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State of California
Franchise Tax Board

Re: De Minimis Partner Reporting and Payment Requirements

Dear Ms. Voet,

Thank you for the opportunity to submit comments on behalf of the Council On State Taxation (COST) regarding California Revenue and Taxation Code § 18622.5(j), which authorizes the Franchise Tax Board (FTB) to establish procedures for the reporting of de minimis adjustments that result from a partnership level audit. Because the administrative costs, to both taxpayers and the tax agency, to prepare and report as well as process the returns a federal tax change, respectively, are often much greater than the tax owed, COST encourages the FTB to adopt reporting procedures for de minimis adjustments pursuant to its authority under Cal. Rev. & Tax Cd. § 18622.5(j).

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities, many of its members doing business in California.

COST Encourages FTB to Adopt a Regulation Outlining Procedures for the Reporting of De Minimis Adjustments

Cal. Rev. & Tax Cd. § 18622.5(j) expressly authorizes the FTB to adopt abbreviated reporting procedures for taxpayers with de minimis federal changes to streamline reporting where the changes are below a certain threshold. Specifically, Cal. Rev. & Tax Cd. § 18622.5(j) provides:

In order to reduce the administrative burden on taxpayers that may be imposed by additional filings and payments that do not contribute materially to revenue, the Franchise Tax Board shall convene a meeting or meetings of interested parties for the purpose of determining appropriate de minimis partner reporting and payment requirements as the result of a partnership level audit.

Because the reporting of federal changes at the state and local level is often burdensome and costly, where an amount is deemed to be de minimis, COST would encourage the FTB to allow taxpayers to use a truncated or easier process to notify the state of that change. This is especially true, where the change at the federal level results in a state-level adjustment that is below the cost of preparing and filing an amended return. COST has learned anecdotally through its members that such costs can range from between \$350-\$500 pre return; thus, where a state-level adjustment is below that amount and in some cases zero, the taxpayer would prefer to simply alert the state and pay an amount deemed de minimis to comply with its reporting requirements as opposed to going through the process of filing a full-blown amended return.

A Multistate Tax Commission's (MTC) work group recently addressed this issue as part of a project considering the reporting of federal changes as well as the Centralized Partnership Adjustment Reporting (CPAR) regime, which went into effect in 2018 at the federal level. In January 2019, the MTC adopted a final model that addressed the reporting of changes for CPAR adjustments as well as federal changes for non-partnership taxpayers as well.¹ It is important to note that the de minimis provision incorporated in Cal. Rev. & Tax Cd. § 18622.5(j) is very similar to language that appears in the MTC model; however, MTC model language applies more broadly to all taxpayers as opposed to just being applicable to CPAR audits. To the extent the FTB can promulgate a regulation to provide filing and payment relief for the reporting of de minimis changes, COST encourages the FTB to consider addressing this issue for partnerships as well as all other taxpayers. If the FTB believes legislation is needed, COST would support a legislative solution.²

During the MTC's work on this issue, it did consider more specific procedures for dealing with de minimis changes. This language was not ultimately adopted in the model, namely because it was so specific in nature that the work group determine was better suited for regulation. Thus, the work group ultimately landed on the more general provision that is similar to what has been adopted in California.

Although this language was not ultimately adopted as part of the model, COST provides it below as a reference or possible starting point for the FTB's work here. This language provides a specific framework that allows taxpayers to report a de minimis change by submitting essentially a letter notifying the taxing authority of a federal adjustment that was below the de minimis threshold, which the taxing authority could accept as sufficient or it could request more information regarding the federal change. COST acknowledges that the draft language does not specifically address issues related to CPAR audits, which will need to be addressed by the FTB.

¹ Information on this MTC uniformity project is available at: <http://www.mtc.gov/Uniformity/Project-Teams/Partnership-Informational-Project>. In lieu of a specific de minimis provision, the MTC model, as adopted, has the following language in Section D of the model: "The [State Agency] at its discretion may promulgate regulations to establish a de minimis amount upon which a taxpayer shall not be required to comply with Sections B and C of this [Chapter]."

² With the Internal Revenue Service and Treasury still working on procedures and regulations related to partnerships and the TCJA, additional state legislation may be needed to address these issues. The Multistate Tax Commission has also formed a workgroup to determine if some adjustments are needed to its model legislation.

Draft De Minimis Exception

(a) **Notice of De Minimis Adjustments.** In the event the adjustments to the Taxpayer's federal taxable income result in a [State] tax liability of less than \$250 (excluding penalties and interest) or a refund, the Taxpayer may, in lieu of filing a Federal Adjustments Report, notify the [State Agency] in writing or on a form prescribed by the [State Agency] that the Final Federal Adjustments are de minimis. The Taxpayer shall file that notice with the [State Agency] no later than 180 days following the Final Determination Date. The Taxpayer's notice shall contain information reasonably necessary to provide the [State Agency] with an understanding of the Final Federal Adjustments and their impact on the Taxpayer's [State] tax liability.

(b) **Option to Request a Federal Adjustments Report.** In the event the Taxpayer provides the [State Agency] with notice that the Final Federal Adjustments are de minimis pursuant to subsection B(2), the [State Agency] may nevertheless request, in writing, that the Taxpayer file a Federal Adjustments Report. The [State Agency] shall mail that request to the Taxpayer no later than 180 days after the date on which the Taxpayer filed the notice with the [State Agency].

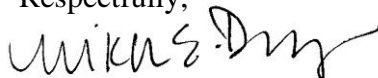
(c) **Filing of Requested Federal Adjustments Report.** In the event the [State Agency] requests a Federal Adjustments Report within the time prescribed in subsection B(2)(b), the Taxpayer has 60 days from the date the [State Agency's] request is mailed to the Taxpayer to file a Federal Adjustments Report with the [State Agency] and, if applicable, pay the additional tax owed by the Taxpayer.

(d) **State Tax Liability.** If the Taxpayer notifies the [State Agency] that it owes the State a de minimis tax liability or was is entitled to a de minimis [State] tax refund, as required in paragraph (a) of this subsection B(2), and the [State Agency] does not request that the Taxpayer file a Federal Adjustments Report within the time prescribed in subsection B(2)(b), the Taxpayer's notice that the adjustments are de minimis will be accepted by the [State Agency], and no tax shall be assessed or refunded.³

Conclusion

COST strongly urges the FTB to continue to explore this issue and would encourage the FTB to hold additional interested parties meetings to develop a procedure that will mitigate the state-level reporting requirements for taxpayers with de minimis adjustments at the federal level. COST has been actively reaching out to its member as well as other stakeholders, encouraging them to also provide feedback regarding this issue. COST recognizes the FTB's work is currently focused on the CPAR adjustments. It would, however, also encourage the FTB to expand any such program developed so that it can be used by all taxpayers. By addressing this issue, the FTB will create a win-win situation that reduces both its and taxpayers' administrative costs in processing tax changes that are greater than the tax owed.

Respectfully,



Nikki E. Dobay



Fredrick J. Nicely

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

³ There was a second option requiring the taxpayer to pay \$250 that is not included in this draft.