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Via E-mail to: director@fasb.org

Re: COST's Comments to the Financial Accounting Standards Board (FASB):

On behalf of the Council On State Taxation (COST), I respectfully submit these comments on the FASB Exposure Draft of Proposed Accounting Standards Update - Income Taxes (Topic 740): Disclosure Framework – Changes to the Disclosure Requirements for Income Taxes.

Our concerns with the exposure draft are similar to the concerns we expressed on February 10 regarding the proposed standard on Government Assistance. We at COST understand that the topic of credits and incentives provided through economic development agreements is the subject of much debate. However, we believe that adoption by FASB of updated accounting standards requiring credit and incentive disclosure by individual businesses would do nothing to either advance the debate or provide additional decision-useful information; rather, the proposed standard would complicate users' understanding. If additional accounting standards are needed to ensure transparency, COST believes the Government Accounting Standards Board (GASB) is the proper forum to address those standards, and any required disclosures should be on an aggregate and not company-specific basis. Our concerns with the Exposure Draft are broad, and include:

- the potential for disclosure of confidential taxpayer information;
- uncertainty and unpredictability of the scope of required disclosures;
- the retroactive nature of the standard;
- inconsistency with IFRS;
- lack of user need for information;
- FASB involvement; and
- the need to extend the comment period.

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 600 major corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multistate business entities.

COST Opposes Disclosure of Confidential Taxpayer Information

The COST Board of Directors has adopted the following policy position on the Confidentiality of Taxpayer Information:

Taxpayers have a justifiable expectation of privacy. State departments of revenue audit business taxpayers on a regular basis to ensure that all relevant tax laws are appropriately enforced; releasing specific business tax returns or information from those returns to the public would serve no policy purpose.

COST's policy was not adopted in response to or in anticipation of proposed financial statement disclosures of confidential taxpayer credit and incentive information. Rather, the policy was adopted to address potential disclosure of confidential taxpayer information by government agencies. However, the principles underlying the policy apply equally to the disclosures contemplated by the Exposure Draft.

COST recognizes that compliance with tax laws depends on a system that taxpayers perceive to be balanced, fair and effective. In fact, in 2000, the United States Congress Joint Committee on Taxation completed an exhaustive review of taxpayer confidentiality. The Committee concluded:

Taxpayers have a justifiable expectation of privacy in the extensive information they furnish under penalty of fine or imprisonment....Our tax system is based on voluntary compliance. Many observers believe that the degree of voluntary compliance is directly affected by the degree of confidentiality given the information that is provided to the IRS.

If returns and return information were publicly available, it would invite a variety of intrusions into a taxpayer's privacy. Business competitors could use the information to gain economic advantage....A lack of confidentiality could also facilitate the use of return information for political gain.

The general rule of § 6103 of the Internal Revenue Code (IRC) is that tax returns and tax return information are confidential and not subject to public disclosure. Furthermore, the IRC contains a provision prohibiting the sharing of federal tax return information with a state or local government unless the state or local government is likewise required to protect the information.

The changes set forth in the Exposure Draft would "require an entity to disclose the description of a legally enforceable agreement with a government, including the duration of the agreement and the commitments made with the government under that agreement and the amount of benefit that reduces, or may reduce, its income tax burden." Such disclosures directly conflict with the principle that tax return information is confidential and should not be subject to public disclosure. We believe it is bad public policy to mandate, via an accounting standard imposed on businesses, the disclosure of information prohibited from disclosure by a government agency.

Disclosures of otherwise confidential information may make trade secrets and other sensitive information public and available for use by competitors. Information such as profit margins,

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competition strategies, investment strategies, policy directions, and geographic strategies could prove devastating to a company if such information falls into the hands of a company's competitor. If a company knew at the time it entered into an agreement that its competitive information would be disclosed, it would have had the opportunity to take precautionary measures regarding that information. FASB should endeavor to protect confidential business information, not require its disclosure.

In addition to the stated concerns about disclosure of confidential business information, COST is concerned that the proposed changes lack any provision to prevent confidential personal information (e.g., employee names, social security numbers, addresses, salary information, etc.) from being disclosed. Companies routinely provide such information to governmental entities pursuant to economic development or other "government assistance" agreements, and that information should be protected. The risks of disclosing confidential information call into question the need for a new accounting standard.

