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Fredrick J. Nicely
Senior Tax Counsel
(202) 484-5213
fnicely@cost.org

November 9, 2021

VIA EMAIL

Ohio House of Representatives
Financial Institutions Committee

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

Dear Chair Jordan, Vice-Chair Ferguson, Ranking Member Crossman, and members of the Committee:

I am writing on behalf of the Council On State Taxation (“COST”) to respectfully request you consider amending H.B. 348 to improve Ohio’s unclaimed property tax laws as administered by the Ohio Department of Commerce (“Commerce”). Below are suggestions that would extend the holding period for certain securities before they are sold, shorten the statute of limitations for non-fraudulent returns, and eliminate all contingent fee unclaimed property auditing.

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.

Holding Period for Certain Securities

The holding period that Ohio law imposes on Commerce before Commerce can liquidate certain escheated securities (stocks, bonds, *etc.*) should be addressed in this bill. 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 American Bar Association’s 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 imposes a specific five-year statute of limitations for non-fraudulent reports and a catch-all, ten-year general statute of limitations. To protect holders acting in good faith, we recommend a four-year statute of limitations for non-fraudulent reports. This is consistent with both the Ohio Commercial Activity Tax¹ and the ABA Model Act. We do not object to a longer statute of limitations for non-filers and fraudulent returns since we recognize Commerce needs ample time to pursue bad actors.

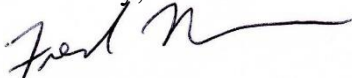
Contingency Fee Auditors

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,² we recommend a broad statutory prohibition of contingent-fee audits for all Ohio unclaimed property audits.

Conclusion

I appreciate the opportunity to provide written comments on H.B. 348. Please let me know if we can assist in drafting any amendments to address our concerns.

Sincerely,



Fredrick J. Nicely

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

¹ Ohio Revised Code Sec. 5751.09.

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