



Officers, 2020-2021

Robert J. Tuinstra, Jr.
Chair
Corteva Agriscience

Michael F. Carchia
Vice Chair
Capital One Services, LLC

Mollie L. Miller
Secretary & Treasurer
*Fresenius Medical Care
North America*

Arthur J. Parham, Jr.
Immediate Past Chair
Entergy Services, LLC

Amy Thomas Laub
Past Chair
Nationwide Insurance Company

Douglas L. Lindholm
President
Council On State Taxation

Directors

Madison J. Barnett
The Coca-Cola Company

Barbara Barton Weiszhaar
HP Inc.

Deborah R. Bierbaum
AT&T Services, Inc.

C. Benjamin Bright
HCA Healthcare, Inc.

Sandra K. Cary
LKQ Corporation

Susan Courson-Smith
Pfizer Inc.

Karen DiNuzzo-Wright
Walmart Inc.

Jamie S. Fenwick
Charter Communications

Kurt A. Lamp
Amazon.Com

Stephen J. LaRosa
Alexion Pharmaceuticals, Inc.

John H. Paraskevas
Exxon Mobil Corporation

Rebecca J. Paulsen
U.S. Bancorp

Robbi Podrug
Best Buy Co., Inc.

Michael R. Raley
VF Corporation

Patrick A. Shrake
Cargill, Incorporated

Kyle Snedaker
Conagra Brands, Inc.

Archana Warner
Exelon Corporation

Emily T. Whittenburg
Nike, Inc.

Patrick J. Reynolds

Senior Tax Counsel

(202) 484-5218

preynolds@cost.org

October 14, 2021

VIA EMAIL

Wisconsin Senate
Senate Committee on Financial Institutions and Revenue

Re: Concerns with Certain Unclaimed Property Provisions in A.B. 325

Dear Chair Kooyenga, Vice-Chair Jagler, and Members of the Committee,

I respectfully submit these comments on A.B. 325, which is ostensibly based on the Uniform Law Commission's Revised Uniform Unclaimed Property Act (RUUPA). Although the RUUPA legislation has received serious criticism since its promulgation (COST prefers the American Bar Association's Draft Model Unclaimed Property Act ("ABA Draft")¹), certain provisions in A.B. 325 fail to meet even the minimal holder protections provided in the RUUPA. While the legislation contains some improvements over last year's A.B. 752 in that it would maintain the State's current exemption for business-to-business transactions and gift cards, it continues to include provisions that are either contrary to RUUPA, the ABA Draft, or federal common law.

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 own property, employ workers, make substantial sales, and are incorporated in Wisconsin.

Statute of Limitations Inconsistent with RUUPA

RUUPA contains a five-year statute of limitations for nonfraudulent reports and a catch-all statute of limitations of ten years from when the duty to report arises. The ABA Draft shortens those periods to four and seven years, respectively. Section 101 of A.B. 325 contains the RUUPA five-year statute of limitations for nonfraudulent reports, but subsection (3) provides that if a holder files a report but does not report property required

¹ Attached. Note that neither the RUUPA nor the ABA Draft have been approved by the ABA House of Delegates.

to be included in the report, it is subject to the ten-year statute of limitations. This language renders the five-year statute of limitations meaningless and is contrary to RUUPA.

Sale of Securities

RUUPA provides that securities can be escheated and liquidated after three years. This relatively short period of time raises Constitutional due process and takings issues,² which is why the ABA Draft provides that securities can be escheated after ten years. Section 105 of A.B. 325 exacerbates those concerns and invites litigation by allowing the State to liquidate securities after only one year.

Priority Rules Inconsistent with Federal Common Law

A.B. 325 expands Wisconsin's jurisdiction to escheat unclaimed property in a manner inconsistent with federal common law. Federal common law (*Texas v. New Jersey*) establishes primary (state of last known address of the owner, as reflected in the books and records of the holder) and secondary (state of incorporation of the holder) priority rules that cannot be superseded by a state. Section 69 applies a third priority rule allowing escheatment if the transaction takes place in Wisconsin and is not "specifically exempt" in states with primary and secondary priority of escheatment. In many states, the unclaimed property statutes of the primary and secondary states may simply not apply to an item of property, even though that property is not "specifically exempt." If the property is not escheatable, for whatever reason, to states holding primary and secondary escheat priority, neither should it be escheatable to Wisconsin under a contrived catch-all third priority rule.

Additionally, Section 66 provides that the *administrator* may determine whether the last known address of the owner is in Wisconsin, even if the holder's books and records do not reflect such an address. This is contrary to federal common law and establishes a standard that makes it impossible for holders to comply.

Expansion of Property Rights to Escheated Property

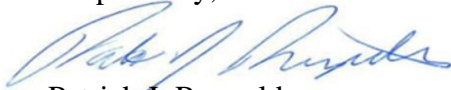
Section 101(1) provides that the expiration of a statute of limitations on an owner's right to receive or recover property, whether specified by contract or court order, does not prevent the property from being reported. This section thus bestows upon the State more rights than the actual owner of the property. Unclaimed property laws should allow the State to temporarily step into the shoes of the owner until the owner comes forth; Wisconsin should not be granted *more* rights to unclaimed property than the rightful owner.

² See the attached article from the ABA's *Business Law Today* publication.

Conclusion

For the foregoing reasons, we believe this Committee should seek further amendments to A.B. 325 or table this legislation until the legislature has had an adequate opportunity to address the issues raised above and hear from all stakeholders on the issues.

Respectfully,



Patrick J. Reynolds

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