101;
- Address and clarify references to "tax matters partner" in H.B. 2101;
- Clarify treatment of tax-exempt entities; and,
- Clarify certain information necessary for a taxpayer to determine allocations to nonresidents and indirect partners.

Prior to H.B. 2101 being introduced, COST and the other Interested Parties have had conversations with the Department about these issues, which we intend to continue after this hearing. Again, we very much appreciate the Department's willingness to engage on this issue and look forward to working with Department staff on the technical amendments.

H.B. 2101 is an Opportunity for Oregon to Improve its General Procedures of Reporting Federal Changes

As indicated above, the MTC model also addresses the state-level reporting requirements for all taxpayers that have been subject to a federal audit. The broad adoption of the MTC model will create greater uniformity, which in turn will lead to greater efficiencies for both taxpayers and the government, along with enhancing voluntary compliance. Thus, we would encourage the legislature to take this opportunity to also incorporate some of the general reporting provisions from the MTC model legislation into ORS § 314.380, which is the statute that outlines how and when a taxpayer is required to report a federal tax adjustment.

Specifically, we see the following provisions as important for Oregon to adopt:

- Apply the definition of "final determination date" and use of that term in places that reference "date of the audit report";
- Modify and clarify the time period for reporting a federal change following a federal change (*i.e.,* after the "final determination date" to 180 days;

- Add a *de minimis* provision contained in the MTC model (a similar provision should also be added to the partnership provisions in LC 570);
- Add a provision that makes it clear Oregon will accept estimated payments prior to a federal change being reported (and a refund if there is an overpayment); and,
- Use the MTC model's statute of limitations provisions.

COST, along with the other Interested Parties, looks forward to working with the Department as well as Legislative Counsel on any of these additional changes.

Conclusion

Again, COST fully supports the Committee's attention to this issue and looks forward to working with the Department and Legislative Counsel on technical amendments.

Sincerely,

Nikki Dobay

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