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Marilyn A. Wethekam
Of Counsel
(202) 484-5224
mwethekam@cost.org

Dylan B. Waits
Tax Counsel
(202) 484-5226
dwaits@cost.org

May 6, 2026

Senator Cathy Kipp, Chair
Senator Janice Marchman, Vice Chair
Colorado Senate Finance Committee

Re: COST Opposes H.B.26-1289

Dear Chair Kipp, Vice Chair Marchman, and Committee members:

On behalf of the Council On State Taxation (COST), we respectfully request amendments to H.B.26-1289, specifically to Section 4, as amended which makes changes to the corporate income tax (CIT) statute. Section 4 would, among other adjustments, repeal the current water's-edge statutory exclusion for domestic corporations who have more than 80% of their property and payroll located outside the United States. While adopting Section 4 as amended aligns Colorado with the Multistate Tax Commission (MTC) draft model statute, Section 4 would also make Colorado an outlier because no other state has adopted verbatim the model language when adopting the MTC model statute.

As indicated by the indeterminate fiscal note, this proposal eliminates the predictable tax revenue necessary for developing future Colorado state budgets. Additionally, this proposal will increase the administrative burden on businesses, making Colorado less attractive for investment. The proposal will also add complexity to the Department of Revenue's (Department) audits of multinational corporations and will do little to enhance the Department's existing enforcement capabilities. It is for these reasons that COST recommends that HB 26-1298 be amended to exclude domestic entities that have more than 80% of their property and payroll outside the United States.

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 multijurisdictional business entities, with many of our members conducting business in Colorado.

The 80/20 Rule for Domestic Corporations Should Remain

Under the existing statute, domestic corporations with 80% or more of their property and payroll assigned outside the United States are excluded from the combined report when filing a Colorado water's-edge return. This rule has consistently provided a clear, objective, and administrable standard that prevents the over-inclusion of foreign operations that lack meaningful economic nexus with Colorado.

Since 2022, the Department has the authority to require the inclusion in the water's edge unitary group any entity incorporated in foreign jurisdiction for tax avoidance purposes.¹ Section 4 also allows the Director of Revenue to disregard the water's-edge election. Thus, tools exist for addressing any abuse of the 80/20 rule. Eliminating the existing 80/20 provision removes a critical boundary that has helped ensure Colorado's approach to combined reporting remains fair, predictable, and constitutionally sound. The new provisions set forth in Section 4, coupled with existing statutory provisions to include entities incorporated in foreign jurisdictions for tax avoidance purposes, would dramatically expand the scope of corporations required to file as part of a combined group. These changes amount to a substantial expansion of Colorado's taxing authority over global corporate structures.

This expansion raises the risk of inconsistent treatment across jurisdictions, resulting in constitutional concerns under both the Due Process and Commerce Clauses. Also, the expansion will increase compliance costs and uncertainty, especially for multinational businesses with legitimate foreign operations. The expansion will not only impact multinational taxpayers, but the Department will be faced with additional audit complexities. The Section 4 provisions will likely negatively impact Colorado's economy and economic competitiveness as companies will reconsider locating or expanding operations in Colorado due to the unpredictability and aggressiveness of the proposed corporate income tax regime.

The existing 80% property-and-payroll standard has long served as a reasonable safeguard that aligns the tax base with actual economic activity within the United States. Striking this provision and replacing it with broad mandatory inclusion rules that are untethered from meaningful nexus undermines both fairness and sound tax administration. Section 4 should be amended to exclude from the affiliated group member corporations with more than 80% of their property and payroll located outside the United States.

Conclusion

We urge you to amend Section 4 of H.B.26-1289 to provide a level playing field for all businesses with operations both inside and outside of Colorado, stability in tax revenue, and

¹ While not specifically at issue in this bill, H.B.26-1289 continues the existing challenges with Colorado's tax haven statutes. COST's policy position against Tax Haven legislation is found here: <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/state-tax-haven-policy-statement-final.pdf>

alignment with other states that have adopted portions of the MTC model statute. With these changes, we would not oppose the proposed bill.

