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November 7, 2019

The Honorable Karen E. Spilka  
President of the Senate  
Commonwealth of Massachusetts

*Via E-Mail*

**Re: Massachusetts Decoupling from IRC § 163(j) in the FY2019 Deficiency Budget**

Dear Senator Spilka,

On behalf of the Council On State Taxation, I am writing to encourage you to support the inclusion of language decoupling Massachusetts from the federal interest expense limitations under IRC § 163(j) in the 2019 supplemental deficiency budget, such as that approved by the House of Representatives in House Bill 4127. While the federal Tax Cuts and Jobs Act (“TCJA”) of 2017 reduced the federal corporate income tax rate, it also significantly expanded the corporate income tax base for various federal tax policy purposes. In the absence of legislation disconnecting from these base broadening changes, there has been an unintended and inadvertent tax increase on Massachusetts businesses.<sup>1</sup> Decoupling from the federal interest expense limitations under IRC § 163(j) will help mitigate this unintentional expansion of the Massachusetts tax base, eliminate an inadvertent increase in the cost of investing in Massachusetts, and ease tax compliance and administration for both taxpayers and the Department of Revenue.

**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 approximately 550 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.

**IRC § 163(j) Decoupling Is Sound Tax Policy for Massachusetts**

Massachusetts should decouple from new federal tax limitations on interest expense deductibility under IRC § 163(j), a complex tax provision included in the Tax Cuts and Jobs Act of 2017. This corporate tax base broadener at the federal level funded, in part, the substantial reduction in federal corporate tax rates to make the U.S. more competitive internationally. These rate reductions, of course, do not flow through to the states, and

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<sup>1</sup> For more information on the potential increase in the states’ tax base from the TCJA, see “The Impact of Federal Tax Reform on State Corporate Income Taxes” available at: <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studiesarticles-reports/cost-federal-tax-reform-3-1-2018-cost-v2.pdf>.

therefore Massachusetts' conformity results in a new and substantial corporate income tax increase—revenue that Massachusetts has not yet received because the provision is effective starting with the 2018 tax year with returns (on extension) due on November 15, 2019.

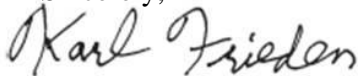
Moreover, at the federal level, the net interest expense deduction was linked with IRC § 168(k), which allows immediate expensing of most capital expenditures. One of the primary reasons for the interest expense limitation under IRC § 163(j) was to discourage excessive debt financing of assets subject to immediate expensing under IRC § 168(k). This Legislature, in 2002, decoupled from IRC § 168(k) and does not conform to immediate expensing for Massachusetts corporate excise tax purposes. Thus, no sound policy reason exists for Massachusetts to couple with IRC § 163(j) when it chooses not to conform to the immediate expensing allowed by IRC § 168(k).

The legislative language included in House Bill 4127 would also avoid burdensome compliance rules relating to interest expense limitations for both taxpayers and the Department of Revenue. Neither the Internal Revenue Service nor the Department of Revenue has issued final formal guidance for taxpayers to follow in applying the intricate federal tax provisions of IRC § 163(j) or converting and applying those provisions to Massachusetts corporate excise tax returns. Decoupling from IRC § 163(j) would alleviate the compliance burden for businesses facing tremendous uncertainty from both a financial statement and tax compliance perspective.

### **Conclusion**

Decoupling from IRC § 163(j) will help mitigate the unintentional expansion of the Massachusetts corporate tax base, eliminate the blatant unfairness of conforming to the federal interest expense limitations of IRC § 163(j) but not to the federal full expensing under IRC § 168(k), and ease tax compliance and administration for both taxpayers and the Department of Revenue. Accordingly, the Legislature should act now to decouple the State's tax code from IRC § 163(j).

Sincerely,



Karl A. Frieden

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