Fredrick J. Nicely
Senior Tax Counsel
(202) 484-5213
fnicely@cost.org

January 13, 2021

Montana State Legislature
House Taxation Committee

VIA EMAIL

Re: Comments on H.B. 53 - Reporting Federal Tax Adjustments

Dear Chair Beard, Co-Vice Chairs Fern and Welch, and Committee Members:

On behalf of the Council On State Taxation (COST), I am writing in support of House Bill No. 53 (H.B. 53) with certain requested amendments, specified below. The bill primarily addresses a change in the federal audit regime for certain partnerships using the Multistate Tax Commission's (MTC) model legislation. The bill also allows taxpayers to make estimated payments and increases the time for taxpayers to report federal tax changes from 90 to 180 days.[1] COST supports these changes; however, we recommend several changes to H.B. 53 so it more closely follows the MTC model legislation. The proposed legislation limits refunds under MCA 15-30-2609 to only changes "arising from federal adjustments." For fairness purposes the legislation should also limit, absent a waiver, assessments by the Montana Department of Revenue with respect to only those state issues arising from a federal tax adjustment. In addition, the definition of "final determination date" used for reporting partnership adjustments should apply to all taxpayers to clarify when a federal tax change, regardless of entity type, is reportable to the Department.

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 over 500 major corporations engaged in interstate and international business representing every industry doing business in every state. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities—a mission it has steadfastly maintained since its creation. Many COST members do business in Montana and are required to report federal adjustments to the Department.

COST Policy Position for Reporting Federal Tax Adjustments

Fair and efficient state laws addressing the reporting of federal tax changes creates a win-win situation for both taxpayers and tax administrators. The COST Board of Directors has approved a policy position addressing state reporting requirements for federal changes.[2] That policy states:

[1] The MTC model legislation is available at: http://www.mtc.gov/MTC/media/Uniformity/AUR/Proposed-Model-RAR-Statute-Technical-Corrections-(FINAL).pdf.
[2] COST Policy Position on "State Reporting Requirements for Federal Tax Changes" is available at: https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/cost-federal-tax-changes-rar-policy-oct-2019.pdf.

> *State reporting of federal tax changes imposes a significant compliance burden on multijurisdictional companies. A fair and efficient state procedure for reporting federal tax changes should include: 1) a clear definition of what constitutes a "final determination" that triggers a state reporting requirement; 2) a minimum period of at least 180 days (or six months) to report such changes to the state; 3) conformity to the Multistate Tax Commission model statute for reporting and payment of partnership audit adjustments, 4) the ability to make advanced payments before a "final determination" triggers the filing responsibility for an amended return; and 5) a limitation on issues open for adjustment to those items that are altered as a result of the federal change (after the normal statute of limitations has expired).*

H.B. 53 conforms to the COST policy provision for three out of the five features of a fair reporting structure: 1) it modifies the law to provide a 180-day reporting period, 2) it incorporates the MTC model for reporting federal partnership audit adjustments, and 3) it allows all taxpayers to make estimated payments. COST requests amendments to H.B. 53 to address the two other features: 1) provide a clear final determination date that applies to all taxpayers; and 2) limit adjustments after expiration of the normal statute of limitations to issues arising from the actual federal tax changes reported by the taxpayer. The recommended changes are addressed in more detail below.

Apply Final Determination Date Definition to all Taxpayers

While COST appreciates the amendments to section 12 (MCA 15-30-2619 – individual income tax) and section 13 (MCA 15-31-506 – corporate income tax) that increase the reporting time period from 90 to 180 days, it fails to incorporate the MTC model legislation's definition of "final determination date," which is used for partnerships to report adjustments. COST recommends these sections be amended to cross reference the final determination date definition in section 1 of H.B. 53 and replace the vague terminology used in section 12 and 13 with "180 days after the final determination date." Importantly, subsection (7)(b) of section 1 of H.B. 53 is important for corporations that file combined reports to limit their requirement to report federal adjustments until the federal adjustments are finalized for all members of the combined group.

Limit Changes to Only Issues Arising from the Federal Tax Adjustment

H.B. 53 limits refunds by partnerships in section 10 (MCA 15-30-2609) and 14 (MCA 15-31-509) to those "arising from federal adjustments made by the internal revenue service." Similarly, when Montana's normal statute of limitations has expired, all taxpayers' adjustments from a federal adjustment should be limited to the reporting of the federal adjustment. COST requests that section 10 of H.B. 53 (MCA 15-30-2606) and section 14 (MCA 15-31-509) be amended to include provisions that would limit taxpayers *and* the Department to addressing only state changes arising from a federal tax adjustment after Montana's normal statute of limitations has expired.

Conclusion

COST appreciates the opportunity to provide comments on H.B. 53 and urges the legislature to amend the bill to address our concerns. Please let us know if we can assist in making these changes.

Sincerely,

Fred Ni

Fredrick Nicely

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