

RESOLUTION

IN SUPPORT OF THE PRESERVATION OF THE ABILITY OF STATE UNCLAIMED PROPERTY PROGRAMS TO UTILIZE UNCLAIMED PROPERTY EXAMINATION FIRMS COMPENSATED ON A CONTINGENCY FEE BASIS AND OPPOSING LEGISLATION AND OTHER MEASURES THAT WOULD PROHIBIT OR LIMIT THIS ABILITY

WHEREAS, the National Association of Unclaimed Property Administrators (NAUPA) is the foremost authority on unclaimed property, representing every unclaimed property program in the United States and facilitating collaboration among unclaimed property administrators in their efforts to protect owners of unclaimed property and ensure compliance with the unclaimed property laws, and

WHEREAS, state unclaimed property laws are intended to ensure that unclaimed property is either returned to its rightful owners or turned over to state unclaimed property programs where it can be used for the public good until the rightful owner can be located, rather than being allowed to remain in the continued possession of persons or organizations merely holding such property (“holders”), and

WHEREAS, conducting unclaimed property examinations is a necessary part of ensuring compliance with the unclaimed property laws both by serving as a check on the accuracy of holder’s voluntary self-reporting and by deterring non-compliance by holders; and

WHEREAS, many states lack sufficient resources to conduct unclaimed property examinations on their own (particularly examinations of large multi-state companies) and, as a result, use of third-party contract examiners has become an essential component of states’ compliance efforts; and

WHEREAS, the use of unclaimed property contract examination firms compensated on a contingency fee basis has been an accepted practice of unclaimed property programs for close to 40 years and all states currently use such contracts to conduct some or all of their unclaimed property examinations, and

WHEREAS, states have determined that contingency fee (also known as “pay for performance”) compensation arrangements are often the most fiscally sound approach to compliance examinations because such arrangements, among other things:

- (i) do not require states to increase the size and costs of their audit programs in a manner that would not be possible due to budgetary constraints;
- (ii) prevent paying excessive fees relative to the amount of unclaimed property recovered during an examination; and

(iii) ensure that owners are able to be paid 100% of the value of their property once they have been located; and

WHEREAS, payments to contract examiners are based on the amount of unclaimed property that is delivered to the state, and contract examiners are not compensated for the amount of unclaimed property that is able to be returned to legal owners by holders through due diligence during the examination process, and

WHEREAS, contract examiners identify and document what they consider to be unclaimed property being held by an entity under examination, and “[s]uch functions are investigative and not quasi-judicial” (Fidelity & Guaranty Life Insurance Co. v. Frerichs, No. 17-3050, 2017 U.S. Dist. LEXIS 181851, at *36 (C.D. Ill. Sep. 1, 2017)), and

WHEREAS, only states have the authority to determine whether property being held by an entity is unclaimed; contract examiners have no authority to compel the reporting and remittance of unclaimed property or to assess interest and penalties, and the entity under examination reserves its rights to object to, or appeal, any of the examiner’s findings, and

WHEREAS, NAUPA has consistently expressed its support for the ability of states to utilize contract examiners compensated on a contingency fee basis, including in its May 2014, submission to the Uniform Law Commission (ULC) Drafting Committee to Revise the Uniform Unclaimed Property Act (RUUPA), in which NAUPA explained the role of contract examiners, the contribution that they make to state unclaimed property programs, and the value of being able to compensate contract examiners on a contingency fee basis in achieving the states’ goal of identifying, collecting, and reuniting unclaimed property with its rightful owners, and

WHEREAS, in adopting RUUPA in 2016, the ULC chose to “expressly permit[] the use of contract auditors working on a contingent fee basis,” after extensive debate on the subject during the four-year drafting process and after having carefully considered strong and persistent opposition by some holder advocates, and

WHEREAS, NAUPA has determined that prohibiting or limiting the current ability of states to utilize contract examination firms compensated on a contingency fee basis would be harmful to the states’ ability to ensure compliance with their unclaimed property laws and their ability to identify and reunite unclaimed property with its rightful owners.

NOW, THEREFORE, BE IT RESOLVED that the National Association of Unclaimed Property Administrators, an affiliated network of the National Association of State Treasurers, supports the continued preservation of the ability of state unclaimed property programs to utilize contract examination firms compensated on a contingency fee basis when performing unclaimed property examinations.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the National Association of Unclaimed Property Administrators, an affiliated network of the National Association of State Treasurers, opposes the legislation or any other efforts that would prohibit in whole or in part the use of contract examination firms on a contingency fee basis for unclaimed property examinations.

This resolution shall remain in effect until amended or rescinded.