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December 6, 2017

Members of California Franchise Tax Board  
Delivery Method: *via email*

**Re: Comments on California Franchise Tax Board Legislative Proposal F**

Dear Ms. Yee, Ms. Harkey and Mr. Cohen:

On behalf of the Council On State Taxation (COST), I am writing to provide feedback regarding the Franchise Tax Board's (FTB) 2018 Legislative Proposal F, which attempts to conform California's tax law to certain partnership audit provisions in the Bipartisan Budget Act of 2015 (BBA). While COST supports all states eventually passing legislation to address the audit changes under the BBA, Proposal F's method of conformity fails to adequately address the limitations states have in administering their income taxes (*e.g.*, apportionment and nexus issues). Further, as the FTB is aware through several meetings, COST and several other organizations, including the AICPA, ABA State and Local Tax Committee, Institute for Professionals in Taxation (IPT), Master Limited Partnership Association (MLPA) and Tax Executives Institute (TEI) (hereinafter referred to collectively as the "Interested Parties") as well as the Multistate Tax Commission (MTC), are working on finalizing a uniform model statute to conform to the BBA. COST urges the Board Members that any grant of authority for the FTB to move forward with Proposal F should be conditioned on it only being a placeholder, and the Board Members should instruct the FTB to work with the above referenced Interested Parties, in conjunction with other organization such as the California Taxpayers Association (CalTax), to draft legislation for California's tax law to conform to the BBA partnership audit procedures.

**About COST**

COST is a nonprofit trade association consisting of approximately 600 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. Many of COST's members do business in California and some of them conduct business through partnerships subject to the new BBA audit procedures.

**The FTB's Current Proposal is Likely Unworkable and is Out of Step with Current Conformity Efforts**

As drafted, the FTB's Legislative Proposal F is unworkable. Specifically, as drafted, the proposal

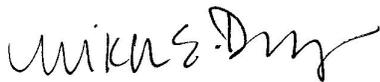
appears to contemplate complete conformity with the BBA's partnership audit provisions. In other words, a partnership subject to a federal audit under these new rules, which provide several choices regarding assessment and payment at the federal level, would be required to comply with those choices for California purposes as well. Most state and local tax professionals, including Multistate Tax Commission (MTC) staff and other taxing agency personnel who have reviewed the new federal audit procedures, agree that the state assessment procedures likely need to differ from the federal audit assessment procedures in the BBA.

As noted above, COST and the Interested Parties have been working together and with the MTC on a model statute that addresses the specific state issues raised in the new audit/assessment of tax procedures of the BBA. This model is being designed to provide taxpayers and the states with flexibility so that taxpayers and states can more quickly and efficiently deal with the results of an audit under these new BBA provisions. This model has recently been revised by MTC staff, and the Interested Parties are in the process of revising the MTC's revised draft. The Interested Parties plan to discuss their proposed revisions on a call with the MTC today and to provide the revised draft back to the MTC within the next seven to 10 days. The interested parties and MTC are hopeful that a final draft will be ready by mid-next month.<sup>1</sup>

Again, COST understands the FTB's concerns and its desire to conform to the BBA partnership audit provisions; however, the FTB's approach is misguided, and it should be considering model conformity legislation that is being worked on by the MTC and the Interested Parties. Providing taxpayers with a uniform procedure for reporting federal partnership audit results, which is the purpose of the model, will increase voluntary compliance. This is a benefit both to taxpayers as well as the states. Thus, COST urges the Board Members to make it clear Proposal F is only a placeholder and instruct the FTB to work with all interested parties on this issue.

I thank each of you for the opportunity to provide comments on the FTB's Legislative Proposal F, and please do not hesitate to contact me if you have any questions or if you would like to discuss these comments further.

Sincerely,



Nikki E. Dobay

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

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<sup>1</sup> COST anticipates early to mid-January 2018 as a reasonable timeframe for the model to be finalized.