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February xx, 2024

Jozel Brunett, Chief Counsel  
Franchise Tax Board  
Legal Division  
PO Box 1720  
Rancho Cordova CA 95741-1720

Dear Chief Counsel Brunett,

The undersigned organizations represent California taxpayers, supply chain service providers, retailers, and agricultural interests.

We are writing to express concerns with recent developments at the Multi-State Tax Commission (MTC) Model Receipts Sourcing Regulation Review Work Group (Work Group) and California's push to revise the MTC's model sourcing rules as they relate to the sourcing of ground transportation services.

As you know, California currently sources interstate trucking business income pursuant to 18 CCR 25137-11 using the portion of the receipts from movements or shipments which originate in one state and terminate in another state as determined on the basis of the interstate ratio<sup>1</sup>, which will hereto be referenced as the "mileage method".

It has come to our attention that a California representative on the MTC's Work Group, which California also chairs, made a motion<sup>2</sup> to the Work Group to have MTC staff draft a "market-based alternative model to source some or all trucking receipts based on pickups and/or deliveries". The California representatives advocating for the new draft of the model rule are relatively alone in their views. Over 20 States have participated in the process and only four, California, Massachusetts, Kansas and Alabama support drafting a new rule – and Kansas and Alabama stated that they while they support proceeding with a draft, they have no intention of actually adopting a new rule. This draft model, which will hereto be referenced as the "volume method", would then

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<sup>1</sup> 18 CCR 25137-11(b)(5) defines "interstate ratio" as "the ratio which the aggregate of the mobile property miles traveled in this state by units of mobile property which are located within more than a single state during the year bears to the aggregate of the total mobile property miles traveled by such property everywhere during the year."

<sup>2</sup> <https://www.mtc.gov/wp-content/uploads/2024/01/01-24-2024-Motion.pdf>

be considered by the Work Group for recommendation to the MTC's uniformity committee as an alternative model for states that choose to adopt that approach.

A summary of our concerns are listed below:

- The current use of the mileage method generally reflects the market for trucking services, has been in place for decades and has resulted in few issues.
- A change from the mileage method to the volume method would worsen the already exorbitant burden California imposes on its critical supply chain sector.
- A change from the mileage method and the resulting lack of uniformity among the States will likely result in substantial additional compliance costs for many of our members thereby increasing the costs of providing transportation services.
- This motion would appear to run counter to the MTC's mission to promote "uniform and consistent tax policy and administration among the states". Our understanding is many MTC member states have indicated they would decline to adopt the volume method and retain the mileage method, which would run counter to uniformity.
- If the FTB's activities at the MTC are a precursor to a change in California regulations for sourcing interstate trucking, there is a possibility such a change would result in multiple and discriminatory taxation which would greatly increase the administrative burdens placed on the both the taxpayer and the State<sup>3</sup> and increase tax disputes.
- From a procedural standpoint, it is concerning that California's representatives are promoting policies counter to California's current and longstanding adopted regulations. In order to adopt or amend a regulation, the Franchise Tax Board must participate in the state's regulatory process under the Administrative Procedure Act (APA). The process involves:
  - Getting authorization to proceed from the three-member Franchise Tax Board.
  - Holding interested parties meetings (IPM) and formal regulatory hearings.
  - Drafting the language.
  - Getting input from the public.
  - Working with the Office of Administrative Law for final approval and filing.

As of the date of this letter, no such regulatory process has been initiated<sup>4</sup>. Furthermore, we would strongly oppose any effort to impose a future MTC model volume sourcing method by Technical Advice Memo in circumvention of the APA.

We look forward to discussing this matter with your office. If you have any questions please feel free to reach out to xxx.

Thank you,

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<sup>3</sup> Pursuant to *Goldberg v. Sweet*, 488 U.S. 252 (1989), to be fairly apportioned California would need to credit taxpayers for taxes paid on the same service to other states ("we hold that the Tax Act is fairly apportioned...and actual multiple taxation is precluded by the credit provision"). Nationally, 11% of loads originate and 8% of loads are destined for California. Each would need to be credited on a unique set of facts.

<sup>4</sup> <https://www.ftb.ca.gov/tax-pros/law/regulatory-activity/index.html#Draft-regulations>

NAMES, TITLE  
ORGANIZATION