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California State Legislature
Senate Governance and Finance Committee

Re: Comments Opposing S.B. 972, Corporate Tax Disclosure

Dear Chairman McGuire, Vice-Chair Moorlach and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing in opposition to S.B. 972. If passed, S.B. 972 would require the Franchise Tax Board (FTB) to annually provide a list of all taxpayers subject to the State's Corporation Tax Law with gross receipts of \$5 billion dollars (less returns and allowances) starting in April 2021. This list would contain confidential taxpayer information, including the taxpayer's name, tax liability and the amount of credits claimed. As currently drafted, the legislation fails to identify to whom or what agencies/organizations the FTB would be disclosing this confidential taxpayer information. Thus, the purpose of S.B. 972 is unclear. In addition, because the public disclosure of confidential taxpayer information at some level appears to be required, COST respectfully urges this Committee to reject S.B. 972 because it violates taxpayers' expectations of privacy without promoting any specific public purpose.

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.

The COST Board of Directors has adopted a formal policy statement in opposition to disclosure and publication of confidential taxpayer information.¹ That policy statement position is:

Taxpayers have a justifiable expectation of privacy. State departments of revenue audit business taxpayers on a regular basis to ensure that all relevant tax laws are appropriately enforced; releasing specific business tax returns or information from those returns to the public would serve no policy purpose.

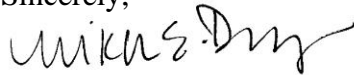
¹ See COST Policy Statement: <https://cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/confidentialityoftaxpayerinformation.pdf>.

COST has consistently warned against violating taxpayer confidentiality under the guise of transparency. Although the specific purpose of S.B. 972 is unclear, it appears that S.B. 972 would require the FTB to make certain taxpayer return information public, to the benefit of no one. Rather than inform the public policy debate, S.B. 972 would mislead both legislators and the public into thinking that businesses do not pay substantial taxes when, in fact, businesses pay substantial taxes, especially in areas other than the corporate income tax. The corporate income tax is the most volatile state revenue stream because of business cycles and the intended features of a specific state tax code. If the Legislature is concerned that certain classes of taxpayers are not being taxed appropriately, then it should ask the executive branch for aggregate information for that class or classes of taxpayers. Showing that a specific taxpayer did not pay corporate income tax for a given year because of tax credits or for some other reason, however, does not meaningfully contribute to the policy debate. To the contrary, it will likely only harm the debate, as the reason for the taxpayer's California income tax liability will likely not be apparent or understood from the information disclosed.

Further, the proposition that confidential tax return information should be made available for public inspection so the public can determine whether a business is paying its "fair share" is fundamentally wrong. The determination of one's "fair share" of tax is inherently subjective. A taxpayer's tax liability is determined by law, not by subjective criteria. From an empirical perspective, having the public examine specific tax return information is not useful in formulating policy. When such disclosures have been made in the past, they have generally been counter-productive due to the lack of public understanding of the complexities of corporate income taxes, especially as they apply to multistate business entities.

Accordingly, COST respectfully requests the Committee to reject S.B. 972.

Sincerely,



Nikki E. Dobay

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