



Officers, 2024-2025

Mollie L. Miller
Chair
Fresenius Medical Care
North America

Jamie S. Laiewski
Vice Chair
Charter Communications

Karen DiNuzzo-Wright
Secretary & Treasurer
Walmart Inc.

Michael F. Carchia
Immediate Past Chair
Capital One Services, LLC

Robert J. Tuinstra, Jr.
Past Chair
Corteva Agriscience

Arthur J. Parham, Jr.
Past Chair
Entergy Services, LLC

Amy Thomas Laub
Past Chair
Nationwide Insurance Company

Patrick J. Reynolds
President
Council On State Taxation

Directors

Madison J. Barnett
The Coca-Cola Company

C. Benjamin Bright
HCA Healthcare, Inc.

Lani J. Canniff
Ameriprise Financial, Inc.

Susan Courson-Smith
Pfizer Inc.

Kathryn S. Friel
Entergy Services, LLC

Damian B. Hunt
Amazon

Laura James
Kimberly-Clark Corporation

Jeffrey A. Langer
The Home Depot

Stephen J. LaRosa
Alexion Pharmaceuticals, Inc.

Jonathan M. Mieritz
Corteva Agriscience

Toni Mincic
Lumen Technologies

John H. Paraskevas
Exxon Mobil Corporation

Michael R. Raley
VF Corporation

Patrick A. Shrake
Cargill, Incorporated

Kyle Snedaker
Conagra Brands, Inc.

Andrew H. Solomon
Stagwell, Inc.

Beth L. Sosidka
AT&T Services, Inc.

Archana Warner
Constellation Energy
Corporation

Marilyn A. Wethekam

Of Counsel
(202) 484-5224

mwethekam@cost.org

August 22, 2025

Representative Julie McCluskie
Speaker of the House
Colorado House of Representatives

Via E-mail

Re: Opposition to H.B. 25B-1002 – State Tax Haven “Blacklist” Legislation

Dear Speaker McCluskie and Members of the House of Representatives:

On behalf of the Council On State Taxation (COST), I am writing to oppose H.B. 25B-1002 (2025 Special Session), which would add Hong Kong, Ireland, Liechtenstein, the Netherlands, and Singapore to the existing list of foreign jurisdictions in which a corporation is presumptively incorporated for purposes of avoiding Colorado’s corporate income tax. H.B. 25B-1002 would require corporate taxpayers to include affiliates incorporated in these jurisdictions (“tax havens”) in their combined group income. COST has a long-standing policy position in opposition to state tax haven legislation. The tax haven “blacklist” approach is arbitrary, misleading, and fraught with Constitutional infirmities. The approach is also completely out of step with the direction of federal and international authorities to address low-tax rate competition.

About COST

COST is a non-profit 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 approximately 500 major corporations engaged in interstate and international business, many of which directly do business in Colorado. COST’s objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities.

Misguided Tax Policy

The COST Board of Directors has approved a policy position opposed to all state tax haven provisions which provides in part:

State “tax haven” designations are arbitrary and overly broad, reflect a discarded “worldwide” approach to state taxation, and are inappropriate to address income shifting or other tax avoidance concerns. Punitive treatment of multinational businesses with affiliates in countries designated by states as “tax havens” interferes with the U.S. Government’s ability to “speak with one voice” on foreign affairs and is constitutionally suspect. States should limit their income tax base to the domestic “water’s-edge” and not tax foreign income with little or no connection with the United States.¹

¹ COST’s policy position on this issue is available at: <https://cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/cost-state-tax-haven-policy-statement-final-4-16-15.pdf>.

In addition to the COST policy position, the State Tax Research Institute (STRI), an IRC 501(c)(3) research organization founded by COST, undertook a significant research project relating to state tax haven legislation. In 2016, STRI published its report entitled “State Tax Haven Legislation: A Misguided Approach to a Global Issue” that provides a detailed analysis of why states should not adopt tax haven legislation.²

Detrimental Impact on the State’s Economy

The blacklisting of foreign countries as tax havens and inclusion in the state tax base of income from businesses operating in these listed countries contravenes the approach taken by virtually all other U.S. states and nations in the world. Branding foreign nations as tax havens has been widely rejected as an arbitrary and illegitimate means for dealing with tax avoidance. The U.S. federal government has never adopted the tax haven list approach as a means for defining its income tax base. And neither state legislatures nor state revenue departments are equipped to make these determinations. A tax haven provision will clearly deter international businesses from operating in Colorado, undermining the State’s ability to attract jobs and capital investment that would improve the State’s overall economy. H.B. 25B-1002 proposed additions to the list of tax haven countries will only compound the state’s inability to attract capital investment from multinational corporations.

