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March 4, 2021

## VIA EMAIL

New Mexico Senate

Senate Tax, Business & Transportation Committee

### Re: COST Supports S.B. 410 with Two Requested Changes

Dear Chair Shendo, Jr., Vice Chair Padilla, Ranking Member Kernan, and Members of the Committee:

We are writing on behalf of the Council On State Taxation (“COST”) to support the changes in S.B. 410 which will closely align New Mexico’s tax law with recent Multistate Tax Commission (“MTC”) model legislation<sup>1</sup> regarding the reporting of federal tax adjustments. However, we respectfully request two changes in the legislation to further improve New Mexico’s tax administrative procedures. The first is to clarify that following the expiration of the State’s general statute of limitations to make state adjustments to tax returns, the reporting of federal adjustments is limited to the effect of the federal changes. The second is to automatically extend the extended tax return filing due date (not payment due date) by one month to avoid the due date from falling on the same due date as the federal tax return.

### 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 New Mexico.

### COST Supports S.B. 410’s Improvements to More Closely Follow the MTC Model

The changes in S.B. 410 will vastly improve New Mexico’s law for all taxpayers required to report federal adjustments to the New Mexico Taxation and Revenue Department. We support the full adoption of the MTC’s model legislation, developed through a collaborative effort between COST, the MTC and other interested parties (including state tax administrators).

### Clarification Needed on Scope of Reporting Federal Tax Adjustments

An important component of the MTC model is a restriction on the reporting of non-federal changes when a state’s normal statute of limitations has expired. COST, in our 2019

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<sup>1</sup> MTC model legislation is available at: [https://www.mtc.gov/MTC/media/AUR/Proposed-Model-RAR-Statute-Technical-Corrections-\(10-25-20\).pdf](https://www.mtc.gov/MTC/media/AUR/Proposed-Model-RAR-Statute-Technical-Corrections-(10-25-20).pdf).

Administrative Scorecard (published every three years) has noted that it is unclear whether the Revenue Department can require tax changes unrelated to a federal change when the State's normal three-year statute of limitations for assessments has expired.<sup>2</sup> Making this improvement, along with the other changes in S.B. 410, will clarify that both taxpayers and the Revenue Department, once past the normal statute of limitations, may only make changes related to federal adjustment. This change would also improve New Mexico's grade on COST Administrative Scorecard, presently a "B-." We suggest the following change:

Amending Section 2 of the bill, which amends Chapter 248, Section 21, Subsection 7-1-18(E) to add at the conclusion of the last sentence of the section -

*"solely to report changes arising from the federal adjustments made by the Internal Revenue Service"*

### **One Month Extension for Filing of State Corporate Income Tax Returns**

Because state corporate income tax returns are based on federal corporate income tax returns and cannot in practice be completed until the federal return has been filed, COST, the American Institute of CPAs (AICPA), and the Tax Executives Institute (TEI) for the last three years have asked state tax administrators in states where state corporate tax filing deadlines coincide with the federal extended return deadline to provide *penalty relief* for late return filing as long as returns are filed within one month of the extended federal due date. This issue arose in 2017, when the federal government changed its extended federal corporate filing deadline by one month to October 15, which coincides with the extended due date of many *state* corporate returns. The issue is particularly problematic given the complexity and lack of state and federal guidance surrounding state conformity to the federal Tax Cuts and Jobs Act (TCJA) of 2017 and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) of 2020.

The COST Board of Directors has adopted a formal policy statement outlining fair, efficient, and customer-focused tax administration. Regarding the timing of the state corporate tax return filing, the policy statement provides:

*The state's corporate income/franchise tax return due date should be at least 30 days after the federal tax return due date. Further, the state's corporate income/franchise tax return due date should be automatically extended with the granting of a federal extension. Extending state due dates assists taxpayers in their efforts to file correct returns based on complete federal return information. Although corporate taxpayers often file a single consolidated federal return, the adjustments necessary to generate the multitude of state tax returns required are complex and time-consuming. To ease administrative burdens, an automatic state extension should only require attaching a copy of the federal extension with the state return to qualify.*<sup>3</sup>

S.B. 410 provides an opportunity to fix to this recurring issue by simply allowing the Revenue Department to extend the New Mexico filing deadline for returns to at least one month after the

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<sup>2</sup> COST Best and Worst of State Tax Administration Scorecard is available at:

<https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/admin-scorecard-final-may-2020.pdf>.

<sup>3</sup> COST's policy statement on Fair, Efficient, and Customer-Focused Administration is available at:

<https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/fair-efficient-and-customer-focused-tax-administration.pdf>.

federal extended due date. This change would both enhance the accuracy of state returns filed by taxpayers and ease the administrative burdens imposed on tax administrators by reducing the number of amended returns filed due to the concurrent federal and state filing deadlines. The following change is suggested:

Amending Section 1.D of S.B. 410, which amends Chapter 248, Section, 18, Subsection 7-1-13. TAXPAYER RETURNS—PAYMENT OF TAXES—EXTENSION OF TIME.” to change the following sentence from six months to seven months:

*“The secretary by regulation may also provide for the automatic extension for no more than ~~six~~ seven months of the date upon which payment of any New Mexico income tax or the filing of any New Mexico income tax return is required.”*

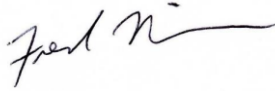
### Conclusion

COST appreciates the opportunity to provide comments on S.B. 410 and urges the legislature to amend the bill to address our concerns.

Sincerely,



Erica S. Kenney



Fredrick J. Nicely

cc: COST Board of Directors

Douglas L. Lindholm, COST President & Executive Director