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January 16, 2023

Representative April Berg, Chair
Representative Chipalo Street, Vice Chair
House Finance Committee
Washington State Legislature

Via E-mail

Re: Opposition to H.B. 2095, Treatment of Gift Certificates as Unclaimed Property

Dear Chair Berg, Vice Chair Street, and Members of the Committee:

On behalf of the Council On State Taxation (COST), we are writing in opposition to H.B. 2095, which would eliminate the State's current exclusion of unused gift certificates from the definition of unclaimed property. The bill would treat gift certificates that are not used for more than three years as abandoned/unclaimed property that must be escheated to the State.

About COST

COST is a nonprofit trade association consisting of approximately 500 multistate corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. COST has a significant number of members that own property, employ workers, make substantial sales, and are incorporated in Washington.

Unused Gift Certificates Should Not Be Treated as Unclaimed Property

The COST Board of Directors has adopted a formal policy position opposing efforts to treat unused gift certificates as unclaimed property, which provides:

*State unclaimed property programs should seek to unite owners with their property in the manner that is least burdensome to owners, holders and the State. Toward that end, such programs must: ...Exclude from the definition of abandoned or unclaimed property unidentified remittances, credit balances arising from business to business transactions, merchandise due bills, gift cards and gift certificates[.]*¹

¹ COST's policy position on this issue is available at: <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/unclaimed-property.pdf>.

House Bill 2095 would separate the State's unclaimed property program from the true purpose of the program—uniting owners with their property. Treated as unclaimed property, unused gift certificates would improperly become an alternative revenue source for Washington. This conversion greatly harms gift certificate owners who are never reunited with their property and holders (the issuers of the gift certificates) who will be required to turn over property which may not be truly abandoned.

The bill also implicates a more fundamental inequity. By subjecting gift certificates to the escheat process, the bill proposes to convey more property rights to the State than are entitled to the owners of gift certificates. Owners of gift certificates are typically entitled to redeem the certificates for only merchandise or services. As unclaimed property escheated to the State, however, H.B. 2095 would force holders to escheat the full cash value of the gift certificate to the State. As such, the bill would unduly interfere in the contractual agreement between purchasers of gift certificates and the issuers of those gift certificates.

If this bill serves as an attempt to generate revenue from the unclaimed property program by circumventing the unclaimed property priority rules, then Washington should anticipate unnecessary and protracted litigation if this bill is adopted. State unclaimed property priority rules (determining which state can require remittance of unclaimed property) are controlled by longstanding U.S. Supreme Court case precedents. *See Texas v. New Jersey*, 380 U.S. 518 (1965). Washington cannot change these rules. *See New Jersey Retail Merchants Association v. Sidamon Eristoff*, 669 F.3d 374 (3rd Cir. 2012) (condemning a large portion of New Jersey's 2010 legislative change to its unclaimed property program related to the treatment of gift certificates).

Lastly, gift certificate-issuing companies incorporated in Washington have likely incorporated in this State with the understanding that Washington currently excludes gift certificates. Those companies can legally reincorporate in another state if Washington changes the gift certificate exclusion by adopting H.B. 2095.

Conclusion

For these reasons, we strongly oppose H.B. 2095 and urge the Committee to reject this proposal.

Respectfully,



Stephanie T. Do



Patrick J. Reynolds

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director