The Proposed Changes Are Unclear and Overbroad

Virtually all taxing authorities have the power to negotiate settlements when the tax laws are unclear. Taxing authorities audit taxpayers and issue assessments regularly throughout the year, and taxpayers frequently appeal those assessments. The entire process involves a significant amount of give and take, and most of those audits end with a negotiated settlement in the form of a closing agreement, either at the audit or appeal level. These settlements are legally enforceable agreements under which both sides receive value, and the government exercises discretion in negotiating the settlement. Will the proposed changes require disclosure of all tax settlements? For purposes of compliance, what should taxpayers consider the amount of the "benefit," and at what level is the assistance measured? The difference between initial audit schedules and what is ultimately paid? The difference between any assessment and what is paid? The difference between amounts due after an administrative law decision? The difference after all court appeals are exhausted?

Many closing agreements also contain a provision regarding prospective treatment of particular issues. Will a business be required to examine all of its prior audit closing agreements to determine if the agreements' provisions are still in effect? How should taxpayers treat nondisclosure provisions in such agreements?

Most states require taxpayers to petition the tax commissioner for an alternate corporate income tax apportionment method if the statutory method does not fairly reflect income in that state. The tax commissioner can also require an alternative apportionment methodology. These situations often result in agreements between the parties, and the tax commissioner clearly uses his or her discretion to accept or reject the alternative apportionment methodology. Will businesses need to disclose all of these agreements?

State law often allows taxpayers to make certain elections, which are often allowed at the tax commissioner's discretion and result in a legally enforceable agreement (e.g., waters-edge reporting). These elections are binding on both parties. Will taxpayers be required to disclose all such elections?

Very Little Need for Disclosure of Agreements

We note that the mission of FASB is to establish and improve standards of accounting and reporting that foster financial reporting by nongovernmental entities that provides decision-useful information to investors and other users of financial reports. We are struggling to discern what decision-useful information would be provided by the proposed standard that is not already provided by current accounting standards.

For example, we agree that an investor may want to know whether a credit or incentive is in jeopardy, thereby potentially affecting a company's financial position. However, the accounting for such a contingency can currently be addressed using existing standards.

Because tax laws are inherently complex, COST is concerned that the disclosures made in the name of transparency will be counter-productive due to the lack of public understanding of the complexities of corporate taxes, especially as they apply to multistate businesses. The proposed disclosures, if adopted, would also fuel the misperception that businesses do not pay substantial state and local taxes, when in fact businesses paid more than \$688 billion in state and local taxes in FY2014 (based on the COST/EY study, Total State and Local Business Taxes, October 2015).

The only plausible reason we can discern in support of the proposed changes that cannot be addressed within the current accounting standards is to assist those who wish to harass a company regarding credits or incentives received pursuant to an economic development agreement.

Any Need for Disclosure is Better Addressed by the Government Accounting Standards Board (GASB) on an Aggregate, Not Company-Specific Basis

The disclosures required by the proposed changes will accomplish little in helping a user determine whether any particular credit or incentive is beneficial to the governmental entity. The credit or incentive may relate to only a portion of the business or a particular subsidiary in a controlled group of corporations, but when viewed in the context of consolidated financial reports the context could be quite skewed. Even if the disclosures relate to the only entity required to publish financial statements, the disclosures would only relate to that entity, giving the user very little information about the impact of the credit or incentive as a whole.

It is our view that this issue has been adequately addressed by GASB in Statement No. 77 regarding Tax Abatement Disclosures. That statement provides that information for tax abatements may be disclosed individually or may be aggregated. It also provides that if the government is legally prohibited from disclosing information, the government may instead disclose a description of the general nature of the omitted information and the specific source of the legal prohibition. While we agree that GASB is the appropriate body to address disclosure of economic incentives, we emphasize that, for the reasons outlined above, if data is not aggregated by the government, the risks of disclosure of proprietary information remain.

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Summary

We at COST believe that the disclosure of confidential taxpayer information pursuant to the proposed standard is bad public policy, and that the potential for such disclosure could dampen economic development efforts. We also believe that the proposed changes are unclear and overbroad, making it very difficult for businesses to comply.

Adopting the proposed changes does little to further the FASB's mission of providing decision-useful information. Users of financial statements, other than those seeking to harass specific companies, have very little need for the information provided by the proposed changes that is not already provided by current accounting standards. To the extent there is a need to analyze the effectiveness of a particular credit or incentive, that need is better addressed by GASB through the grantors of such incentives on an aggregate basis with no company-specific information.

Sincerely,



Patrick J. Reynolds
Tax Counsel

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