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Foreign Unclaimed Property

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***In State, Out of State?
It's All Foreign to Me!***

Foreign Unclaimed Property
Within the United States

Overview of U.S. Laws on Foreign Escheat

- A. Federal Common Law
 - 1. Texas v. New Jersey
 - 2. Pennsylvania v. New York
 - 3. Delaware v. New York

- B. State Statutory Law
 - 1. Uniform
 - a) Uniform Unclaimed Property Act of 1954 & 1966
 - b) Uniform Unclaimed Property Act of 1981 & 1995
 - 2. Idiosyncratic: Delaware

Uniform Unclaimed Property Acts of 1954 & 1966

- The UUPA of 1954 & 1966 makes no specific provision for Foreign Property.
- However, the first two versions of the UUPA focused upon property “held or owing” in a state rather than a “last known address” in a state.

Uniform Unclaimed Property Acts of 1981 & 1995

**SECTION 36 (1981);
SECTION 26 (1995)**

FOREIGN ESCHEAT

This Act does not apply to any property held, due and owing in a foreign country and arising out of a foreign transaction.

Partially Foreign Transactions

(U.S. Company but non-U.S. Owner)

SECTION 3(5) (1981); SECTION 4(5) (1995)

[General Rules for Taking Custody of Intangible Unclaimed Property]

Unless otherwise provided in this Act or by other statute of this State, intangible property is subject to the custody of this State as unclaimed property if the conditions raising a presumption of abandonment under Sections 2 and 5 through 16 are satisfied and:

5. the last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or government or governmental subdivision or agency of this State; or...

The Commissioners who drafted the 1995 Act left the language of subsection 5 unchanged but re-numbered Section 3 as Section 4

1981 & 1995 Uniform Unclaimed Property Act: Official Comments

OFFICIAL COMMENT TO THE STATES:

SECTION 3(5) & SECTION 4(5) provides that when the last known address of the apparent owner is in a foreign nation the State in which the holder is domiciled may claim the property. This issue was not dealt with by the Supreme Court in *Texas v. New Jersey*, but is a rational extension of that ruling.

SECTION 26 & SECTION 36. FOREIGN TRANSACTIONS. This [Act] does not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

The Commissioners who drafted the 1995 Act repeated this comment verbatim.

1981 & 1995 Uniform Unclaimed Property Act: Other Thoughts

SECTION 3(5) & SECTION 4(5)

However rational this provision appears to be, the question is whether or not any extension of a U.S. Supreme Court ruling, no matter how logical, is binding.

SECTION 26 & SECTION 36. FOREIGN TRANSACTIONS.

In 1981 the Commissioners first drafted a provisions to exempt “wholly foreign” transactions. This provision was unchanged in 1995.

Is Subsection 5 Constitutional?

Granted these additions make sense. However, the U.S. Supreme Court's ruling dealt with only the priority among competing states, not with jurisdiction over an individual who is not a U.S. citizen. Can a state legislate beyond or outside of the Texas v. New Jersey guidelines? What's the verdict?

NO - American Petrofina Co. v. Nance,
859 F.2d 840 (10th Cir. 1988).

YES - Riggs National Bank v. District of Columbia,
581 A.2d 1229 (D.C. App. 1990).

States Enacting the Uniform Unclaimed Property Act of 1981

- Alaska
- Colorado
- District of Columbia
- Florida
- Georgia
- Idaho
- Iowa
- Maryland
- Michigan
- Minnesota
- New Hampshire
- New Jersey
- North Dakota
- Oklahoma
- Oregon
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Utah
- Virginia
- Washington
- Wisconsin
- Wyoming

States Enacting the Uniform Unclaimed Property Act of 1995

- Alabama
- Arizona
- Arkansas
- Hawaii
- Indiana
- Kansas
- Louisiana
- Maine
- Montana
- New Mexico
- Nevada
- North Carolina
- Vermont
- West Virginia

About Delaware

Delaware is one of a handful of states which did not adopt the model legislation or specifically provide for “foreign transactions” in its statutes. The Delaware Code of Escheat defines the holder (debtor) as follows:

Delaware Code Title 12 §1198(6)

(6) "Holder" means any person having possession, custody or control of the property of another person and includes....
every other legal entity incorporated or created under the laws of this State or doing business in this State....

Indian Reservations...Little Known Facts

- Indian Reservations are subject to Tribal Ordinances.
- An Indian tribal reservation is considered a sovereign entity, even though the reservation is geographically located in one or more states.
- The fifty states have no jurisdiction over these reservations. However, the tribal reservations are subject to federal jurisdiction.
- QUESTION: Is a reservation a state for the purpose of Texas v. New Jersey?

