



UNCLAIMED PROPERTY
PROFESSIONALS ORGANIZATION

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February 19, 2018

Representative Paul Graves
122B Legislative Building
PO Box 40600
Olympia, WA 98504

Re: Washington H.B. 2486 - Unclaimed Property Provisions

Dear Representative Graves:

The Unclaimed Property Professionals Organization (UPPO) is the national trade association of unclaimed property holders and service providers. We represent over 400 unclaimed property holders and service providers and 1,300 unclaimed property professionals of diverse industries and employer size. UPPO provides education to holders and advocates for fairness in unclaimed property laws and regulations.

UPPO assisted the Uniform Law Commission (ULC) in developing the Revised Uniform Unclaimed Property Act (RUUPA), which the ULC adopted in 2016 and advocates for fairness in unclaimed property laws and regulations. UPPO respectfully submits our concerns with H.B. 2486 which require redress as the House continues its review of this proposed legislation. While H.B. 2486 closely tracks RUUPA, and UPPO supports many of the provisions in H.B. 2486, we have identified certain issues that deviate from RUUPA and that warrant examination. As such, UPPO hereby proposes certain additions and/or revisions to the bill.

Retention of Records – Section 404

Comment: UPPO supports the language in section 404 to the extent it identifies the records to be kept that are considered sufficient for audit purposes. However, section 404 increases the years for which those records are to be retained to 10 years. UPPO believes that in order to avoid undue burden, a requirement that is tailored to fit within other regulatory recordkeeping time periods is appropriate. As Washington's current 6-year requirement is more in line with other recordkeeping time periods, it is UPPO's position that the 6-year requirement should be retained.

Suggested Language: UPPO suggests that the language contained within H.B. 2486 remain the same except that the word “ten” be replaced with the word six as follows:

A holder required to file a report under section 401 of this act shall retain records for six years after the later of the date the report was filed or the last date a timely report was due to be filed, unless a shorter period is provided by rule of the administrator.

Periods of Limitation and Repose - Sec. 610

Comment: UPPO believes that H.B. 2486 should provide a Statute of Limitations in line with the time period in which records are required to be retained as this allows there to be records sufficient for an audit to avoid estimation. Stakeholders in the unclaimed property industry, including the National Association of Unclaimed Property Administrators, agree that estimation should only be used to encourage holders to maintain adequate records. It should not be used as a general revenue raising tool.

Suggested Language: UPPO suggests that the language contained within H.B. 2486 remain the same except that the word “ten” be replaced with the word “six” as follows:

The administrator may not commence an action, proceeding, or examination with respect to a duty of a holder under this chapter more than six years after the duty arose.

Disposal of Securities – Section 702

UPPO does not support the current section 702 contained in H.B. 2486 to the extent it requires the State to sell remitted securities “as soon as possible.” Also, the section fails to require the administrator to give the apparent owner notice under Section 503. This version of the proposed act deviates dramatically from RUUPA.

Comment: UPPO believes that this section should protect the owner from unnecessary losses and potential market growth of their securities. The premature sale of securities does not protect the owner of the property which is the purpose of the unclaimed property law. UPPO supports the RUUPA version of Section 702 as it provides stronger consumer protections and allows additional time for owners to be located and be reunited with their securities prior to sale. It also gives the owner some additional protection from being pulled out of the securities market before they would otherwise choose to do so. Further, UPPO supports the RUUPA version as it embodies the agreement achieved by NAUPA and the securities industry. The industry agreed to a lower dormancy period in exchange for NAUPA’s agreement that securities will be held by administrators for a minimum of three years.

Suggested Language: UPPO proposes that the RUUPA language be utilized.

Alternatively, if the language requiring the administrator to sell the securities immediately upon receipt is retained, a provision should be added that would allow for a period of protection for the owner to receive replacement securities of fair market value and all entitled distributions including dividends and interest.

Recovery of Securities or Value by Owner – Section 703

Comment: UPPO does not support the current section 703 contained in H.B. 2486 as it fails to provide protections to the owner of the value of reported securities for any period of time.

Proposed language: UPPO proposes that the RUUPA language be utilized to protect shareholders by allowing replacement securities or the market value of the securities plus dividends, interest and other increments for six years. Should an owner's securities be sold by the state, they should be made whole for the value of the security up to six years after the property has been reported/remitted.

Administrative Review – Section 1103

Comment: UPPO believes that H.B. 2486 should provide for a judicial remedy of any final decision in an administrative proceeding. Such a provision would provide the opportunity for a completely independent and meaningful review of the unclaimed property administrator's determination.

UPPO strongly disapproves of Section 1103 as written and does not support the provision in its current version for the following reasons:

1. A Petition for Review of denial of refund must be filed 30 days after denial. This is not a sufficient time period in which to prepare a review. The RUUPA allows for 90 days.
2. A Petition for Review of an audit assessment must be filed "before the due date of the assessment." This is not a sufficient time period in which to prepare a review.
3. The right to judicial review of any final decision in an administrative proceeding is removed.

Judicial Remedy – Section 1104

Comment: UPPO believes that H.B. 2486 should provide for judicial review of the assessment before payment is required to be remitted to the State. It appears that the language utilized for this provision was modeled after the judicial review procedures as found in the Washington Tax Code. Tax Code procedures do not translate to fairness in an unclaimed property review. Typically, under the Tax Code, states require payment before a challenge to a tax assessment to prevent taxpayers from impacting government tax collection expectations by filing challenges with the primary goal of delaying payment. Since unclaimed property should not be considered revenue to the state, allowing a pre-payment challenge does not cause the same problem. Furthermore, because certain property, such as securities, is not in cash form, requiring pre-payment to the state before actual liability is determined can cause harm to the apparent owner which is not an issue in the tax area.

UPPO strongly disapproves of Section 1104 as written and does not support the provision in its current version for the following reasons.

1. As written, the provision only provides for a judicial review after property is paid or delivered to the administrator. There is no option to seek judicial review upon assessment and before payment is remitted to the state.
2. The right to appeal to the court is only available to those holders who have kept and maintained records "as required." By way of this bill, Washington's record retention requirement will increase from 6 years to 10 years and the records to be retained will only just have been defined. Therefore, it is likely that holders have not preserved sufficient records "as required" for the earlier years.
3. Holder only has 30 days after "the administrator rejects in writing an application for refund or return of property" to file for judicial review. Therefore, the holder has to make an official petition for refund before seeking judicial intervention.

Proposed Language: UPPO proposes that Washington adopt the judicial review language contained in RUUPA.

Transitional Provision – Section 1503

Comment: UPPO recommends that this provision be stricken from the legislation as it runs contrary to legal and constitutional law. The result of this section is that any repeal of exemptions or changes of dormancy determinations will be retroactive for 10 years. UPPO recommends the following language to replace the current language of Section 1503 (a): "Any property that was required to be reported before the effective date of this Act, but that is not required to be reported under this Act, shall not be required to be reported after the effective date. Any property that was in existence prior to the effective date of this Act, and was not required to be reported before the effective date of this Act, shall not be required to be reported under this Act."

We appreciate your consideration. Please contact me with any questions or comments regarding the content of this letter.

Sincerely,



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