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**Marilyn A. Wethekam**  
*Of Counsel*  
(202) 484-5224  
[mwethekam@cost.org](mailto:mwethekam@cost.org)

May 9, 2025

The Honorable Mike Dunleavy  
Governor of Alaska

### Re: Veto Senate Bill 113

Dear Governor Dunleavy:

On behalf of the Council On State Taxation (COST), I am writing to urge you to veto S.B. 113, which for corporate income tax purposes adopts market-based sourcing and requires highly digitized businesses<sup>1</sup> to apportion income using a single sales factor apportionment formula. This veto request is grounded in the fact that the legislation singles out one specific industry for apportionment and likely violates the federal Internet Tax Freedom Act (ITFA).<sup>2</sup> ITFA prohibits states from imposing discriminatory taxes against electronic commerce and other constitutional provisions.<sup>3</sup>

#### 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 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. Several COST members have operations in Alaska that would be negatively impacted by this legislation.

### S.B. 113 Violates ITFA and the U.S. Constitution

ITFA, which was first enacted in 1998 and subsequently extended until made permanent in 2016, preempts state and local governments from levying multiple and discriminatory taxes on electronic commerce.<sup>4</sup> The proposed legislation singles out and requires highly digitized businesses to apportion their corporate income tax using a

<sup>1</sup> A highly digitized business is defined as one that 50 percent or more of its sales in Alaska consist of (1) intangible property by electronic transmission in the state; (2) services delivered by electronic transmission in the state; (3) services related to computer, electronic transmission, or internet technology; or (4) tangible personal property delivered in the state from Internet sales, if the Internet is the primary mode of customer access in the state.

<sup>2</sup> COST takes no position on the State's adoption of market-based sourcing provisions to apportion income.

<sup>3</sup> Public Law 114-125, § 922(a).


<sup>4</sup> *Supra*.

single sales factor consisting of the ratio of Alaska sales to everywhere sales. Since the single sales factor apportionment method would only apply to highly digitized businesses and no other similar businesses, the law discriminates against highly digitized business engaged in electronic commerce. The bill also raises valid threats of constitutional challenges under both the fair apportionment requirements of the Commerce Clause and Due Process. Thus, the enactment of S.B. 113 will embroil the State in expensive and protracted litigation.

### **Conclusion**

COST respectfully requests that you veto S.B. 113 as the highly digitized business apportionment provisions likely violate federal law (ITFA) and raise serious constitutional questions.

Sincerely,

  
(Marilyn A. Wethekam)

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