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VIA EMAIL TO: tweiler@le.utah.gov

Sen. Todd Weiler, Chair
Utah Senate Judiciary, Law Enforcement, and Criminal Justice Committee

Re: SB175

Dear Senator Weiler:

On behalf of the Council On State Taxation (COST), I am writing to urge you to table consideration of SB175 until all options for overhauling Utah's unclaimed property laws have been properly vetted. We understand the Uniform Law Commission (ULC) has adopted the Revised Uniform Unclaimed Property Act (RUUPA), upon which SB175 is ostensibly based. The ULC, however, in a departure from normal practice, has withdrawn the RUUPA from consideration and approval by the American Bar Association (ABA). During the drafting process of the RUUPA, the ABA expressed concerns with the constitutionality of certain provisions of the RUUPA and its failure to prevent states from obtaining more rights to escheated property than the owners of such property possess (known as the Derivative Rights Doctrine). The ABA has now re-commenced work on its model unclaimed property act, which it will release soon. COST suggests it would be premature for Utah to adopt SB175 without simultaneous consideration of other, more constitutionally sound options.

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

Background

Prior to the ULC's commencement of the drafting process of the RUUPA, the ABA was in the process of drafting a model unclaimed property act. The ABA, however, halted work on its model act when the ULC initiated what turned out to be a three-year drafting process, which culminated in the ULC's adoption of the RUUPA in 2016. During that drafting process, the ABA provided neutral advisors to the ULC Drafting Committee, and those advisors regularly commented on drafts.

However, rather than provide the RUUPA for review by the ABA, as is the regular matter of course for ULC uniformity projects, the ULC has instead withdrawn the RUUPA from the ABA's consideration. This appears to be because of certain defects in the RUUPA noted by the ABA's advisors to the ULC. The ABA will now consider model unclaimed property act provisions that address these and other concerns raised during the ULC drafting process.

Conclusion

COST urges you to table consideration of SB175 until all options for overhauling Utah's unclaimed property laws, including the upcoming ABA model act, have been vetted. If you have any questions or would like to discuss further, please do not hesitate to contact me.

Sincerely,



Patrick J. Reynolds
Senior Tax Counsel

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