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July 8, 2021

**VIA EMAIL**

Representative Derek Merrin  
The Ohio House of Representatives

**Re: Concerns with Unclaimed Property Provisions in H.B. 110 and H.B. 348**

Dear Representative Merrin:

We are writing on behalf of the Council On State Taxation (“COST”) to encourage you to modify the amendments Am. Sub. H.B. 110 made to R.C. 169.07. We also encourage you to consider certain amendments to H.B. 348.

**About COST**

COST is a nonprofit trade association consisting of over 500 multistate 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. COST has a significant number of members that are subject to Ohio’s unclaimed property laws.

**Interest, Penalties, and Notice of Legal Proceedings**

1. The amendments to R.C. 169.07, as set forth in Am. Sub. H.B. 110, do not adequately protect holders. The amendments suggest holders who timely remit unclaimed property in good faith to the Ohio Department of Commerce (“Commerce”) could be liable for interest and penalties imposed by a court of law. This raises concern and should be addressed. We recommend inserting language to suitably protect both the State and holders.
2. Am. Sub. H.B. 110 imposes a 14-day period for holders to notify Commerce of a legal proceeding. 14 days is too short, and we recommend at least a 30-day notification requirement.
3. H.B. 348 should address the holding period that Ohio law imposes on Commerce before Commerce can liquidate certain escheated securities (stocks, bonds, *etc.*). The Revised Uniform Unclaimed Property Act (“RUUPA”) provides a three-year period before a state’s administrator of unclaimed property can sell such property. The ABA Draft Model Unclaimed Property Act (“ABA Model Act”) contains a longer, ten-year period. We recommend the adoption of a ten-year period.

### Statute of Limitations

The statute of limitations should balance Commerce's desire to audit unclaimed property reports with the business community's need for certainty and predictability. The ABA Model Act provides for a four-year statute of limitations for non-fraudulent reports and a catch-all, seven-year statute of limitations. RUUPA has a five-year statute of limitations for non-fraudulent reports and a catch-all, ten-year statute of limitations. To protect holders acting in good faith, we recommend a four-year statute of limitations for non-fraudulent reports. This would be consistent with both the Ohio Commercial Activity Tax<sup>1</sup> and the ABA Model Act. We would not object to a longer statute of limitations for non-filers and fraudulent returns since Commerce needs ample time to pursue bad actors.

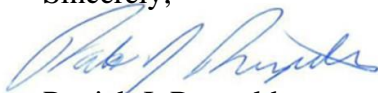
### Contingency Fee Auditors

Contingent-fee audit arrangements create an inherent conflict of interest. They encourage auditors to be overly aggressive; to interpret State laws to their own advantage rather than in society's best interest, to "cherry pick" audit targets, and to ignore holder errors that would result in lower assessments. The risk of abuse creates a perception of unfairness that colors holders' relationships with administrators and creates an atmosphere of mistrust that hinders compliance. Excessive payments to contingent fee auditors also significantly reduce funds that would otherwise be available for the owners of the property or for the general fund revenue of the State. While Commerce administratively imposes some limits on contingent-fee audits through its administrative rules,<sup>2</sup> we recommend a broad statutory prohibition of contingent-fee audits for all Ohio unclaimed property audits.

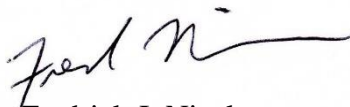
### Conclusion

We appreciate your interest in unclaimed property law and your willingness to sponsor H.B. 348. Please let us know if we can provide any additional assistance.

Sincerely,



Patrick J. Reynolds



Fredrick J. Nicely

cc: COST Board of Directors

Douglas L. Lindholm, COST President & Executive Director

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<sup>1</sup> Ohio Revised Code Sec. 5751.09.

<sup>2</sup> See Ohio Rule 1301:10-3-04 that allows Commerce to enter into contingent-fee audits initiated by another state.