

HOLDERS COALITION

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Re: Revenue Ruling 2018-17 Withholding and Reporting with Respect to Payments from IRAs to State Unclaimed Property Funds

Ladies and Gentlemen,

The Holders Coalition appreciates your willingness to discuss with us our concerns relating to Revenue Ruling 2018-17 (the "Ruling"), which could be construed to impose withholding and reporting requirements on holders of unclaimed IRA accounts when they transfer assets from a shareholder's IRA account to a state pursuant to that state's unclaimed property law. Members of the Holders Coalition represent a diverse group of institutions impacted by the Ruling, including broker dealers, investment companies (mutual funds), banks etc. that serve as custodians or record keepers for traditional IRAs.

The Ruling provides that when an IRA account is transferred to a state pursuant to the state's abandoned property law, the account becomes subject to federal income tax withholding under §3405 of the Internal Revenue Code ("IRC") and Form 1099-R reporting under §408 of the IRC. This Ruling raises concerns for institutions that have responsibilities under both the IRC and the federal securities laws; therefore, we urgently seek clarification and guidance from the Internal Revenue Service ("IRS") regarding compliance with the Ruling. In particular, the Ruling raises concerns for the members of the Holders Coalition and other institutions that maintain IRA assets on behalf of IRA owners when the IRA account does not consist only of cash, but is instead comprised of securities (including equities, debt securities, mutual funds and limited partnership units). This is because the Ruling appears to

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presume that the holders of these accounts have authority to liquidate securities on behalf of the investor, which we do not believe is authorized under the federal securities laws. That is, if the account consists of securities, compliance with the Ruling might require a breach of federal securities law, in that it would necessitate liquidation of the securities to comply with the Ruling's withholding and tax payment requirements.

The federal securities laws at issue are designed to protect investors. They preclude holders (including broker-dealers and mutual fund transfer agents, among others) of securities accounts – including IRA accounts – from liquidating some or all of a customer's account without either authorization from the owner to do so or pursuant to a court order, which affords the account owner due process. State abandoned property laws themselves do not require the liquidation of a shareholder's account without the shareholder's consent. Instead, when an IRA or other asset in a shareholder's account is deemed abandoned under state law, the entirety of the account is transferred from the IRA account to a state account with the same institution pursuant to the state's abandoned property law, where the assets are then held by the state for the owner.

An example of the regulatory requirements designed to protect an owner's interest in an account held at a broker-dealer is Financial Industry Regulatory Authority ("FINRA") Rule 408(a), which defines prohibited conduct to include "[p]urchasing or selling securities in a customer's account without first contacting the customer and receiving the customer's authorization to make the sale or purchase." Holders subject to FINRA's rule are concerned with the regulatory and civil liability they are likely to incur as a result of liquidating a customer's account without lawful authority to do so. Similarly, pursuant to 17 CFR §240.17Ad-12, Securities and Exchange Commission Rule 17Ad-12 prohibits a transfer agent from liquidating the shares of its clients' shareholders.

Most states that receive escheated accounts holding securities liquidate such securities after maintaining them for a specified period of time. Notwithstanding such liquidation, the proceeds from the sale of the securities are held for the account owner should he or she – or their beneficiaries – claim the securities. In other words, while the states, upon liquidation of any securities held in an IRA account, would be in a position to pay any required tax withholding due on such account when it is liquidated (distributed), the same is not true of the financial institution that transfers those assets to the state under a state's unclaimed property law.

Due to the Ruling's impending implementation date of January 1, 2019, we believe the substantial issues it raises need to be resolved as soon as practicable. It is for this reason that we have respectfully requested a meeting with representatives of the IRS and the Treasury Department. We very much appreciate your interest in working through these issues with us.

Sincerely,

Toni J. Nuernberg, CAE
Holders Coalition Administrator

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The Holders Coalition ("Coalition") represents institutions whose members hold or represent owners of property. The Coalition was initially formed to assist the Uniform Law Commission ("ULC") develop and approve the Revised Uniform Unclaimed Property Act of 2016 ("RUUPA 2016"). Throughout the multi-year process, the members of the Coalition earnestly worked with the ULC's Drafting Committee and other participating stakeholders to develop the RUUPA 2016, sharing valuable testimony, insight, and expertise on legal, regulatory, technical, and operational matters. With the adoption of the RUUPA 2016 by the ULC, the Coalition continues to work together to address common issues impacting the owners of property.

Holders Coalition Members

Because of the breadth of issues being considered by the Holders' Coalition and the collaborative nature of our discussions, not all signatories to this letter are equally impacted by the issues for which we make a collective recommendation. The recommendations of the Holders' Coalition do not necessarily reflect the views of all present or future clients, attorneys, or members of each participant in the Coalition. Signatories to this letter with differing views will advance them separately from the collective recommendations.

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