



Unclaimed Property 101 The Basics



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What is Unclaimed Property

- Definition:
 - Intangible Personal Property that has gone unclaimed by the rightful owner (i.e. remained outstanding) after a specified period of time
 - Most states claim contents of safe deposit boxes
 - All States have a Law
 - No two states have the SAME law

Common Terms

Abandoned (Unclaimed) Property: Intangible personal property, and in some instances tangible personal property, that has gone unclaimed for a specific period of time by its rightful owner.

Activity: Action taken on property by the owner which has the effect of tolling or restarting the running of the applicable dormancy period under the law of the relevant jurisdiction. Examples: owner making a deposit or withdrawal, receipt of a written memorandum by the holder or any action that state statute deems adequate for this purpose.

Aggregate Amount: The threshold dollar value of an individual owner's account that will require owner detail included on the company's unclaimed property report. This may also trigger additional due diligence efforts. That is, if the aggregate amount is \$50, all individual accounts equal to or greater than \$50 must be identified on the report and due diligence performed.

Common Terms (Cont'd)

Custodian: An individual or entity who holds property until it is delivered to the rightful owner. Most states' laws make the unclaimed property division a custodian of the property remitted to the state.

Due Diligence: The degree of effort required by law that a holder must perform to locate the owner before reporting and remitting property to the state. Generally speaking, the required activity involves the holder sending some form of written notice to the owner.

Dormancy (Abandonment) Period: The continuous period of time that must elapse without any activity being taken by the owner before property will be considered "presumed abandoned" and, thus, reportable in accordance with state unclaimed property laws.

Dormancy Date/Date of Last Activity: The date of last contact by the owner as evidenced by the records of the holder.

Common Terms (Cont'd)

Escheat: A physical transfer of property to the state that has the effect of making the state the legal owner, rather than the custodian, of the transferred property. Few states operate under an escheat provision as it relates to unclaimed property

Holder: The entity that is in possession of, or controls, property belonging to another or any person indebted to another with respect to an obligation. The term Holder is widely used in state reporting instructions to refer to the entity responsible for filing an unclaimed property report

Indemnification: Refers to the protection from subsequent claims (whether made by an owner or by another state) that may be provided by a state to a holder that remits property to a state

Intangible Property: Personal property that has no intrinsic value but is merely the representation or evidence of valuable property rights. *Intangible property includes stock certificates, checks, drafts, deposits, customer credit balances, gift cards, security deposits, unpaid wages and royalty payments*

Common Terms (Cont'd)

Last Known Address: A description, as identified in the holder's books and records, of the location of the owner of unclaimed property sufficient for the purposes of the delivery of mail

Owner: Any person, as identified in a holder's books and records, having a legal or equitable interest in property held by a holder, including, but not limited to, a creditor, claimant or payee

Statutes of Limitation: Establishes time limits for pursuing a legal claim. In unclaimed property law, statutes of limitation are sometimes used to determine how far back a state may reach to claim funds held by a holder. However, most state unclaimed property statutes contain an "anti-limitation" provision, which generally provide that statutes of limitation other than those defined within the unclaimed property laws themselves generally will not apply to defeat a state's right to unclaimed funds

Where to Report - Priority Rules

- Texas v. New Jersey (1965):
The Court establishes the seminal dual-priority scheme that controls future unclaimed property reporting and payment by holders
 - State of owner's last known address
 - Holder's State of Incorporation, if the last known address of the owner is unknown
 - *Foreign address property
 - *1981 Uniform Unclaimed Property Act

Overview of the State and Federal Rules

- 54 jurisdictions have unclaimed property laws
 - Some states have adopted versions of the Uniform Unclaimed Property Acts while others have not; laws are constantly changing.
- Supreme Court Case Law – priority rules for reporting
 - Texas v. New Jersey (1965)
 - Pennsylvania v. New York (1972)
 - Delaware v. New York (1993)
- Uniform Unclaimed Property Acts
 - 1954 Uniform Act
 - 1966 Uniform Act
 - 1995 Uniform Act

Where to Report Last Known Address

- Last Known Address means “A description of the location of the apparent owner sufficient for the purpose of the delivery of mail”
- Generally the owner’s mailing address
- Address in the Holder’s books and records controls. Holder is not required to verify its accuracy

How Unclaimed Property Differs from a Tax

- Derivative rights doctrine
- Nexus does not apply
- No statute of limitations
- Few states provide administrative remedies
- Records retention requirements
- Use of Contract Auditors

