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Rep. Tracy Kraft-Tharp, Chair
House Business Affairs and Labor Committee
Colorado General Assembly

VIA EMAIL

Re: S.B. 88

Dear Chair Kraft-Tharp and Members of the House Business Affairs and Labor Committee:

On behalf of the Council On State Taxation (COST), I encourage you not to advance SB 88 as currently drafted. This measure would retroactively subject certain property to Colorado's unclaimed property laws, which is fundamentally unfair and Constitutionally questionable. In addition, the bill does not include reforms proposed by the American Bar Association's (ABA) Draft Model Unclaimed Property Act (attached for your reference). This ABA draft model act was drafted by leading national unclaimed property experts and reviewed by the ABA's Business Law and Tax Sections and should provide a basis for any revisions to the unclaimed property law in Colorado.

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 550 major corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Retroactive Liability for Unclaimed Property

Among its infirmities as discussed further below, S.B. 88 contains a particularly troubling provision. Section 38-13-1503 of the new legislation would adopt a transitional provision requiring the escheat of "all items of property that would have been presumed abandoned during the five-year period preceding July 1, 2020, as if [the new law] would have been in effect during that period." This retroactively subjects property to escheat that is not subject to escheat under current law.

C.R.S 38-13-112 currently allows holders to retain two percent of the value of the property or twenty-five dollars whichever is more per item of unclaimed property. S.B. 88 would retroactively repeal this deduction, requiring holders to remit such amounts under the proposed law as if it had been in effect long before its enactment. Such legislation is fundamentally unfair and Constitutionally questionable.

ABA Advisors Concerned with the RUUPA, Offer Draft Alternative

After the Uniform Law Commission's adoption of the Revised Uniform Unclaimed Property Act (RUUPA), upon which S.B. 88 is loosely based, representatives of the ABA Business Law Section, who served as ABA advisors on the RUUPA drafting committee, led an effort to address the RUUPA's Constitutional infirmities by drafting an ABA Draft Model Unclaimed Property Act. The ABA advisors' concerns with the RUUPA include the following:

- Allows states to use unclaimed property laws to override other substantive laws governing the debtor-creditor relationship;
- Allows states to escheat foreign-owned property;
- Allows states to escheat property in a manner which is inconsistent with federal common law unclaimed property rules;
- Allows states to liquidate securities in a manner that potentially violates the U.S. Constitution's provisions regarding due process and taking; and
- Allows states to require that the holders of property possibly subject to escheat incur significant expenses in investigating rights to the property.

The ABA advisors' concerns are set forth in more detail in the attached article from the ABA's *Business Law Today* publication.

During the effort to draft the ABA Draft Model Unclaimed Property Act, the drafters sought input from ABA members in both the Business Law Section and Tax Section who practice unclaimed property law, as well as from other interested parties. COST feels that the ABA draft model act is a far superior product that, if adopted by Colorado, will go a long way toward preventing the kind of bad conduct by unclaimed property auditors that a federal district court judge, in *Temple-Inland v. Cook*, 192 F.Supp.3d 527 (2016), found to "shock the conscience," while furthering the goal of reuniting unclaimed property with its owners. COST therefore urges you to vote against S.B. 88, and instead work to incorporate the reforms outlined in the ABA draft model act into Colorado's unclaimed property law.

Sincerely,



Patrick J. Reynolds
Senior Tax Counsel

CC: COST Board of Directors
Douglas Lindholm, COST President & Executive Director