Respectfully,



Marilyn A. Wethekam



Dylan B. Waits

cc: COST Board of Directors
Patrick J. Reynolds, COST President & Executive Director

Senate Finance

05/07/2026

HB26-1289 Modification of Certain Tax Expenditures

Typed Text of Testimony Submitted

| Name, Position, Representing | Typed Text of Testimony |
|--|---|
| Daniel McFarland Amend McFarland Oil | <p>Madam Chair, members of the committee, thank you for the opportunity to present to you today. My name is Daniel McFarland, representing McFarland Oil and I am here to oppose specifically Section 22 and 23 of this bill. Colorado has a tall task in regards to the freeze/thaw cycles our pavements are subject to. This impacts the longevity of the asphalt pavement due to the number of iterations the pavements thermally expand and contract. This same reality impacts our industry. We have to accept these temperature variations and make good decisions with that in mind. McFarland Oil operates most heavily in Chaffee County. We pull most of our product out of Denver/Colorado Springs areas. When we load at the rack in Denver, and haul it to Salida, by the time it gets here the temperature of that product has changed. We store some of our fuel in above ground tanks at our bulk storage facility. This specific inventory is needed to serve our community of ranchers, farmers, construction crews, DOTs, bus barns, etc some of which are tax exempt entities. This fuel inventory volume being subject to ambient air temperature changes throughout the day, every day, as it is experiencing the same conditions as the roads in this state. It has iteration after iteration of cooling and warming with volumes being impacted. While those are the conditions I operate under, I also have to operate under the fact that the taxes I have paid are at a standardized temperature at the rack even if my average temperature of the fuel I sell is not that same temperature. In order to account for these changes in temperature the standard 2% allowance is reasonable, justified, an established principle in the industry and should not be reduced to the proposed 1%.</p> <p>The 0.5% allowance for bad debt should also go unchanged. This allowance is established and necessary to accommodate for the reality that our industry prepays these taxes at the time of purchase instead of at the time of sale. This dynamic simplifies the reporting, however ties up a lot of money for us and gives the state more immediate cash flow than having to wait for the fuel to get to the end user before the tax is remitted. 0.5% is reasonable, justified, and established in this industry to allow for taxes paid that may not be collected and should not be eliminated.</p> |

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| | In summary, McFarland Oil does not support this response to the budgetary shortfall. I believe Section 22 and 23 is unreasonable, lacks perspective, and is counterproductive |
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Good afternoon chair and members of the committee,

My name is Emily Settlecowski, and I am the Food Access Manager at Metro Caring, a Denver Metro area anti-hunger organization.

We are here today in support of HB26-1289 because improving access to healthy, affordable, local food in our communities cannot wait. Right now, the federal administration continues to erode our most basic right to food by reducing SNAP benefits and increasing ICE operations that force Coloradans to make impossible decisions about whether it is safe to go to work, the grocery store, or send their children to school. Missed school means missing important meals for many of our food-insecure children. Missed work means missed income and deeper entrenchment in the cycle of poverty that keeps our communities' food insecure. Now, more than ever organizations like ours are collaborating with our local

I manage our Fresh Foods Market-- a free grocery store-style food pantry that welcomes 700 households each week to choose from nutritious, culturally rooted, and locally sourced foods. We ask our community what food items they need us to stock on our shelves. The things they need are fresh produce, meat, eggs, and shelf-stable dry goods that meet a variety of dietary needs.

The charitable food supply chain is over burdened and doesn't supply us with all of those items. So we fill this gap by purchasing food from local farmers, ranchers, and food hubs. Since the pandemic, like many other food access organizations, we have established and continue to grow year over year, budgets for food purchasing. This year, we plan to spend \$450,000 to bring locally sourced, fresh food to our communities. We need strong local food businesses to be able to provide a nutritious, culturally relevant selection of food in our pantry. One way to strengthen and support these local food businesses and farmers is streamlining the already established Community Food Access Program.

The community food access portion of this bill will help more farmers support food insecure communities by removing unnecessary administrative barriers and allowing more farmers and food hubs to participate. And we know, a strong local food system is important to our community.

We asked over 600 members of our community what their priorities were for the food system, they told us:

- #1 is to increase local food production
- #2 protect natural resources—food production practices that protect soil, air, and water.
- #3 increase access to healthy food—make it easier for community members to find and purchase healthy food.

HB26-1289 can meaningfully advance these priorities. Colorado has the opportunity in absence of federal will to increase the capacity of small, local retailers to stock healthy foods, lower prices for consumers, reduce food insecurity, and keep more economic activity within our local communities. The needed changes to the program do just that.

On behalf of Metro Caring, I respectfully urge the committee to support this bill and help ensure that the program can reach its full potential for Colorado families, farmers, and small businesses.

Thank you for your time and consideration.