COST
COUNCIL ON STATE TAXATION

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VIA EMAIL
The Honorable Paul Marquart, Chair
The Honorable Dave Lislegard, Vice Chair
Minnesota Legislature
House Committee on Taxes

Re: COST Opposes H.F. 2114 – Deeming Controlled Foreign Corporations as Domestic Corporations for Corporate Income Tax Purposes

Dear Chair Marquart, Vice Chair Lislegard, and Members of the Committee,

On behalf of the Council On State Taxation (COST), I am writing to oppose H.F. 2114, which would require controlled foreign corporations (CFCs) that earn global intangible low-taxed income (GILTI) in a particular year to be included in the domestic combined filing group if they are unitary with the group. No other state utilizes this form of reporting to calculate its corporate income taxes. Just as Minnesota has rejected the inclusion of GILTI in its tax base, Minnesota should also reject this approach. The tax increase embodied in H.F. 2114 is particularly unwarranted since it is proposed on top of an actual 21 percent increase in the State's corporate income tax during the previous fiscal year.

About COST

COST is a nonprofit trade association consisting of over 500 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 has a significant number of members that own property, have employees, and make substantial sales in Minnesota.

COST's Research on the State Corporate Tax Impact of Federal Tax Reform

In March 2018, COST, through its affiliated State Tax Research Institute (STRI), issued a study entitled The Impact of Federal Tax Reform on State Corporate Income Taxes.[1] The study, conducted by Ernst & Young LLP (EY), estimated that state tax conformity with federal tax reform would result in an average annual state corporate income tax base increase of 12% over the 10- year period between 2018 through 2027. This state tax increase contrasted sharply with the overall 10% corporate income tax decrease at the federal level from the TCJA. The difference in outcome at the state level was attributable to state conformity with federal corporate tax base broadeners but not with federal corporate tax rate cuts.

[1] The Impact of Federal Tax Reform on State Corporate Income Taxes, by Ernst & Young LLP for the State Tax Research Institute, March 2018, available at: http://cost.org/globalassets/cost/state-taxresources-pdf-pages/coststudies-articles-reports/the-impact-of-federal-tax-reform-on-state-corporateincome-taxes.pdf.

The study also concluded that Minnesota would experience an approximately 12% annual increase in its corporate income tax base – the same as the national average - if it conformed to certain provisions in the TCJA. In fact, the EY study underestimated the positive revenue impact in Minnesota. Based on a recent annual tax burden study conducted by EY on behalf of STRI, Minnesota's corporate income tax actually increased 21% from FY 2018 to FY 2019 ($1.4 billion to $1.7 billion).[2] This is greater than the national average which reflected an overall 17% increase in state corporate income taxes in FY 2019.[3] The large corporate income tax increase in Minnesota occurred even without State conformity to the federal GILTI provision.

Including Controlled Foreign Corporations with GILTI in the Minnesota Domestic Combined Filing Group Is Unsound Public Policy

H.F. 2114, similar to a House Version introduced in 2019 (H.F. 2125), takes an approach to the taxation of GILTI that is more onerous than virtually any other state that has included GILTI in its corporate tax base. This legislation would require the inclusion of controlled foreign corporations (CFCs) that incur GILTI in a particular year in the domestic combined filing group if the CFCs are unitary with the group. The practical impact of including CFCs with GILTI in the domestic combined filing group is to compel Minnesota corporate taxpayers into something that closely resembles mandatory worldwide combined reporting. For many multinational businesses, particularly those in the services, digital, and financial industries, or those selling tangible property with older (depreciated) facilities, GILTI will constitute all or most of their foreign source income.

This would make Minnesota an extreme outlier, as no other state currently mandates this type of worldwide combined reporting. H.F. 2114 also raises fundamental fairness concerns because CFCs are included in the unitary group when they have GILTI but excluded from the group when they have no GILTI or have losses in their CFCs. Furthermore, CFCs would be included in the group whether they have small or large amounts of GILTI and regardless of whether the GILTI is subject to tax at the federal level (after the allowance for foreign tax credits). As a result, this legislation would arbitrarily (and perhaps unconstitutionally) allow the State to bring in income from CFCs when they have net GILTI, but exclude them, absent the 10-year election to use worldwide reporting when the CFCs have overall losses. Moreover, the bill would include CFCs in the Minnesota combined returns in years when the CFCs pay no federal tax on GILTI because of the utilization of foreign tax credits to offset the GILTI amounts.

Conclusion

For the above reasons, COST respectfully opposes H.F. 2114 and urges the Committee to reject the bill. Minnesota's corporate income tax revenues remain strong and this legislation is not needed.

Sincerely,

Fredrick J. Nicely

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

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[2] "Total State and Local Business Taxes" business tax burden study for FY 2018 is available at: https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/fy18-state-and-local-business-tax-burden-study.pdf. The FY 2019 business tax burden study is available at: https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/2020-business-tax-burden-study---final.pdf.

[3] *Supra*, FY 2019 tax burden study.