



April 18, 2014

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Uniform Law Commission
111 N. Wabash Ave.,
Suite 1010,
Chicago, IL 60602

Re: *Request for Comments –Uniform Law Commission’s Committee to Revise
the Uniform Unclaimed Property Act*

Members of the ULC Study Committee:

On behalf of the Michigan Chamber of Commerce members we are pleased to submit the following comments to the Study Committee to Revise the Uniform Unclaimed Property Act (the “Committee”).

The Michigan Chamber of Commerce is a statewide business organization representing approximately 6,800 employers, trade associations and local chambers of commerce. The Michigan Chamber represents businesses of every size and type in all 83 counties of the state. Our organization is very active in the state legislative process with a strong emphasis on state taxation and other matters administered by the Michigan Department of Treasury. Our members have a keen interest in improvements to the unclaimed property laws of Michigan. In the past year, we have successfully led and obtained legislation to improve the administration and application of Michigan Unclaimed Property Act. Specifically, we have achieved needed reform in the areas of business-to-business transaction exemption, codification of standards for audits, and are currently working with the Administration to institute a statutory appeals process for Holders.

However, much more reform is needed. Our members continue to have significant concerns with respect to the State’s use of third-party audit firms who are compensated based on a contingency-fee arrangement, as well as the inconsistent application of the Uniform Unclaimed Property Act, lack of robust audit standards, use of extrapolation and the lack of independence. In furtherance of these concerns, we submit the following comments for consideration by the Committee.

Prohibit the Use of Contingency Fee Audit Arrangements

While we have actively pursued legislation with widespread legislative support in Michigan to prohibit contingency fee arrangement based on its ability to impair an auditor’s judgment, the Michigan Department of Treasury has opposed these efforts, citing “revenue” concerns and the need to align to the basis on which these auditors are

engaged on a multi-state basis (making it difficult to demand a different type of payment arrangement.)

Our members are unsympathetic to these concerns. While we concur in the need for states to conduct examinations in a timely and efficient manner, it should never be forgotten that every state's obligation is simply to act as Custodian of property until the rightful owner of the property can be located. Yet, like other states, Michigan has become increasingly reliant on perceived "abandoned" property as a general fund revenue stream, making it difficult to eliminate contingency-fee audit arrangements. The use of contingent auditors threatens impartial evaluation as well as threatens the voluntary compliance upon which all uniform acts rely.

Contingency fee or commission-based engagements incentivize the auditor to inflate a holder's liability due to the allure of a greater reward. There is an inherent conflict of interest with this type of arrangement. We provide below several actual examples in which such conduct is apparent:

- Demands have been made for the immediate escheatment of checks which had been re-issued to Owners and subsequently cashed.
- An immediate demand was made for company shares invested in a dividend reinvestment plan, without permitting any attempt to re-establish contact with the Owners. Rather than comply with this unreasonable demand, the company attempted to re-establish contact, and was able to reunite Owners with almost 50% of the shares demanded. Had the company immediately complied, such action would have resulted in the loss of future appreciation and voting rights to these Owners.
- Auditors insist on improperly including items that have already been properly escheated to another state.
- Audit selection that is not based on any authorized criteria; the audit firm specifically "cherry picks" businesses with the "deepest pockets."

Our members have also questioned whether contingent fee arrangements are constitutional.¹ The Michigan Chamber is not alone in its strong opposition to the use of third-party contingency fee arrangements.²

¹ See, *Tumey v. Ohio*, 273 US 510 (1927). In this prohibition case the mayor of an Ohio village would hold "Liquor Court" to convict defendants of possession of alcohol when the village was in need of funds. The Court found that such arbitrary exercise of authority denied the defendant due process of law. See also, *Sears, Roebuck & Co. v. Parsons*, 401 SE2d 4 (1991), where the Georgia Supreme Court found that contingent-fee audit arrangements offend public policy.

