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June 14, 2022

Senate Judiciary Committee
California State Assembly

Re: Suggested Improvements to A.B. 2280 (Unclaimed Property VDA Program)

Dear Chair Umberg, Vice Chair Borgeas, and Members of the Committee:

On behalf of the Council On State Taxation (COST), we are writing regarding improvements to A.B. 2280. While COST does not normally weigh in on Voluntary Disclosure Agreement (VDA) programs, we are compelled to support the suggested administrative process improvements outlined in the attached letter submitted to the Assembly by several Abandoned and Unclaimed Property consulting and law firms on March 15, 2022, as a matter of sound administrative policy. We appreciate the consideration and amendments adopted by the Assembly in response to stakeholders. We support the concerns and requests made by stakeholders, and to the extent not already addressed by Assembly amendments, we respectfully suggest that you modify the bill to incorporate the changes identified in the accompanying letter.

About COST

COST is a non-profit 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 over 500 major corporations engaged in interstate and international business, many of which are incorporated and do business in California. COST's objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities.

Sincerely,

Patrick J. Reynolds

Erica K. Kenney

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

attachment

Support AB No. 2280 if Amended

March 15, 2022

California State Assembly
Committee on Judiciary
Legislative Office Building
1020 N Street, Room 104
Sacramento, CA 95814

Via Web Portal

We present this position letter on Assembly Bill No. 2280 as some of the leading providers of unclaimed property consulting and/or legal services to companies who report and remit unclaimed property to all US jurisdictions, either through annual filing, voluntary disclosures, or audits. Collectively we have served on boards of trade organizations focused on holder's rights, testified in front of other state legislatures on unclaimed property legislation, submitted official commentary in front of the uniform law commission, and more. In short, we believe we are some of the Country's leading experts on state unclaimed property regulatory enforcement. Based on our collective experience and expertise, we take this opportunity to propose relatively minor changes to the proposed California Voluntary Compliance Program ("Program") that we believe will maximize the Program's effectiveness, reach and overall impact.

At the outset, we applaud the proposed Program as a first step in achieving, the overarching goal, as stated in Section 1 of the bill, to collect as much past due unclaimed property as possible in order to return it to California residents. To achieve that goal the Program should incent enrollment by as many holders as possible and also ensure that what is reported as part of the Program is complete – not just a portion of what is past due. However, a robust and meaningful voluntary compliance program should also encourage all holders with past due property to come forward and, at the same time, ensure that holders who complete the Program become regular and ongoing annual filers.

As drafted, the proposed Program does not go far enough to achieve the goal of collecting all unreported unclaimed property. Instead, the proposed Program is simply an amnesty program that is substantively no different than the amnesty program the State Controller's Office ("SCO") offered in the early 2000s. In its current form, the Program is simply a pathway for holders to self-identify past due property and report and remit it in exchange for interest abatement. Further, the proposed Program is even more restrictive in who can participate than the prior amnesty program, and provides a shorter time horizon to identify, report and remit past due property.

While the prior amnesty program yielded \$196 million in additional past due unclaimed property being reported, the prior program did little to nothing to increase the amount of unclaimed property that gets reported annually to California. As the SCO Office stated in its March 1, 2020, SCO Report to the Joint Legislative Budget Committee and Chairpersons of the Fiscal Committees of the Assembly and Senate, amnesty programs are ineffective because they (1) are unlikely to result in sustainable compliance with the California Unclaimed Property Law, (2) trigger systemic noncompliance; and (3) result in additional state costs. California historic

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annual filing data from the same report demonstrably shows that the prior amnesty program had little impact on annual filing:

- In 2001-2002 when SCO introduced its amnesty program, non-amnesty standard annual reports were 15,043 total reports yielding \$586 million of unclaimed property reported and remitted.
- In 2016-2017 there were 16,555 holder reports in which \$594 million dollars was reported and remitted. That equates to 10% increase in holder reports over the last 15 years, and a 1.365% increase over the past fifteen years in the amount of unclaimed property reported to CA through annual compliance.
- In fact, in the period 2013-2014 through 2018-2019, there were only two years in which the total amount of unclaimed property reported to California through standard annual reporting exceeded the amount reported/remitted in 2001-2002.¹

We appreciate that California residents would benefit from an additional one-time remittance of \$200 million in unclaimed property. However, the evidence suggests that a program yielding the same results as the prior amnesty program, will not increase annual compliance or increase the amount of unclaimed funds returned to California residents. Thus, not meeting the overall goal of the Program.

On the other hand, if the Program is designed to encourage ongoing annual compliance, the amount returned to California owners would increase accordingly. The following example illustrates that point. On average over the period 2013-2019, the SCO returned 45.40% of unclaimed property that is remitted year over year.² Using the average amount reported for the same period, and the average amount returned by SCO, increasing the amounts reported by 10% would likely yield \$31 million in additional unclaimed property returned to California residents by SCO annually. It follows that increasing the amounts reported by 20% would likely yield \$61 million dollars in additional unclaimed property returned to California residents by SCO annually. Increasing annual compliance by 100% would likely yield \$294 million in additional unclaimed property returned to California residents annually by the SCO.

