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48933-2012

January 3, 2012

Richard J. Darling, Deputy Treasurer  
Financial and Administrative Services  
State of Michigan Department of Treasury  
P. O. Box 30756  
Lansing, MI 48909

Re: Notice Regarding Unclaimed Property Voluntary Disclosure Program

Dear Mr. Darling:

This letter is sent to express concern over the content of the above-referenced Notice that was recently received by a Michigan lawyer who brought it to the Bar's attention. Having no way of gauging the size or composition of the audience that received a similar notice, but surmising that both lawyers and nonlawyers were recipients, I have concerns about the potential confusion the Notice creates. Because many of Michigan's lawyers as well as their clients have the potential of becoming holders of unclaimed property, the clarity of communication about this topic is important on multiple levels. Lawyers want to competently advise impacted clients how to respond, as well as make appropriate choices for their law firms in responding. To the extent that the form misleads or confuses the recipient about legal obligations, further communication from your division might be in order.

Although the Notice references a voluntary disclosure program, the content gives recipients only two options: either report about and remit unclaimed property or file a form "attesting to compliance" with the Uniform Unclaimed Property Act ("UUPA"), by affirmatively stating that the reporting entity has no unclaimed property. As the UUPA does not itself contain a mandate that holders affirmatively report annually an *absence* of unclaimed property subject to the Act, it would appear that the filing of an Attestation of Compliance is wholly voluntary. The Notice expresses this as an obligatory step in two places – within the second paragraph<sup>1</sup> and at the end of the third paragraph<sup>2</sup>.

A second point of concern is the declaration that, "Unclaimed Property examinations will cover the last 10 reportable years." To be sure, if a would-be holder executes the Michigan Unclaimed Property Voluntary Disclosure Agreement, the holder is contractually agreeing to language that such an examination "may cover up to the last ten reportable years." Similarly, any potential holder who signs the Attestation is attesting to awareness<sup>3</sup> that unclaimed property examinations will cover up to the last ten reportable years. But, although the UUPA requires holders of unclaimed property to maintain records of the names and

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<sup>1</sup> "If an entity does not have unclaimed property to report, an *Attestation of Compliance with Unclaimed Property Reporting* (Form 4305) **is to be filed** with Treasury by July 1st." [Emphasis added.]

<sup>2</sup> "If you are certain you do not have unclaimed property to report and remit, enrollment in the Voluntary Disclosure Program is not necessary; however, you **must** complete Form 4305." The mandatory nature of this is reinforced by the next sentence: "**The deadline for submitting either of these forms is January 31, 2012.**" [Emphasis in original.]

<sup>3</sup> The choice of "I am aware..." with reference to the unclaimed property examination versus "I acknowledge...Section 31(2)" in the paragraph immediately above it in the form Attestation demonstrates the lack of an identifiable provision within the UUPA covering the ten-year examination period concept.

last known addresses of owners for ten years after the property becomes reportable, no express statutory authority for ten-year retrospective audits is articulated within the UUPA.

With both points in mind, any holder who executes the Voluntary Disclosure Agreement creates remedies and avenues for the Department that it does not appear to have, absent that agreement. For that reason, it is crucial that any communication eliciting voluntary participation clearly express the voluntary nature of that participation. The Notice does not accomplish that.

If, on the other hand, there is statutory authority requiring the filing of an attestation when no unclaimed property is held, reference to it should be included. Similarly, if there is statutory authority for a ten-year retrospective examination based upon a failure to file an attestation, it should be referenced.

Your prompt response is appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Welch".

Janet K. Welch  
Executive Director

cc: Gonzalo Llano, Administrator, Unclaimed Property Division, Michigan Department of Treasury  
Dawn Evans, Director, Professional Standards Division, State Bar of Michigan