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***Via Testimony Portal***

Senator Nicole Grohoski, Chair
Representative Dan Sayre, Chair
Committee on Taxation
Maine State Legislature

Re: Opposition to LD1939/HP1298 - Mandatory Worldwide Combined Reporting

Dear Chair Grohoski, Chair Sayre, and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing to oppose LD1939/HP1298, which would impose mandatory worldwide unitary combined reporting (MWWCR) on Maine corporate income taxpayers. With one limited exception, no other state or country currently imposes MWWCR.[1] MWWCR would have an unpredictable (and possibly negative) effect on State revenue, would impose significant administrative burdens on both businesses and the State, and would place Maine at a significant competitive disadvantage among states. The proposal should be rejected.

## 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 multistate and multinational business entities. Many COST members have operations in Maine that would be negatively impacted by this proposed legislation.

## Mandatory Worldwide Unitary Combined Reporting Rejected by Neighboring States

In 2023, the New Hampshire Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax forcefully rejected MWWCR, stating that "[MWWCR] is a grossly overbroad remedy for concerns that transfer pricing is misused for tax advantage, as it sweeps all foreign profits into the base,

[1] Solely for oil companies that either explore, produce, or own a pipeline interest in the State, Alaska is the only state that mandates a limited form of worldwide combined reporting.

regardless of whether any transfer pricing has been used, or its extent, or its alleged misuse."[2] The Commission's Final Report directly addressed the import of the inclusion of foreign income in its business profits tax base: "[g]iven New Hampshire's taxation of foreign dividends and GILTI, which do capture a measure of foreign earned income, and given the various mitigation steps that have been adopted in recent years, we are convinced that any incentives to engage in 'abusive' 'profit shifting' have been reduced significantly. We are also persuaded that opportunity to make further material progress in the quest to fully eliminate those incentives must rest primarily upon the federal government, which has ongoing international and diplomatic initiatives in play."[3] Subsequent to the release of the report, H.B. 121 of 2024 and H.B. 502 of 2025, both of which proposed to implement MWWCR, were heard in the Ways and Means Committee and were determined to be "inexpedient to legislate."

Similarly, the Vermont Ways and Means Committee studied moving from water's-edge combined reporting to MWWCR in 2024. The Vermont Joint Fiscal Office determined that the transition would raise at most an additional $2.8 million annually and could actually result in a small revenue loss.[4] The Committee chose not to move forward with the proposal.

The conclusions in the New Hampshire Commission's report and the analysis of Vermont's Joint Fiscal Office should be of particular interest to this Committee because Maine, like Vermont and New Hampshire, already taxes most foreign source income through its taxation of a large percentage of repatriated foreign dividends[5] and 50 percent of GILTI. Thus, it is likely that Maine will see a similarly negligible or negative revenue impact.[6]

Three other states have also recently rejected the move to MWWCR. In 2017, Indiana decided to forego MWWCR, observing that though it might increase tax revenues in the short term, those gains were almost certain to be fleeting and result in no net gain over the longer term.[7] A 2023 Minnesota bill that would have adopted MWWCR passed the House but died in the Senate without a hearing or discussion by the Senate. In 2024 in Maryland, a House and Senate bill proposed MWWCR; however, they did not advance beyond the first committee in which they were heard; and an amendment to impose MWWCR that was added late in the session to the Budget Reconciliation and Financing Act of 2024 was rejected in the final version of the bill.

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[2] Final Report of the Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax RSA 77-A:23-b (HB 102, Chapter 12, Laws of 2022)
[3] 4 Id, at 16.
[4] Presentation on Worldwide Combined Reporting to the Vermont House Committee on Ways and Means by the Joint Fiscal Office, Feb. 29, 2024.
[5] Vermont and New Hampshire tax 100% of repatriated foreign dividends. Maine, Minnesota, and Utah tax 50%. Over two-thirds of the states impose no tax on foreign source dividends and the remaining states tax 30% or less. See COST OBBBA Conformity Maps.
[6] The potential negative revenue impact results because MWWCR requires the inclusion in the tax base the income and/or loss of all foreign and domestic unitary affiliates. Additionally, it requires the elimination of intercompany foreign dividends. Maine currently includes both foreign dividends and other foreign source income in the corporate tax base. Thus, adopting MWUCR could result in a reduction of Maine taxable income rather than increasing it.
[7] Office of Fiscal and Management Analysis, Indiana Legislative Services Agency, A Study of Practices Relating to and the Potential Impact of Combined Reporting, Oct. 1, 2016.

