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September 30, 2026

Phil Mendelson, Chair
Committee of the Whole
Council of the District of Columbia

Via Email

Re: Bill 26-708 – Request to Remove Provisions Unrelated to Transition to *Finnigan* Apportionment

Dear Chair Mendelson and Committee Members:

On behalf of the Council On State Taxation, I submit these comments to respectfully request amendments to limit Bill 26-708 to only address its stated purpose, which is to “enact, amend, and repeal provisions of law necessary to implement the transition from the Joyce to Finnigan method of apportionment for combined reporting”. In its present form, Bill 26-708 far exceeds this stated purpose by replacing the District of Columbia’s 15-year-old combined reporting statute with additional statutory language related to a Multistate Tax Commission (MTC) model statute for combined reporting. Some of the model act provisions are unrelated to clarifying the District’s recent transition from a *Joyce* to a *Finnigan* apportionment methodology¹. Under present law, the District generally includes the active business income of a foreign company, effectively connected income, in the combined group’s income. This treatment is consistent with the federal standard for taxing foreign businesses. The current statute also explicitly excludes income of a foreign company when that income is protected from federal taxation under a tax treaty. This bill, as drafted, would eliminate both of these protections and would instead subject all U.S. source income to taxation by the District and specifically override tax treaties, thereby taxing income that the federal government and the majority of states do not tax.

About COST

COST is a nonprofit trade association based in Washington, D.C. 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 450 major corporations engaged in interstate and international business. COST’s objective is to preserve and promote

¹ *Finnigan* and *Joyce* are names of California tax cases. The *Finnigan* approach requires all members to be part of the combined group for apportionment factor purposes, while *Joyce* would only include those members of the group that have nexus with the District. While COST has a policy position that supports the *Joyce* approach, the purpose of our comments is to emphasize this legislation goes beyond clarifying the District’s change to use the *Finnigan* approach to impact other areas of combined reporting. For more information on COST’s policy position, see “State Corporate Income Tax Filing Methods,” available at: <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/state-corporate-income-tax-filing-methods-policy-statement-final.pdf>.

the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities, with many of our members conducting business in Washington, D.C.

Several Provisions Are Unrelated to the Transition from *Joyce* to *Finnigan*

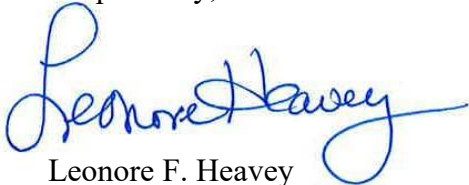
The stated purpose of Bill 26-708 is to make the statutory changes necessary to implement the *Finnigan* method of apportioning a combined group's income. Therefore, COST urges the Council to amend this bill to refrain from complicating the transition by adding unnecessary provisions unrelated to clarifying the use of the *Finnigan* approach. The following proposed changes are unrelated to this clarification:

- Based on the MTC model statute, B26-708 would use a U.S. source income standard and specifically override treaties. This provision is problematic because it would replace the District's federal "effectively connected income" standard, which properly focuses on income truly derived from conducting a trade or business in the United States. It also expressly disregards federal tax treaties. Income subject to this provision may already be taxed in the recipient's foreign country, which could result in double taxation. U.S. source income is a particularly broad and ambiguous concept. Consequently, no state has adopted a U.S. source income standard. The District, like most other states, should continue to use an effectively connected income standard, D.C. Code § 47-1810.07.
- Proposed §47-1810.07A(a)(6) concerns the 20% intangible-income inclusion rule and would remove the treaty protection language contained in District's current law. The change could affect the treatment of income that is protected from federal taxation under a treaty. It therefore raises the same basic issues regarding treaty treatment and potential double taxation discussed above. This provision would constitute a substantive change to the District's corporate taxation regime unrelated to whether the District uses the *Joyce* or *Finnigan* method.

Conclusion

COST strongly urges the Council to limit Bill 26-708 to only those provisions that are necessary to accomplish the transition to the *Finnigan* apportionment approach. The District should position itself as a competitive place to invest and do business and not adopt new far-reaching tax provisions that could discourage investment and growth.

Respectfully,



Leonore F. Heavey

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