Dorothy Rothrock
Vice President, Government Relations

September 21, 2012

The Honorable Felipe Fuentes
California State Assembly
Chair, Assembly Revenue and Taxation Committee
California State Capitol, Room 2114
Sacramento, CA 95814

The Honorable Wesley Chesbro
California State Assembly
Chair, Assembly Natural Resources Committee
California State Capitol, Room 2141
Sacramento, CA 95814

The Honorable Steven Bradford
California State Assembly
Chair, Assembly Utilities and Commerce Committee
California State Capitol, Room 5136
Sacramento, CA 95814

Re: Joint Informational Hearing, September 27
Proposition 39 – Statement of Opposition

Dear Chairmen:

Proposition 39 would eliminate the three-factor apportionment formula that has been a part of California law since 1966 and instead impose a single sales factor (SSF) calculation on all multistate businesses. In 1966, California adopted an equally weighted, three-factor apportionment formula for taxing multistate businesses – payroll, property and sales. In 1974, California joined an interstate compact adopting this formula. The compact requires that participating states offer the three-factor formula, but allows states to offer an alternative apportionment formula, so long as the taxpayer can elect which formula to apply. In 1993, the Legislature amended the three-factor apportionment formula by giving double weight to the sales factor. In 2009, the Legislature retained the revised three-factor apportionment formula (double weight on sales) but provided an alternative SSF apportionment formula that allows multistate businesses to apportion income to California using only their percentage of sales in California.

<u>Multistate corporate income apportionment policy:</u>

On June 27, CMTA adopted an "oppose" position on Prop 39. Maintaining the taxpayers' ability to choose either the longstanding three-factor apportionment formula or the SSF will encourage new investment and employment in California while protecting taxpayers who opt for the longstanding formula.

The proponents argue that Prop 39 "repeals a shady backroom legislative deal enacted in 2009" that created a tax "loophole" for "out-of-state" companies. That is false and misleading. In fact, Prop 39 would repeal a longstanding method for income apportionment based on three factors that has been acknowledged by California and most other states as a comprehensive way to apportion income for tax purposes. Income apportionment is necessary because many large corporations have "multistate" operations. It is inaccurate to label companies that prefer to pay taxes under the 3 factor formula as "out-of-state" companies.

Prop 39 fails to recognize the importance of all taxpayers' contributions to the state's economic health. Many companies have significant investments of property, equipment, facilities and payroll in California, but have sales in the state that are relatively large in comparison. In California, SSF is particularly ill-suited for manufacturers producing consumer products that cannot be produced here and shipped across the country and world to other customers.

Forcing these companies to use SSF would be a $1.2 billion tax increase even though they would be operating as they have for many years. Nothing justifies this increase – they are imposing no additional burden on government services, nor will they be able to avoid the tax increase through reasonable in-state investments and/or hiring.

The bi-partisan agreement in February 2009 allowed use of SSF to help stimulate investment and hiring in the state for the companies who might otherwise invest elsewhere. At that time the Legislature rightfully allowed for the method to be elective in nature, allowing the longstanding method to be used by employers for which SSF is actually a disincentive to invest. By moving to mandatory SSF, Prop 39 punishes taxpayers who neither sought SSF nor ever planned to use it.

Current California law already imposes a tax burden on companies that ranks the state 48th (2012 Tax Foundation Business Tax Climate Index) and measures sales as 50% of the income calculation (double weight). Mandating SSF also magnifies the uncertainty and unpredictability of the tax climate in the state. This will further erode California's ability to attract and compete with other states for business investment and hiring.

<u>Use of the revenue:</u>

California is suffering from an ongoing state budget deficit that lawmakers have been unable to resolve. State tax increases, if necessary, should be for purposes identified by our elected officials based on priorities important to California citizens.

Prop 39 devotes half of the tax increase for a new bureaucracy to fund various environmental purposes without showing any need. In fact, Californian's have been paying billions of dollars, and will spend billions more, through their utility bills and at the gas pump for programs to address climate change and clean the environment.

Giving another $500 million per year for this purpose and creating a new government bureaucracy when public safety, schools, and low-income programs are competing for budget resources does not make any sense.

Sincerely yours,

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