



EXHIBIT 3  
DATE 3-11-13  
HB 578

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*Vice President, Senior Tax Counsel*  
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March 11, 2013

The Honorable Mike Miller, Chairman  
Members of the House Taxation Committee

**RE: COST Support for HB 578**

Mr. Chairman and Members,

I am writing to express the Council On State Taxation's (COST) support for House Bill 578. House Bill 578 would eliminate the list of so called "tax havens" in section 15-31-322, MCA for Montana corporate income tax purposes. As we have commented to the Montana Legislature in the past, the branding of specific nations as "tax havens" and thereby penalizing companies who do business there is ultimately arbitrary, bad tax policy, and announces to the world that Montana discourages foreign direct investment.

**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 nearly 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 multijurisdictional business entities.

**Tax Haven Lists are Arbitrary and Misleading**

The "water's-edge" election allows corporate taxpayers to elect, for a set period of time (e.g., seven years), to apportion to Montana their worldwide income or their water's-edge income—income earned within the "water's-edge" of the United States. The water's-edge was intended to roughly measure what the federal government viewed as within reach for federal income tax purposes. The creation of the water's-edge election was a necessary modification to world-wide combination to avert what many of our most important foreign trading partners viewed as a discriminatory tax regime.

Unfortunately, in 2003 Montana enacted section 15-31-322, MCA which identified a number of countries as "tax havens" and thereby forced any company having business in one or more of them to include their activities there within the water's-edge. The list of countries identified was derived largely

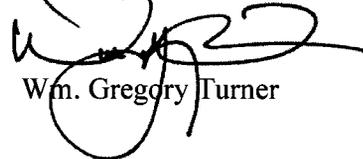
from a list created by the OECD (Organization for Economic Co-operation and Development) in 1998, which has since been largely repudiated as a basis for blacklisting specific nations for tax purposes. In fact, only two other jurisdictions—West Virginia and the District of Columbia—have maintained any provisions dealing with “tax haven” countries. Neither of those jurisdictions uses the blacklist approach, but instead provides criteria for identifying a tax haven. The Multistate Tax Commission, when consideration was given to this matter for their model state legislation, specifically rejected the blacklist approach in favor of criteria.

Moreover, the mere fact that a company is incorporated in a so-called tax haven country does not by any definition mean that the company is somehow engaged in abusive tax avoidance strategies (which is the alleged rationale for blacklisting such countries). Certainly, Montana, like every other state, has an interest in ensuring that companies engaging in multinational business enterprises fairly apply the tax laws and are not engaged in illegal tax avoidance strategies. Montana has at its disposal tools which can address such issues without the arbitrary approach created by section 15-31-322, MCA.

Repealing section 15-31-322’s arbitrary list of “tax havens” will not diminish Montana’s ability to ensure that apportioning businesses are not unfairly avoiding their tax obligations to the state. Repealing section 15-31-322’s list of “tax havens” will, however, bring Montana’s water’s-edge election back in line with other states and make clear to multinational businesses that Montana has stopped an arbitrary tax practice that impairs their investments in the state.

For these reasons, COST respectfully urges the Committee to support HB 578.

Cordially,



Wm. Gregory Turner

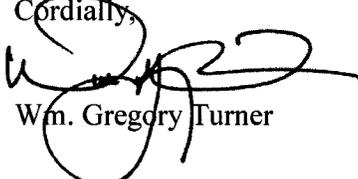
cc: COST Board of Directors  
Douglas L. Lindholm, President & Executive Director, COST  
Nancy Schlepp, President, Montana Taxpayers Association  
Webb Brown, President & CEO, Montana Chamber of Commerce

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