## Worldwide Unitary Combined Reporting: Historical Context

MWWCR is not a new concept; nearly a dozen states imposed this filing methodology until the mid-1980's. In a series of actions beginning in 1984 and accelerating over the next ten years all those states moved away from MWWCR, granting taxpayers the right to file (or elect to file) using the water's-edge methodology. This position has held fast in the states over the last 40 years.

Pressure against MWWCR started building up in the 1970s and early 1980s from both foreign governments and foreign and domestic multinational business enterprises. Some foreign governments threatened to instigate an international tax war. In particular, the British and Japanese governments threatened retaliatory tax measures against the U.S. to counter the trend toward MWWCR.

Although the U.S. Supreme Court upheld the constitutionality of California's imposition of MWWCR in 1983, pressure from the international community continued to build, spurring President Ronald Reagan to convene the Worldwide Unitary Taxation Working Group in 1984. The Working Group, led by Treasury Secretary Donald Regan, comprised representatives of the federal government, state governments, and the business community. Although the Working Group found it difficult to reach an agreement on several issues, it did agree on a set of principles designed to guide the formulation of state tax policy. Among those principles was a recommendation that states only enact "water's-edge" unitary combined reporting for both U.S. and foreign-based companies.

Under the water's-edge method, only the income and the apportionment factors derived from operations within the domestic United States (i.e., up to the "water's edge") are used to calculate state corporate income tax liability. That principle has held to the current day. No state has returned to a MWWCR regime for all business corporations; and even the Multistate Tax Commission's model for combined reporting includes a water's-edge election.[8]

## Practical Problems with Mandatory Worldwide Combined Reporting

In addition to the foreign policy implications, states have also rejected the MWWCR approach because of the imbedded compliance complexities and costs. Compliance burdens vary from taxpayer group to taxpayer group depending on several group-specific factors, such as the international location of subsidiaries, the composition of the unitary group, merger and acquisition activity, company software systems, and income producing activities. For many multinational corporate groups, often comprised of hundreds of subsidiaries, the compliance requirements are expensive and time consuming. Auditing these issues for every unitary

[8] The international competitiveness concerns with MWUCR are even greater now than they were in the 1980s. The United States (with GILTI/NCTI) and a large number of other economically advanced nations (with the OECD's Pillar 2 solutions) have enacted generally comparable global minimum taxes to address the problem of low-taxed foreign source income. If states impose additional taxes on foreign source income, they will place U.S. multinational businesses at a competitive disadvantage with foreign multinationals that have no similar subnational tax on such income. See Karl A. Frieden and Douglas L. Lindholm, "Revisiting the Debate Over State Taxation of Foreign-Source Income," *Tax Notes State,* June 23, 2025; Douglas L. Lindholm and Marilyn A. Wethekam, "Mandatory Worldwide Combined Reporting: Elegant in Theory but Harmful in Implementation," (March 2024), COST/STRI.

corporate group that does business in Maine would also impose a herculean task and additional costs on Maine Revenue Services.

Typical hurdles to overcome include: (1) a unitary analysis for each affiliate to determine the composition of the unitary group; (2) a combined calculation of worldwide apportionable income (in U.S. dollars) for all affiliated entities, many using different international accounting standards, and without the benefit of a federal taxable income figure for foreign subsidiaries; (3) computation of the state apportionment formula, which entails both policy choices and reasonable estimation methods that can be second-guessed by audit teams; and (4) administrative and corporate governance issues addressed when combining foreign and domestic subsidiaries in the same unitary group.

Although proponents of MWWCR are quick to point out that some corporate groups elect to file on a worldwide basis in the minority of states that provide such an election, that decision requires an assessment of the administrative burden, including compliance costs, and availability of the required data by individual companies. This differs company-to-company and, while we support such an election, all companies are not equally positioned to deal with these additional compliance costs.

## Conclusion

MWWCR is contrary to the approach to taxing corporate profits currently employed by all other states and nations with corporate income taxes. Its adoption would have a negligible (and possibly negative) effect on your State's revenue, would impose significant administrative burdens on both taxpayers and Maine Revenue Services, and would place Maine at a competitive disadvantage among states by sending a warning signal to multinational businesses that Maine is a hostile environment for business expansion and relocation. For the foregoing reasons, COST strongly urges the Committee to reject LD1939/HP1298.

Respectfully,

Leonore Heavey
Senior Tax Counsel

CC: Patrick Reynolds, President and Executive Director
COST Board of Directors