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Representative Aisha Gomez, Co-Chair
Representative Greg Davids, Co-Chair
Minnesota House Committee on Taxes

Re: COST Opposes H.F. 1041 “CEO-to-Median-Wage Ratio Surtax”

Dear Co-Chair Gomez, Co-Chair Davids, and Committee Members:

On behalf of the Council On State Taxation (COST), we respectfully write you to share our opposition to H.F. 1041 that would increase the franchise tax rate by up to 1.5 percent based on a company’s CEO-to-median-wage ratio as disclosed under Code of Federal Regulations, title 17, section 229.402(u)(1)(iii).¹ This creates difficult and potentially insurmountable compliance and administration issues and creates an artificial tax rate classification.

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. COST’s objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities. Many of COST’s member are engaged in business in Minnesota and will be adversely impacted by these provisions.

CEO-to-Median-Wage Ratio Surtax Is Unsound and Not Administrable

The COST Board of Directors has adopted a formal policy statement on taxes based on CEO-to-median-wage ratios.² The policy position states:

Predicating a state or local tax on a CEO-to-median-wage pay ratio has no basis in sound tax policy. ... Further, these taxes are constitutionally suspect because they measure and increase taxes based on business activities that typically take place outside of the jurisdiction imposing the tax.

¹ Additionally, H.F. 1041 would deny a corporation from receiving a grant pursuant to Minn. Stat. 16B.981.

² See COST Policy Statement: www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policypositions/ceo-to-average-wage-ratio-surtax-03022018-amendment---final.pdf.

The use of the SEC CEO-to-median-wage ratio to determine a state tax is misguided and unworkable for several reasons. First, the SEC pay ratio encompasses all corporate entities worldwide and is based on a 50 percent ownership threshold. Thus, the SEC reported pay ratio would almost never be applicable because unitary businesses would have to calculate their pay ratio using only its unitary members. What about private businesses that are not subject to the SEC provision? H.F. 1041 indicates a corporation must use the pay ratio “disclosed” under the SEC law; but how would that apply to a private corporation that is not required to make that disclosure? Computing this pay ratio would be very burdensome for corporations and auditing it would place a significant burden on the Minnesota Department of Revenue. Additionally, using the SEC pay ratio as a basis for calculating a tax creates uncertainty and severe forecasting and financial reporting difficulties for companies whose pay ratio may fluctuate above and below the targeted ratios.

The SEC’s CEO-to-median-wage ratio is only applicable to publicly traded companies. Publicly traded companies comprise less than one percent of U.S. companies, yet this proposed additional pay ratio tax would have to be computed by all corporations subject to the State’s franchise tax. Further, the SEC has provided companies that are required to report with a large degree of flexibility to determine this ratio, which would create additional disparities among impacted companies. The imposition of a CEO-to-median-wage ratio tax will almost certainly have no influence on pay disparity—the supposed rationale for such measures. Like all taxes, a pay ratio tax would be borne in some combination by workers (through lower wages), by consumers (through higher prices), and by the businesses (through lower returns for investors and shareholders).³

Lastly, the additional tax based on a CEO-to-median-wage ratio impermissibly attempts to impose a tax based on activities with no connection to the taxing jurisdiction. For example, in most cases neither a company’s CEO nor most of its employees (from which the wage ratio is derived) will be physically located in Minnesota. This issue raises concerns under both the Due Process and Commerce Clauses of the U.S. Constitution.

Conclusion

H.F. 1041 represents an unsound tax policy that would be counterproductive to Minnesota’s economic development and create an unworkable administrative and compliance regime. Please contact us with any questions regarding this bill.

Respectfully,



Marilyn A. Wethekam



Dylan B. Waits

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

³ See *Complete Auto* (430 U.S. 274 (1977)) and *Jefferson Lines* (514 U.S. 175 (1995)).