² The American Institute of Certified Public Accountants have adopted a policy position in opposition to the use of contingency fee arrangements suggesting that "governments at all levels reject the use of contingent fee audit arrangements." <http://www.aicpa.org/Advocacy/Tax/StateLocal/DownloadableDocuments/AICPA-contingent-fee-audit-comments-5-14-13.pdf>. The National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation of Communications and Electronic Commerce unanimously adopted a resolution calling on governments to end the use of contingent fee arrangements. <http://www.ncsl.org/documents/standcomm/sccomf/CContingencyFeeAuditResolution.pdf>

We encourage the Uniform Law Commission Study Committee on Unclaimed Property to consider a ban on the use of contingency Fee audit arrangements.

Unprofessional Audit Conduct

A negative by-product of contingency-fee audit arrangements is the unprofessional conduct and increasingly aggressive audit tactics of these audit firms. We are seeing a vicious cycle that creates a high risk of abuse of our members who are the Holders under audit, and fosters an atmosphere of distrust towards the state and its agents.

First, unclaimed property audits are commenced without clear indication of the entities included in the scope of the audit, and increasingly large amounts of information are demanded prior to setting scope. This is a needless waste of resources for our members.

Second, the auditors fail to properly educate their audit teams as to corporate structure, which is readily available from public information. This requires our members to expend resources to educate the auditors, when such effort should be expended by the audit firm prior to audit commencement.

Third, the audit firms rely upon vague language regarding “related companies” and “affiliates” for their alleged authority to demand information prior to firmly setting the scope of the audit.

Fourth, the auditors routinely request documentation well beyond Michigan’s 10-year statute of limitations from the last report filed.

Fifth, the audit firms continue to encourage participation by other jurisdictions, even after confidentiality agreements are executed. Our members have expressed concerns as to the policing of these agreements, as well as to any meaningful enforceability of these agreements.

And lastly, the confidentiality agreements demanded by the auditors contain provisions which require Holders to waive otherwise available legal remedies, or force Holders to bear the cost of litigation related to the audit or its findings, should the Holder not prevail. For unsophisticated Holders, this loss of rights is untenable, and is not demanded in any other audit conducted by the state.

We encourage the Uniform Law Commission Study Committee on Unclaimed Property to recommend the development of professional standards of conduct for use in unclaimed property audits, with clear and meaningful relief for instances when such standards are not complied with.

Use of extrapolation

Our members believe that the use of extrapolation is inconsistent with the intent of the Uniform Unclaimed Property Act, since findings determined as a result of extrapolation do not have any Owner related to them, whether known or unknown. These findings have no basis in law and are morally repugnant, particularly when coupled with the use of contingency-fee audit arrangements.

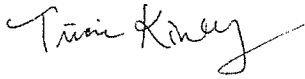
We encourage the Uniform Law Commission Study Committee on Unclaimed Property to consider alternatives to raw extrapolation of findings when records are unavailable, or if agreed to by the parties.

Conclusion

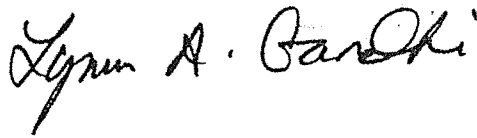
States should remain focused on their primary mission as Custodians of abandoned property - to return abandoned property to its rightful owner. The fair, unbiased and credible execution of examinations is critically important to creating a climate of trust between Holders and Administrators. Such climate is necessary to encourage and foster an atmosphere of accurate, timely, and voluntary compliance.

We appreciate the ability to submit comments to the Committee. If we can be of further assistance please don't hesitate to contact us.

Sincerely,



Tricia Kinley
Sr. Director, Tax & Regulatory Reform
Michigan Chamber



Lynn A. Gandhi, Honigman
Chair, Michigan Chamber Tax Policy
Committee

cc: Rex Blackburn, Co-Chair
Michael Houghton, Co-Chair
Charles M. Trost, Reporter