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Fredrick J. Nicely
Senior Tax Counsel
(202) 484-5213
FNicely@cost.org

March 5, 2020

Representative Steven Johnson, Chair
Representative Les Mason, Vice Chair
Representative Jim Gartner, Ranking Minority Member
Kansas Legislature, House Committee on Taxation

Re: Support of House Bill 2722 - Establishing Tax Withholding Requirements When Certain Employees Work in Multiple States

Dear Chair Johnson, Vice Chair Mason, Ranking Minority Member Gartner, and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing in support of H.B. 2722, similar to legislation enacted in Illinois,¹ which would establish a 30-day safe harbor for non-resident employees that travel into Kansas to perform work duties. H.B. 2722 simplifies individual income tax filings and reduces employers' withholding and reporting burdens for employees who work less than 30 days in Kansas. To encourage other states to enact similar legislation and provide the same protection to Kansas employees who travel outside Kansas for work, we recommend that a reciprocity provision be included in the bill language.²

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 550 major corporations engaged in interstate and international business, many of which directly do business in Kansas. COST's objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities.

A Pressing Problem

Every day, hundreds of thousands of employees across the country are sent by their employers to work in states where employees are not residents. The vast majority of these trips are temporary in nature, whereby the employee conducts business in the

¹ Illinois H.B. 3633/S.B. 1515, enacted on August 29, 2019 as P.L. 101-0585. Similar legislation, S.F. 3188, is also currently pending in Minnesota and we expect other states to also introduce legislation this year.

² COST suggests including: "This will only apply when the non-resident individual's state of residence: i) provides a substantially similar exclusion, or ii) does not impose an individual income tax, or iii) the individual's income is exempt from taxation by this state under the United States Constitution or federal statute."

non-resident state for a short period of time and then returns to his or her resident state. Non-resident employees who travel to Kansas for business purposes are subject to onerous administrative burdens because, in addition to filing federal and resident state income tax returns, they are also legally required to file an income tax return in Kansas, and their employers are required to withhold from their paychecks, if they spend *even a single day working in Kansas*.

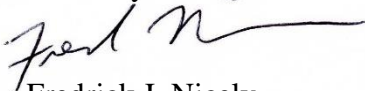
A Simple Solution: 30-Day Threshold

H.B. 2722 provides for a fair, and easily administered law in the form of a 30-day threshold which helps individuals and businesses to stay compliant with tax return and withholding laws, greatly reducing the undue burden that the current system places on employees and employers. The 30-day threshold is a simple solution to protect non-resident employees traveling into Kansas for a temporary period from incurring a personal income tax liability in Kansas and employers (including businesses, associations, governments, and unions) from incurring withholding obligations for those employees.³ Of course, a non-resident employee's earnings would be subject to income tax in Kansas if the employee is present and performing duties for more than 30 days during the calendar year, from day one. Inclusion of the reciprocity provision in the bill will offer this protection only to residents of those states that have also adopted a comparable 30-day threshold and will encourage other states to adopt a similar threshold.

Conclusion

H.B. 2722 is not just a business bill – it also protects individual employees such as emergency workers and first responders; trade union workers; non-profit staff; teachers; federal, state and local government employees; and many others. Any organization with employees who cross state lines for temporary periods will benefit from this law. Enactment of H.B. 2722 will greatly improve Kansas' national reputation for fair, efficient and customer-focused tax administration. We stand ready to assist you in your efforts to enact this important measure.

Sincerely,



Fredrick J. Nicely
Senior Tax Counsel

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

³ There are exceptions for certain types of employees: professional athletes, professional entertainers, and qualified production employees would be subject to Kansas' income tax on all income earned in the State.