	10% increase	20% increase	30% increase	40% increase	50% increase	100% increase
Baseline: \$644,881.17	\$ 709,369.28	\$ 773,857.40	\$ 838,345.52	\$ 902,833.63	\$ 967,321.75	\$ 1,289,762.33
Amount returned to owners by SCO	\$ 322,080.10	\$ 351,360.11	\$ 380,640.12	\$ 409,920.13	\$ 439,200.14	\$ 585,600.18
Avg Amt Returned by SCO	\$ 290,683.33	\$ 290,683.33	\$ 290,683.33	\$ 290,683.33	\$ 290,683.33	\$ 290,683.33
Amt not being returned to owners	\$ 31,396.77	\$ 60,676.78	\$ 89,956.79	\$ 119,236.80	\$ 148,516.81	\$ 294,916.85

¹ See the March 1, 2020, SCO Report to the Joint Legislative Budget Committee and Chairpersons of the Fiscal Committees of the Assembly and Senate.

² This statistic, based on data from March 1, 2020, SCO Report to California Legislature (Page 5), is somewhat misleading, as owners can claim property reported in prior years, not necessarily the year the property was remitted. However, averaging the amount returned (especially since the amount reported is essentially static), a trend can be determined.

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It is thus evident that a Program designed to maximize and incent enrollment by as many holders as possible and that ensures material and ongoing annual compliance would benefit California residents on an ongoing basis. Based on our experience and knowledge of other state programs, we believe the Program can achieve these dual goals with the proposed amendments referenced below.

1. Strike §1577.5(d)(3) and (4) as Unfair to Certain Holders

The first proposed amendment would be to strike paragraphs (d)(3) and (4) in proposed Section 1577.5:

~~(3)The Controller has notified the holder of an interest assessment under Section 1577 within the previous five years, and the interest assessment remains unpaid at the time of the holder's request to enroll.~~

~~(4)The Controller has waived interest assessed against the holder within the previous five years.~~

Under the current version of the bill, holders that have been assessed interest and have an outstanding waiver request as well as holders that have received a waiver of interest in the last five years, are prevented from taking part in the Program. Holders are often assessed interest in error or have good cause to receive an abatement of such an assessment. Why should holders who have lawfully appealed a wrongful assessment of interest be treated differently than those holders that never received an interest assessment but failed to report an entire property type? It does not stand to reason that these holders who have correctly received an abatement of interest or that are currently requesting a valid abatement of interest, should be treated differently than non-compliant holders. Holders hit especially hard by these provisions are holders that want to come into compliance but have acquired a company which has received an interest waiver in the past. If the goal is to encourage compliance, it does not make sense to prevent the holders from taking part of the proposed Program. It is for these reasons that we suggest the removal of subsections (3) and (4) of section 1577.5.

2. Increase the Completion Requirement from Six Months to Eighteen Months

We also propose to amend the bill to extend the amount of time a holder must submit a report after enrolling in the Program from six months to eighteen months. Based on our experience, it takes most holders, especially large, complex organizations, more than six months to complete a self-review in order to identify all past due unclaimed property. Other state voluntary compliance programs allow for at least a year (with the possibility for extensions), while other successful state voluntary compliance programs allow 18 months to two-years. We propose 18-months as enough time for California holders to complete the Program. While there will be holders who are able to report well within 18 months, providing a longer timeframe will incent holders to employ a more thorough self-review. Accordingly, we would suggest amending Section 1577.5 (e)(4) as follows:

(4) Reports to the Controller as required by subdivisions (b), (c), and (e) of Section 1530

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within ~~six~~ eighteen (18) months after the date on which the Controller notified the holder of their enrollment in the program, unless the Controller sets a different date.

3. *Include a Waiver of Audit Limited to Property Types, Entities and Years Reviewed as Part of the Program*

The proposed Program does not authorize the state to waive its right to audit holders completing the Program. Combined with the short time period to conclude the Program, this will likely drive participation rates in the Program downward.

Instead, a program that allows the state to waive its right to audit for the same property types, entities and years reviewed as part of the program would likely provide an even greater incentive to participate. Such a waiver should be contingent upon the holder filing annual reports in the three annual reporting cycles following the conclusion of the Program. The limited audit waiver we propose will undoubtedly increase participation in the program because of the certainty it provides. Most likely, it will also increase the amount of past due property that is brought forward because holders will want to take advantage of the waiver. Most importantly, it will increase ongoing annual reporting. Our suggestion is to add a new subsection (h) to 1577.5 to read as follows:

(h) The Controller shall not conduct an examination under § 1571 of any holder completing California Voluntary Compliance Program for the time periods and property types reviewed and submitted under this section, unless the Controller reasonably determines the holder has made a fraudulent or willful misrepresentation in reporting unclaimed property pursuant to paragraph (2); or if the holder fails to file annual reports pursuant to Section 1532 in the three annual reporting cycles following the completion of the California Voluntary Compliance Program.

California has a great opportunity here to create a meaningful and robust voluntary compliance program that has the potential to return hundreds of millions of dollars to California residents. We appreciate the opportunity to provide this position letter to the Committee and hope that the Committee takes the time to review our proposals. We are available either collectively or individually to provide testimony or answer any other questions you may have.

Thank you for your time.

Sincerely,

True Partners Consulting LLC – Cathleen Bucholtz

Reed Smith LLP – Sara Lima

MarketSphere Unclaimed Property Specialists – Heather Gabell

Sovos Compliance LLC – Freda Pepper