

## MEMORANDUM

**TO:** BOARD OF DIRECTORS **DATE:** OCTOBER 26, 2022

**FROM:** RICHARD A. DAVIS III  
SETH A. WOOLSON 

**SUBJECT:** DEPARTMENT OF REVENUE RULING REGARDING TRANSFER FEE REFUND

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### I. BACKGROUND

SVCA first established a transfer fee in 2015 at the level of \$125. Effective July 1, 2016, the transfer fee was increased to \$125 plus  $\frac{1}{4}$  of 0.01% of the sales price of the real property.

In October, 2021, the Board rescinded that portion of the transfer fee which exceeded \$125 (effective January 1, 2022) and implemented a program to refund that portion of the transfer fees that had been previously collected. That refund program is currently underway. It is expected that some of the transfer fees collected by SVCA will not be claimed. A concern has been expressed in the community that any transfer fees which are unclaimed will be deemed "abandoned property" and subject to custody of the State of Washington.

Recently, a third party unilaterally contacted the Washington State Department of Revenue ("DOR") in an effort to obtain a ruling which would be binding on SVCA as to whether unclaimed transfer fees would be considered unclaimed property and, therefore, subject to the custody of the State of Washington. We have reviewed the request and DOR's response. Neither the initial request nor the response from DOR identifies the person who submitted the request. But the Board has informed us that the Board did not authorize any SVCA representative to seek this opinion. Binding rulings cannot be obtained by a customer or consumer. They can only be issued to taxpayers which, in this case, is SVCA. That did not happen here.

### II. ISSUES

You have asked us to answer the following questions:

1. *Since the DOR ruling was not requested by SVCA, as the taxpayer, is it binding on SVCA?*
2. *If the ruling is not binding, are unclaimed transfer fees presumed abandoned and subject to the custody of the State?*

### III. ANALYSIS

#### A. The DOR Ruling Was Not Sought By SVCA and Cannot Be Binding on SVCA.

The DOR website confirms that binding rulings can only be issued to the taxpayer (business) and not to customers or consumers:

##### **Customer/consumer questions**

**Binding rulings are not issued to customers or consumers.** However, we provide tax assistance on issues of general taxability. . . .

##### **Ruling requests**

**A taxpayer requesting a binding ruling must disclose the name of the business, provide all pertinent facts, and provide a complete and accurate description of the planned transaction or business activity. The request should state the questions the taxpayer wants answered or the information the requester is seeking.**

When providing a binding ruling, the Department uses information from

- The ruling request
- The taxpayer's website
- Department of Revenue account information

The Department may use other relevant information to develop the ruling. The ruling will summarize the information used.

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##### **Informational responses**

Informational responses result from requests from consumers or from someone other than an identified business or their hired representative. Informational responses from the Department are not binding on the Department or the requestor. These responses are merely for informational purposes.

Here, SVCA (the taxpayer) did not request a binding ruling from DOR. Rather, an unidentified third party requested it and received the ruling. The ruling was not issued to SVCA and, in fact, has never been received by SVCA. We understand SVCA became aware of it through social media postings.

In light of the foregoing, we see no reason to believe that SVCA is bound by the ruling. We have issued a Public Records Act request to DOR to obtain the identity of the individual(s) who sought the ruling to confirm that it was not an SVCA authorized representative. In the meantime, we have also advised DOR that the ruling was requested by someone other than the taxpayer (SVCA). We expect DOR to confirm that the ruling is not a binding ruling as to SVCA. However, if DOR were to conclude otherwise, SVCA has the right to appeal the ruling.

**B. Any Unclaimed Transfer Fees Likely Are Not Presumed to be Abandoned Property..**

Washington has a Uniform Unclaimed Property Act, RCW 63.29 (“Original Act”). However, Washington recently adopted the Revised Uniform Unclaimed Property Act (“Revised Act”), which will go into effect on January 1, 2023, and will repeal and replace the Original Act. The pertinent provisions of the Revised Act are similar to the Original Act.

Under the Original Act, “[A]ll intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.” RCW 63.29.020(1). An “owner” means “a person having a legal or equitable interest in property subject to this chapter . . . .” RCW 63.29.010(14).

Under the Revised Act, property is presumed to be abandoned “the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises.” S.S.B. 5531, Sec. 201 (14). “Owner” means a person that has a legal, beneficial, or equitable interest in property subject to this chapter.” S.S.B. 5531, Sec. 102 (21).

Here, there is no evidence that an SVCA member who paid a transfer fee has an actual legal, beneficial, or equitable interest in the funds paid to SVCA. SVCA could terminate the refund program at any time. A member who paid the transfer fee could only establish a legal, beneficial, or equitable interest by obtaining a court ruling that they have an interest in the money and ordering SVCA to issue the refund. Further, after the statute of limitations has run, a member loses the opportunity to make that claim in court. SVCA would have the ability to obtain a binding ruling from DOR to confirm this advice.

If you have any questions, please let me know.

Richard  
Seth