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September 15, 2025

VIA EMAIL TO:

Vivek Bakshi
Virginia Department of Taxation
Legislative Work Group to Study BPOL Out-of-State Deduction

Re: COST Comments to the Virginia BPOL Workgroup

Dear Members of the Virginia BPOL Workgroup:

On behalf of the Council On State Taxation (COST), I want to express our disappointment and frustration that the draft report to the legislature makes no legislative recommendations, ostensibly because the work group did not achieve consensus. We believe avoiding recommendations shirks the responsibilities entrusted to the work group by the General Assembly. We instead encourage the work group to recommend, consistent with earlier guidance from the Department of Taxation, that the legislature clarify that “income or other tax based on income” as used in the statute¹ includes not just “net income tax” but also “gross income tax.”

The tax policy and legal analyses supporting our suggested recommendation were thoroughly discussed during the meeting and were overwhelmingly uncontroverted.² The *only* purported policy position advanced for maintaining the recent inconsistent guidance³ is local governments’ desire for additional revenue.

We further disagree with the assertion in the report that the clarification we request is in any way an “expansion” of the deduction. It is simply a clarification consistent with: 1) the original intent and plain meaning of the statute; 2) earlier guidance from the Department of Taxation; 3) recent guidance regarding the BPOL and federal law; and 4) U.S. Constitution limitations. This clarification would achieve the consistency, clarity, and fairness the draft report recognizes is vital to the administration of the BPOL tax.

Sincerely,

Patrick J. Reynolds
President & Executive Director

CC: COST Board of Directors

¹ [Virginia Code § 58.1-3732\(b\)\(2\)](https://law.lis.virginia.gov/vacode/title58.1/chapter37/section58.1-3732/#:~:text=A.,the%20ordinary%20course%20of%20business.) (<https://law.lis.virginia.gov/vacode/title58.1/chapter37/section58.1-3732/#:~:text=A.,the%20ordinary%20course%20of%20business.>)

² The argument by the Commissioners of the Revenue Association in its letter is clearly unsupportable. See Michele Borens (Eversheds Sutherland) letter included with the draft report.

³ [Tax Commissioner Ruling 22-117, July 21, 2022](https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/22-117) (<https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/22-117>)