Further, when a state arbitrarily penalizes taxpayers for doing business in specific countries - that state potentially violates the Foreign Commerce Clause. The constitutional standard set forth in *Japan Line, LTD v. County of Los Angeles*, 441 U.S. 434 (1979), is clear: state tax measures may not impose a risk of multiple taxation at the international level and may not prevent the federal government from “speaking with one voice” on international policy matters.

Arbitrary and Overly Broad Approach

Branding foreign nations as tax havens has been widely rejected as a legitimate means for dealing with tax avoidance. The tax haven lists are derived largely from a list created over 15 years ago by the Organization for Economic Cooperation and Development (OECD) to encourage countries to adopt greater transparency and information sharing about tax issues. It was not done to broaden the tax base of member countries. Presently, no countries remain on the OECD’s list of uncooperative tax jurisdictions. Moreover, no country, including the United States, has ever adopted the tax haven list approach as a means for defining their income tax base. Rather than providing a viable solution to the issue of foreign income sourcing, the adoption of a tax haven list creates new problems by arbitrarily targeting sovereign nations.

More importantly, this legislation does not consider the significant progress made over the past decade by the OECD and G20 nations (including the United States) to implement fundamental international tax reform to address low-tax rate competition. The OECD/G20 project, commonly referred to as the base erosion and profit-shifting project, is one of the most ambitious international tax projects ever undertaken. The project was initiated in 2013 to address concerns over profit shifting and to limit the capacity of large multinational companies to move intangible assets around the world to take advantage of more-favorable income tax rates and rules in low-tax jurisdictions. Most recently, 137 of the 141 countries and jurisdictions participating in the OECD/G20 project, including the United States, agreed to implement a

² Karl Frieden and Ferdinand Högroian, State Tax Haven Legislation: A Misguided Approach to a Global Issue, State Tax Research Inst. (Feb. 2016), <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/coststudies-articles-reports/state-tax-haven-legislation--a-misguided-approach-to-a-global-issue.pdf>.

global minimum tax of 15%, based largely on the U.S. GILTI legislation, with the goal of eliminating or drastically reducing profit shifting and global low-tax rate competition.³

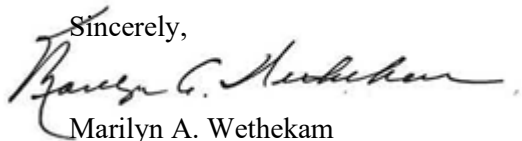
Foreign Commerce Clause Concerns

Given the recent progress to revamp the international corporate tax system and the United States’ participation in this project, Colorado’s current tax haven list and this bill warrant additional scrutiny for violating the Foreign Commerce Clause. The constitutional standard is clear: state tax measures may not impose a risk of multiple taxation at the international level. The five targeted jurisdictions have adopted the 15% global minimum tax.⁴ As a result, H.B. 25B-1002 by requiring the income of affiliates incorporated in those jurisdictions to be included in a Colorado combined group’s taxable income potentially subjects those taxpayers to multiple taxation in violation of the Foreign Commerce Clause.⁵ When a state arbitrarily penalizes taxpayers for doing business in specific countries, which is the effect of H.B. 25B-1002, Colorado arguably violates the Foreign Commerce Clause by adopting a measure contrary to the federal government’s approach to taxing foreign source income, preventing the federal government from “speaking with one voice.”

Conclusion

We respectfully urge you to oppose H.B. 25B-1002, which would add five foreign jurisdictions to the tax haven “blacklist.” Additionally, we urge you to consider repealing the tax haven list Colorado already has in its law. Please let us know if we can provide additional information or assistance.

Sincerely,



Marilyn A. Wethekam

cc: COST Board of Directors
Patrick J. Reynolds, COST President & Executive Director

³ OECD, *International Collaboration to End Tax Avoidance*, <https://www.oecd.org/tax/beps/>.

⁴ The OECD Pillar 2 15% Global Minimum Tax was enacted by Hong Kong effective December 31, 2023, Ireland effective December 31, 2023; Liechtenstein effective January 1, 2024; Netherland effective December 31, 2023; and Singapore for financial years beginning January 1, 2025.

⁵ *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 451 (1979).