U.S. Code Title 28 § 1360(b).

State civil jurisdiction in actions to which Indians are parties

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.



Around the World in Fifteen Minutes

Unclaimed Property
Outside the United States

Puerto Rico

- P.R. Laws, Title 7, pt. VI, Ch. 133
 - Money and Other Liquid Assets Abandoned and Unclaimed
 - “Other liquid assets”: Assets that can be changed into money within a term less than 1 year with a loss that does not exceed 50% of value
 - Generally, 5 year dormancy period
 - Reports due August 10 as of preceding June 30th

U.S. Virgin Islands

- Based upon 1981 Uniform Act
 - 5 year dormancy period for most property types
 - 15 yrs for travelers' checks, 7 years for money orders, 3 years for gift certificates, 1 year for payroll
 - Normal due diligence requirement (\$50 cutoff)
 - Report due November 1 as of preceding June 30th
 - Interest and penalties for noncompliance

Canada (Alberta)

- Unclaimed Personal Property & Vested Property Act (eff. Sept. 2008)
- Coverage and dormancy periods similar to Uniform Unclaimed Property Act
 - Payroll (1 year), Life insurance (3 years), Securities and other unspecified property (5 years), Money orders (7 years), Travelers' checks (15 years), Gift cards exempt
- Jurisdiction
 - Holder doing business in Alberta, with Alberta owner
 - Holder based in Alberta, not carrying on business in a reciprocating jurisdiction, but whose records show the apparent owner's last known address to be in that jurisdiction
 - Holder based in Alberta, unknown owner

Canada (Quebec)

- Property covered:
 - Bank deposits
 - Checks, drafts, and bills of exchange
 - Amounts payable for the repayment or redemption of debt securities
 - Securities and other assets received by a securities adviser or broker
 - Life insurance proceeds
- Generally 3 year dormancy
- Property held by province for 10 years, or 30 years if valued at C\$500 or more
- Fees of 10% (up to C\$1,000) to recover property from province

Canada (British Columbia)

- “Mandatory” Holders
 - Credit Unions
 - Debt Collection Agencies
 - Municipalities & Courts
 - Real Estate Agencies
 - Companies in liquidation
- Other holders are voluntary
- Property types covered: life insurance policies, property insurance policies, trust funds, deposits, money orders
- Due diligence required

Cayman Islands

- Dormant Accounts Law of 2010
 - 7 year dormancy period
 - Property held in trust by government for additional 6 years
 - As with most U.S. unclaimed property laws, once the financial institution has turned over the funds, the owner must claim the funds from the government
 - Notification requirements
 - Newspaper publication for Cayman residents
 - Listing on bank website or at bank's principal office for non-residents

Eastern Caribbean

- No unclaimed property laws of general application
- Eastern Caribbean Central Bank, the monetary authority for Anguilla, Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, St Kitts and Nevis, St Lucia, and St Vincent and the Grenadines, maintains an Abandoned Property Holders list of dormant accounts held by those islands' regulated financial institutions

United Kingdom

- <http://www.mylostaccount.org.uk>
 - Website maintained by British Bankers' Association and others for unclaimed bank accounts
- <http://www.thepensionservice.gov.uk>
 - Pension tracing service
- <http://www.bonavacantia.gov.uk>
 - Office of the Treasury Solicitor
 - Unclaimed estates

Switzerland

- No unclaimed property laws of general application, but mandatory rules for members of Swiss Bankers Association
 - Banks perform due diligence, if possible under confidentiality obligations
 - Funds reported and remitted to “Central Claims Office”
 - Underlying funds continue to accrue interest

Australia

- Administered by Australian Securities and Investments Commission (searchable database)
 - <http://www.asic.gov.au>
- Banking Act
 - Deposits and other assets from banks, credit unions, and building societies
- Corporations Act
 - Unexchanged shares resulting from M&A activity
- Life Insurance Act
 - Policies unclaimed 7 years after becoming payable

New Zealand

- Trustee Act
 - Allows trustees to pay money or securities held by a trust to the Crown. Treasury holds money for six years, and thereafter transferred to the Crown
- Unclaimed Money Act
 - Deposits in financial institutions
 - Wages
 - Dividends
 - Property held by solicitors (lawyers)

Kenya

- No current unclaimed property law.
- Government is currently considering the creation of a “national register” of unclaimed pension benefits
- Proposal would require companies to report and remit unclaimed pensions after a “specified dormancy period”

Questions?

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