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April 21, 2020

Hon. Ralph Northam  
*Via E-mail*

Re: COST's Support of House Bill 30

Dear Gov. Northam:

On behalf of the Council On State Taxation (COST), I am writing to ask you to consider comprehensive tax administrative relief in response to the COVID-19 pandemic. While we thank you for your suggested amendment to H.B. 30 to provide interest relief for late payments of income tax due between April 1 and June 1 and February sales tax payments, we encourage you to consider, via executive order or special legislative session, further administrative relief outlined below, which is consistent with actions taken by the federal government and other states.

### About COST

COST is a nonprofit trade association consisting of approximately 550 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 members provide significant investment in Virginia, with many of them either being headquartered in the state or having large-scale operations employing thousands of workers.

### COST's Recommendations

In response to the COVID-19 pandemic, COST continues to hear concerns from our members regarding compliance issues caused by extreme disruptions to the economy and a shelter-in-place workforce. These issues are not just issues of concern for the business community, but also for taxing authorities who are dealing with their own issues caused by closed offices and employees working remotely. COST recommends a comprehensive approach to help right the economy and minimize damage until our workforce returns. Our suggestions for state and local compliance relief during the pandemic are listed below:

**Extend Filing and Payment Deadlines.** Virginia should follow the lead of states and the federal government and broadly postpone all tax filing and payment deadlines for state and local taxes, preferably by statewide action to ensure consistency among local governments.

- **Calendar and Fiscal Filers.** Virginia and its localities should apply extended filing and payment deadlines to fiscal-year filers as well as to calendar-year filers.
- **Estimated Payment Extension.** Virginia and its localities should include estimated tax payments with postponed tax filing and payment deadlines
- **Sales, Use, Property and Other Tax Extensions.** In addition to corporate income taxes, Virginia and its localities should postpone deadlines for other types of taxes, including sales, use, property, and other business activity taxes.

**Waive Interest and Penalties for Late Payment or Late Filing.** During tax periods encompassing emergency declarations and or periods of severe economic disruption, penalties and interest for late filing or late payment (absent fraud) should be waived.

**Eliminate Difficult Compliance Requirements for Shelter in Place Employees.** Since most business employees are working from home, Virginia and its localities should consider eliminating administrative requirements that are difficult to achieve when working remotely, to include:

- **Paper Filing.** To the extent not already allowed, Virginia and its local tax jurisdictions should implement some sort of electronic filing, even if it's an email of a .pdf return.
- **Wet Signatures & Notarized Statements.** To the extent not already allowed, Virginia and its local tax jurisdictions should allow electronic signatures and not require notarized statements.
- **Requirements to Use Certified Mail.** To the extent currently required, Virginia and its local tax jurisdictions should consider suspending any requirement that items be sent via certified mail.
- **Paper Checks.** To the extent not already allowed, Virginia and its local tax jurisdictions should consider allowing electronic payment with no additional fees.

**Option to Continue Withholding at Employer Location While Employees Shelter in Place.** Many individuals live in a jurisdiction different from where they work. State and local taxes based on the location of an employee should allow employers the option of continuing to treat employees as working at their regular work location for payroll tax purposes, including withholding personal income tax.

**Limit Nexus Opportunism.** Virginia should specify that the presence of an employee working in the State due to shelter-in-place restrictions will not create nexus for tax purposes in Virginia.

**Extend Appeal Deadlines.** Virginia and its local tax jurisdictions should also extend appeal deadlines.

**Suspend Accelerated Sales Tax Payments.** Payments of accelerated sales tax payments currently scheduled for June 20, 2020, should be suspended. Accelerated sales tax is targeted at large retailers whose sales have been particularly hard hit by the pandemic. Expecting a business to make a pre-payment based on its June 2019 sales is particularly punitive since that was during a period of a booming economy that is not representative of today's economy.

**Exempt Sales/Use Tax for Donated Products.** Virginia requires a business that donates products to a charity or governmental entity to pay and remit use taxes on that donated product. During this crisis and longer term, we would encourage Virginia to exempt donated products from its sales/use taxes to provide specific relief.

**Update the Virginia tax laws to conform to the current Internal Revenue Code.** The recently enacted federal Coronavirus Aid, Relief, and Economic Security (CARES) Act included several significant tax relief provisions aimed at helping businesses improve cash flow and liquidity to weather the COVID-19 crisis:

- Modifications to the business interest deduction to increase the cap from 30% to 50% and allow 2019 adjusted taxable income to be used for calculating the 2020 business interest deduction.
- Net operating loss modifications to allow for carryback of losses and removal of the 80% annual cap on NOLs.
- The reclassification of qualified improvement property (*e.g.*, leasehold improvements made by retailers and restaurants) to correct a technical error in the federal Tax Cuts & Jobs Act and return such property to its prior (and more favorable) depreciation schedule.

Importantly, these changes involve timing differences solely affecting **when** a taxpayer receives a deduction, not **if** a taxpayer is entitled to the deduction. Unfortunately, because Virginia conforms to the Internal Revenue Code as of a fixed date (December 31, 2018), the State does not conform to these new business relief measures. Virginia should follow the lead of many other states with rolling conformity to the Internal Revenue Code that conform to some or all of these business relief measures.<sup>1</sup>

### **Conclusion**

We encourage you to consider, via executive order or special legislative session, action to provide comprehensive state and local tax filing relief due to the COVID-19 pandemic as outlined above, which is consistent with the relief provided by the federal government and other states.

Respectfully submitted,



Patrick J. Reynolds

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

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<sup>1</sup> See: Karl Frieden and Stephanie Do, “State Tax Conformity to Key Taxpayer-Favorable Provisions in the CARES Act,” *State Tax Notes*, April 20, 2020.