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April 17, 2017

Texas Legislature
House Committee on Business and Industry

Via E-mail to: Israel.martinez_hc@house.texas.gov

Re: TX HB 2829

Dear Chair Oliveira and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing to oppose HB 2829 in its current form. While COST does not oppose the ability of the Comptroller to enforce the unclaimed property laws, COST does oppose the ability of the Comptroller to delegate authority to third parties with whom the Comptroller may contract to audit unclaimed property holders. Many third-party unclaimed property auditors are paid on a contingent-fee basis, which encourages them to be overly aggressive and results in conduct and audit tactics a federal judge recently held to “shock the conscience.”¹ COST encourages you to refrain from granting the Comptroller the ability to delegate its enforcement powers to third parties that engage in such conduct.

About COST

COST is a nonprofit trade association based in Washington, DC. COST 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.

COST’s Policy on Contingent-Fee Auditors

COST’s Board of Directors has adopted a policy that encourages state unclaimed property programs to unite owners with their property in the manner that is least burdensome to owners, holders and the State. Toward that end, such programs should ensure that administration of State unclaimed property statutes is conducted in a fair, even-handed and predictable manner by banning contingent-fee arrangements to compensate outside auditors. Contingent-fee arrangements 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. Equally important, excessive payments to contingent fee auditors significantly reduce funds that would otherwise be available for the

¹ *Temple-Inland, Inc. v. Cook*, Civ. No. 14-654-GMS (D. Del. June 28, 2016)

owners of the property or for the general revenue of the State. I have attached for your reference a copy of COST's policy statement on this issue.

Recent *Temple-Inland* Decision

An example of the overly aggressive audit tactics used by contingent-fee auditors can be found in the decision of the United States District Court for the District of Delaware in its June 28, 2016, decision in *Temple-Inland*, a copy of which I have attached for your reference. In that case, the judge listed several factors, including the auditor's estimation methodology, that were so egregious they "shocked the conscience." Although this decision was specific to Delaware, many contingent-fee auditors employing the same tactics operate throughout the United States, including Texas.

Conclusion

COST opposes the use of contingent-fee auditors and encourages you to refrain from granting the Comptroller the ability to give more authority to third-party auditors that encourages overly aggressive conduct.

Sincerely,



Patrick J. Reynolds
Senior Tax Counsel

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