COST
Council On State Taxation

Stephanie T. Do
Senior Tax Counsel
(202) 484-5228
sdo@cost.org

February 14, 2023

Representative Nancy Nathanson, Chair
Representative E. Werner Reschke, Vice-Chair
Representative Jules Walters, Vice-Chair
House Committee On Revenue
Oregon Legislative Assembly

Via E-mail

Re: COST's Support of H.B. 2549 – Decoupling from Federal Limitations

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

On behalf of the Council On State Taxation (COST), we are writing in support of H.B. 2549, which intends to allow "full bonus depreciation in first year of service" and the "deduction of certain net business interest without [the State's current] limitation[s]" through the State's conformity to IRC § 163(j).[1] Bonus depreciation allows businesses to immediately deduct their capital investments from their taxable income; it is intended to boost and encourage capital investment and employment levels. While the federal IRC § 163(j) limitations are part of a collective package in the federal Tax Cuts and Jobs Act (TCJA) used to partly offset a significant federal corporate tax rate decrease intended to make the United States more competitive internationally. These federal rate reductions, however, do not flow through to the states.[2] As a result, Oregon's current adoption of the IRC § 163(j) limitations is misaligned with the federal tax policies creating the limitations.

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business, including in Oregon. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Maintaining Oregon's conformity to the federal business interest expense deduction limitations results in a substantial State corporate excise tax increase. This arbitrary outcome is solely based on Oregon's mechanical conformity to the IRC § 163(j) limitations, while forgoing the federal corporate tax rate cuts.

[1] Cameron D. Miles, *Open Government Impact Statement, HB 2549*, https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureAnalysisDocument/65515 (last visited Feb. 13, 2023).
[2] The TCJA reduced the corporate tax rate from 35 percent to 21 percent for tax years beginning after 2017.

The impact is compounded by the automatic reduction of the cap on business interest expense deductions starting in 2022. This change narrows the "adjusted taxable income" base (upon which the interest expense deduction limitation is calculated from earnings before interest, taxes, depreciation and amortization (EBITDA) to simply earnings before interest and taxes (EBIT).

Furthermore, the IRC § 163(j) provisions are not tailored to limit abusive or distortive intercompany lending. Rather, the provisions limit interest expenses across the board, for both intercompany and third-party borrowing, and impact all borrowing by Oregon taxpayers for both business operations and investment and expansion. This harms Oregon's competitiveness.

For the reasons discussed above, COST urges this Committee to pass H.B. 2549, with amendments aligned with the bill's intention—allowing full expensing of depreciation and business interest expenses—by decoupling from the federal limitations. Doing so will help make Oregon more competitive by facilitating business expansion in the State and encouraging businesses to locate in Oregon. Please let me know if you have any questions.

Respectfully,

Stephanie T. Do

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