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April 5, 2019

**VIA EMAIL**

**Re: COST Comments re Proposed Administrative Rules 500.19-4 (Retail Sale) and 500.19-6 (Separate Itemization)**

Dear Director Lannom:

On November 6, 2018, Portland voters approved a one percent tax on certain retail receipts by businesses that meet certain national and city sales thresholds (hereinafter referred to as the “retail receipts tax”). On February 19, the Portland City Council codified this new tax into the Portland City Code subject to certain revisions. The City of Portland Revenue Division (Revenue Division) is charged with administering the retail receipts tax. The Council On State Taxation (COST) appreciates the significant challenges the Revenue Division faces in administering this retail receipts tax, which is the first of its kind in the U.S. Thus, COST offers the following comments regarding the above referenced proposed rules that have been issued by the Revenue Division to help with the administration of this new tax. COST and its members have significant experience with retail sales and excise taxes imposed in other states. This new retail receipts tax is something new for Portland; however, because it is similar to other retail sales taxes, it would behoove the Revenue Division to work with taxpayers that understand how to comply with those regimes to make this administratively feasible for both the City and those businesses subject to the 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 COST has an independent membership of approximately 550 major corporations engaged in interstate and international business representing every industry doing business in every state. COST members conduct substantial business in the City of Portland, employ a substantial number of Portland citizens, and own extensive property within the City. COST’s objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities—a mission it has steadfastly maintained since its creation.

### **The Revenue Division Should Consider Providing a Gross-up Safe Harbor**

Proposed Rule 500.19-6, as well as the City Code, provides that although the incidence of the new retail receipts tax is on a qualifying large retailer, the taxpayer (the retailer) may separately state the tax on the receipt. Assuming a taxpayer includes the tax as a separate line item on the receipt, the tax charged and collected becomes a receipt subject to the retail receipts tax. This aspect of the new retail receipts tax arises in Hawaii as well. In Hawaii, however, the state provides a “gross up” safe harbor for taxpayers that choose to separately itemize the tax to cover a portion of the tax that will be due on the tax.<sup>1</sup> To illustrate, the statutory general excise tax rate in Hawaii for retail items is 4 percent; however, a taxpayer may include on the receipt a separate line item for tax at a rate of 4.166 percent to cover the gross-up for the tax due on the 4 percent tax. We would urge the Revenue Division to also consider the inclusion of a gross-up safe harbor in its regulation of 1.01 percent.

### **The Revenue Division Should Use Uniform Resale Exemption Certificate**

Proposed Rule 500.19-4, which addresses “retail sales,” provides that prior to exempting a sale for resale from the tax base, “the taxpayer must have **reasonable certainty** that the good or service will be resold by the purchaser and not consumed or used by the purchaser.” Reasonable certainty is a very high burden of proof, which many if not most retailers will be unable to meet. Further, the proposed rule goes on to provide that although a retailer may accept a resale certificate, it is not required and does not appear to provide any substantive liability protection for retailers.

COST strongly encourages the Revenue Division to address the issue of resale exemption certificates. Specifically, the Revenue Division should consider providing liability protection for a business following the Streamlined Sales and Use Tax Agreement’s model that twenty-two full member states utilize for exemption certificates.<sup>2</sup> Washington is a full member state that could be used as a model. While an exemption certificate for resale should not be required if it is reasonably certain the purchaser will resell the purchased products, full relief should be provided to a seller when it obtains a resale exemption certificate.

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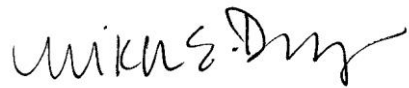
<sup>1</sup> See Hawaii Tax Fact 37-1, #7 page 2, which can be found at: <http://files.hawaii.gov/tax/legal/taxfacts/tf2015-37-1.pdf>.

<sup>2</sup> See Section 317 of the SSUTA. The SSUTA can be found at: [https://www.streamlinedsalestax.org/docs/default-source/agreement/ssuta/ssuta-as-amended-2018-12-14.pdf?sfvrsn=8a83c020\\_6](https://www.streamlinedsalestax.org/docs/default-source/agreement/ssuta/ssuta-as-amended-2018-12-14.pdf?sfvrsn=8a83c020_6). See also Rules 317 to 317.2 of the SSUTA; available at: [https://www.streamlinedsalestax.org/docs/default-source/agreement/ssuta-rules/rules-as-amended-2018-05-03.pdf?sfvrsn=d09623a6\\_17](https://www.streamlinedsalestax.org/docs/default-source/agreement/ssuta-rules/rules-as-amended-2018-05-03.pdf?sfvrsn=d09623a6_17).

**Conclusion**

Thank you for the opportunity to provide comments on these proposed regulations, and please do not hesitate to contact me if you have any questions or if you would like to discuss these comments further.

Respectfully,

A handwritten signature in black ink, appearing to read "Nikki E. Dobay". The signature is fluid and cursive, with the first name "Nikki" being more prominent than the last name "Dobay".

Nikki E. Dobay

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