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VIA EMAIL
Minnesota House
House Committee on Taxes

Re: COST Opposes H.F. 991's Retroactive Corporate Income Tax Provisions

Dear Chair Rep. Marquart, Vice Chair Lislegard, and Members of the Tax Committee:

On behalf of the Council On State Taxation (COST), I am writing to oppose the retroactive corporate income tax provisions in H.F. 991which would impose tax on certain income. The legislation also runs counter to H.F. 5, enacted in the first session of 2019, that addressed the tax provisions of the 2017 federal Tax Cuts and Jobs Act (TCJA).

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.

Retroactive Legislation

COST's Board of Directors has adopted a policy position on "Retroactive Tax Legislation,"[1] which reads as follows:

> *Legislation imposing new or increased tax liabilities attributable to prior periods is fundamentally unfair and in some cases unconstitutional and thus must be avoided. Under no circumstance should legislation imposing new or increased tax liabilities be applied to any periods beginning prior to the date the legislation was enacted. Retroactive legislation or administrative pronouncements that do not impose new or increased tax liabilities may be appropriate.*

The retroactive provisions in H.F. 991 that would apply to tax years beginning on and after 2016 should be removed. That retroactivity raises serious constitutional issues (*i.e.*, Due Process) and tax policy concerns. H.F. 991 would retroactively subject to tax dividend income actually distributed to the United States that was excluded as deemed repatriated income under Internal Revenue Code (IRC) § 965 or Global Intangible Low

[1] COST policy position is available at: https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/retroactivetaxlegislation.pdf.

Taxed Income (GILTI) under IRC § 951A on returns already filed with the Minnesota Department of Revenue.[2] The tax liability for the prior tax years has already legally attached and the retroactivity of H.F. 991 raises serious questions about the stability, reliability, and fairness of Minnesota's tax system. Taxpayers make significant financial decisions based on current tax laws and those decisions should not be undermined by legislation imposing new or increased tax liabilities after the fact. Additionally, retroactive changes may have unintended consequences for many companies' financial reporting to shareholders, creditors, and other interested parties.

Other Concerns with H.F. 991's Corporate Income Tax Changes

The impact on the corporate income tax in H.F. 991 could have adverse effects on economic development in Minnesota. The failure to fairly apportion income earned by businesses operating in multiple jurisdictions (within the U.S. and internationally) with no foreign factor relief raises serious constitutional concerns. Additionally, the proposed tax rate increase from 9.8% to 11.25% is problematic, from a competitive standpoint, because that increase would make Minnesota a significant outlier with respect to its corporate income tax rate. Iowa, which previously imposed the highest tax rate (a graduated tax rate from 6% to 12%) will now have a top rate for tax years on and after 2021 equal to Minnesota's current rate, 9.8%. An 11.25% tax rate would give Minnesota the dubious distinction of imposing the highest corporate tax rate of any state.

Conclusion

COST urges the Committee to remove the retroactive provisions in H.F. 991 and take into consideration the impact the other tax changes could have on businesses seeking to expand in or relocate to Minnesota.

Respectfully,

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Fredrick J. Nicely

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

[2] The income would be eligible for the corporate dividends received deduction, an 80% deduction.