July 8, 2015

His Excellency Charlie Baker
Governor of the Commonwealth of Massachusetts
State House
Boston, MA 02133

Dear Governor Baker:

We are writing to urge you to veto the Legislature's plan to eliminate the FAS 109 deduction as a part of the fiscal 2016 budget. This deduction is an important part of the carefully negotiated agreement on combined reporting and reversing that promise threatens the state's credibility with businesses. Worth noting, eliminating the deduction entirely was not part of either the House or Senate budgets. Had the full elimination – rather than another postponement – been included in either version, our groups would have immediately voiced concern.

The adoption of combined reporting changed the methodology by which corporate taxpayers determine their Massachusetts liability. An unintended consequence of combined reporting was that for some companies it caused a negative impact on financial statements and, potentially, to stock prices. The FAS 109 deduction is necessary to mitigate the financial harm to companies.

To be clear, the deduction was not a tax break for business. Rather, it was a method to minimize the negative impact on the state's corporate taxpayers for the purposes of financial reporting caused by the shift to combined reporting. The state's Department of Revenue describes the purpose of the deduction as "to alleviate, for certain publicly held companies, the potential financial statement impact resulting from these tax law changes" in its Technical Information Release 09-8.

Furthermore, the deduction was never intended to be permanent. It is a single deduction phased-in over seven years. If the state had followed its original plan and allowed the deduction beginning in 2012, it would have been phased-out in about three years.

The FAS 109 deduction is necessary because there are differences in the way companies treat assets for calculating taxes compared with financial reporting. The federal economic stimulus bill allowed companies to use accelerated depreciation for tax purposes, which means they could reduce the value of their assets at a faster pace than permitted in financial statements. Massachusetts followed federal tax law.

The deduction would apply only to publicly-traded companies which have an increase in net deferred tax liabilities in their financial statement as a result of the state's move to combined reporting. It would allow such taxpayers to deduct a portion of the difference between accelerated depreciation, as permitted by tax law, and the depreciation schedule required for financial reporting. For state tax purposes, a business would apply the deduction over a seven-year period to minimize the impact on tax revenues.

The deduction is a critical aspect of the combined reporting agreement because the difference between the two depreciation schedules became exponentially larger for capital-intensive businesses that report income from other states. Without the deduction, companies must report the entire tax impact on financial statements, and this could have serious ripple effects because investors and others use these to analyze a company.

Besides the very real financial impact for businesses, there are other damaging effects to the state. The decision to eliminate the deduction sends a troubling message to businesses that agreements are always subject to change. If taxpayers cannot expect the state to fulfill its commitment on a key piece of tax policy, in the future businesses may be wary of the state's promises.

The state already has a poor reputation for tax predictability, as evidenced by its perpetual low ranking in CFO Magazine's survey of business tax executives, and this repeal will undoubtedly amplify that perception. The decision to postpone the deduction in each year since it should have taken effect has already frustrated those who negotiated in good faith. This disregard for fulfilling a commitment means that Massachusetts is a state that is willing to change the terms of an agreement whenever it suits the state's purposes.

Sincerely,

Eileen McAnneny

Eileen McAnneny
President
Massachusetts Taxpayers Foundation

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Rick Lord

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President & CEO
Associated Industries of Massachusetts

aim
Leadership is our Business

James Rooney

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TheChamber
Greater Boston Chamber of Commerce
Connect & Grow.

JD Chesloff

JD Chesloff
Executive Director
Massachusetts Business Roundtable

MBR
MASSACHUSETTS BUSINESS ROUNDTABLE

cc: Kristen Lepore, Secretary of Administration and Finance
Jay Ash, Secretary of Housing and Economic Development
Members of the Legislature