COST
COUNCIL ON STATE TAXATION

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March 25, 2019

House Committee on Revenue
Oregon State Legislature

VIA EMAIL

Re: COST's Letter in Support of H.B. 2101-1 (Conformity with Centralized Partnership Audit Rules)

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

I am writing on behalf of the Council On State Taxation (COST) in support of House Bill No. 2101-1, which makes certain technical amendments to H.B. 2101 as introduced. If passed, H.B. 2101-1 would require pass-through entities subject to a federal audit under the new centralized partnership audit rules to report and pay any additional Oregon tax due following such an audit. H.B. 2101-1 would also allow the Oregon Department of Revenue (Department) to assess tax on any such entity (or its partners) that fails to properly report and pay any additional Oregon tax following such an audit.

Over the past two years, COST has worked with the Multistate Tax Commission (MTC) and several other organizations, including the Tax Executives Institute, the Association of International Certified Professional Accountants, the American Bar Association's State and Local Tax Committee, the Institute for Professionals in Taxation, and the Master Limited Partnership Association (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 the MTC model statute as the basis for H.B. 2101-1 and for their efforts to work with the Interested Parties to adapt the MTC model statute to Oregon's specific tax code.

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 steadfastly maintained since our creation.

H.B. 2101-1 Will Provide Efficiency for the Reporting of Federal Partnership Audit Adjustments and Promote Uniformity

As mentioned previously, COST and the 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). We would also highlight that key members of the Oregon Department of Revenue engaged in and eventually led the working group that drafted the model ultimately adopted. The MTC model has been endorsed by COST and each of the other Interested Parties, and the MTC officially endorsed the model on January 24, 2019.[1]

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 will create 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 issue, and we are confident other states will also use the MTC model legislation to conform to the new federal procedures.

During the January 31, 2019 public hearing on H.B. 2101, COST offered its support for H.B. 2101, but noted that the following technical corrections 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.

The Department agreed that the above issues needed to be addressed, and since the prior hearing the Department has diligently worked with COST and the Interested parties to address these mutual concerns. Understanding that corrective legislation may be needed in the future to address uncertainties related to the Internal Revenue Service's administration of these new audit procedures at the federal level, we are nonetheless satisfied that H.B. 2101-1 provides a framework for taxpayers to report and pay – and the Department to administer – any additional Oregon tax due following an audit under the federal government's new centralized partnership audit rules.[2]

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[1] A copy of the MTC model statute can be found at: http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Partnership-Informational-Project/Proposed-Model-RAR-Statute-7-18-18-Version-with-minor-changes-discussed-at-UniCom-(updated-title).pdf.aspx?lang=en-US.

[2] In our January 31, 2019 letter to the Committee in support of H.B. 2101 as introduced, COST also urged the Committee to consider further amendments that would improve the general procedures for all taxpayers (not simply partnerships) to report federal audit adjustments. Although COST continues to urge the State to support such efforts, COST understands that the "relating to" clause for H.B. 2101 is too narrow to support the inclusion of any such amendments in this particular bill. COST would welcome the opportunity to engage with the Committee on that issue at a later date. As pointed out in our previous letter, greater uniformity on this issue for all taxpayers will provide greater efficiencies for both taxpayers as well as the Department, thereby enhancing voluntary compliance.

Conclusion

H.B. 2101-1 is a commendable example of a State utilizing an MTC model statute developed with substantial input from the business community, and the Department of Revenue's efforts to engage with the business community should be commended. COST supports H.B. 2101-1 and urges this Committee to provide a "do-pass" recommendation.

Sincerely,

Nikki Dobay

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