

Section of Taxation

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February 15, 2018

Kaitlin D. Wolff, Esq.
Legislative Counsel
Uniform Law Commission
111 N. Wabash Avenue, Suite 1010
Chicago, IL 60602

Dear Ms. Wolff:

Pursuant to conversations between the delegates of the American Bar Association Section of Taxation (the “Tax Section”) and Carl Lisman at the ABA Midyear Meeting, the Tax Section requests that the National Conference of Commissioners on Uniform State Laws (“Uniform Law Commission” or “ULC”) reopen and reconsider certain provisions of the Revised Uniform Unclaimed Property Act (“RUUPA”). Several members of the Tax Section with extensive background in unclaimed property law have studied the provisions of RUUPA.

RUUPA added new protections for owners of unclaimed property and otherwise improved the unclaimed property law. Upon study by the Tax Section, however, the conclusion was reached that the Act still lacks essential safeguards for property owners and others who would be impacted by the law.

- RUUPA fails to recognize the derivative rights doctrine. The derivative rights doctrine, which is a fundamental tenet of unclaimed property laws, means that the state stands in the shoes of the owner of the property and has only those rights and generally is subject to the same defenses to which the owner of the property would be subject. By failing to apply the derivative rights doctrine, RUUPA effectively alters the legal relationships between the owners and the holders (obligors) in defining the state’s claim to custody of the property on behalf of the owners.
- The RUUPA Article 7 provisions for the disposition of securities held by the states on behalf of the owners raise a number of concerns. RUUPA would benefit from additional protections afforded securities owners, including to defer Federal rule tax consequences of sales of securities.
- RUUPA authorizes the states to use contingent fee auditors in Section 1009(e). The contingent fee audits have been a source of considerable controversy over the years. While the states have legitimate concerns about their resources available for audit, the use of contingent fee auditors presents too many potential conflicts of interest when the auditor conducting the review of compliance with the unclaimed property law has a stake in the results. The use of contingent fee auditors in many cases does not advance the primary goal of unclaimed property laws to reunite property with the owners.


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- RUUPA's transitional provisions could require holders to turn over property that was not reportable when the property would have been presumed to be abandoned under the states' prior unclaimed property laws. Such application of new law raises serious questions and concerns regarding retroactivity.

We commend the ULC for its efforts in producing RUUPA. For the reasons expressed above and for other reasons, we believe that RUUPA requires additional consideration. We look forward to the opportunity to work together to achieve a sound uniform law to be adopted by the states.

Thank you for considering this request to reopen and reconsider certain of the RUUPA provisions. The Taxation Section is available, as needed or desired, to provide any additional information or explanation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KH', with a horizontal line extending to the right.

Karen Hawkins
Chair, Section of Taxation

cc: Anita Ramasastry, President, Uniform Law Commission
Carl Lisman, Chair of the Executive Committee, Uniform Law Commission