Understanding your Reporting Obligations: Examples of Reportable Property

- Uncashed checks (vendor checks, etc.)
- Payroll, commissions, expenses
- Accounts receivable credit balances, refunds, and customer deposits
- Rebates
- Insurance proceeds
- Utility deposits
- Money orders, travelers checks
- Goods received/not invoiced

Representative Holders of Unclaimed Property

- Automotive Dealers
- Business Associations
- Financial Services
- Financial Institutions
- Government Agencies
- Hospitals
- Manufacturers
- Insurance
- Management Companies
- Oil & Gas
- Retailers
- Universities/Colleges
- Utilities/Cooperatives
- Temporary Employment Agencies

Holder Responsibilities Under the Unclaimed Property Laws

- Duty to file a report timely
- Duty to perform due diligence timely
- Duty to remit the property timely
- Duty to maintain copies of the reports and supporting documentation
- Duty to protect the funds until reported and transferred to the state

Understanding your Reporting Obligations: Important Considerations

- When are the reports due
 - Most states due Nov. 1 - May 1 for life insurance companies
- What are the dormancy periods?
 - Vary by state and by property type.
- How far back do I go?
 - When filing an initial report companies must determine the period of time subject to reporting, which varies by state.
- Is due diligence required?
 - If so, what are the guidelines?
- Does the state have an aggregate amount
 - and if so, are we prepared to report appropriately?
- Who must sign the report – is it required to be notarized?

Understanding your Reporting Obligations: Important Considerations

- Does the state require electronic filing / payment?
- Does the state accept NAUPA filing formats?
- Where are the reports sent?

Determining Abandonment

- No owner-generated activity
- The owner has not otherwise indicated an interest in the account
- The owner does not have another relationship where there has been owner-generated activity

Dormancy Periods in General:

- Bank accounts- 5 years
- Certified checks and cashier's checks – 5 years
- IRA's- 3 years after mandatory distribution
- Money orders – 7 years
- Travelers checks - 15 years
- Vendor checks – 5 years
- Credit balances -5 years
- Utility deposits – 1 year
- Wages - 1 year
- Dividends - 5 years
- Stock shares – 5 years
- Bonds – 5 years
- Most other property – 5 years

Third Party Administrators

- Payroll processing
- Securities transfer agent
- Check processing
- Rebates
- Class action distributions

Performing Due Diligence

- Send written notice no more than 120 days before report date if:
 - Company's records do NOT reflect the address of record as being inaccurate.
 - The account is \$50 or more

Tips for Effective Due Diligence

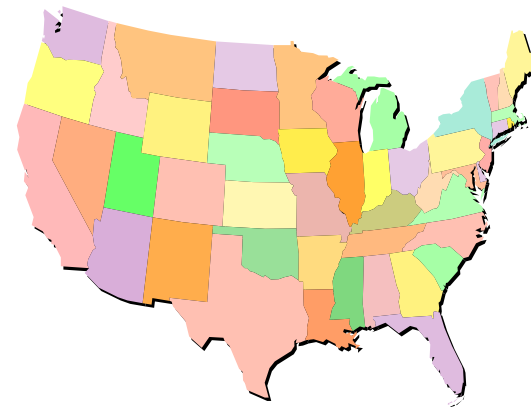
- Allow enough time for response
- Make the letter easy to understand
 - Clearly state purpose of letter
 - Include a deadline for receipt of the response
 - Indicate what will happen if response not received
 - If providing state contact information, include when property will be sent
 - Provide company contact information for customer questions
 - Note that certain states have statutory requirements for information contained in the letters

Filing the Report



Report to the Correct State

- State of owner's last known address, if known
- State of holder's incorporation or domicile if address not known



Reciprocity

- Most states exchange incidental property
 - Less than ten accounts totaling less than \$1000
- National Reciprocity Matrix
- www.naupa.org

Keep in Mind.....

- Property must be remitted and reported per the laws of the Entitled State, not the Receiving State
- Receiving State cannot release and/or indemnify the holder for property not belonging to that state



Understanding the State Reporting Deadlines: Identify Items Due for November 1 Reporting

Report Due	Dormancy Period	Transactions Occurring Prior to this Date Should Appear on the Report
11-1-2011	5	6-30-2006
11-1-2011	3	6-30-2008
11-1-2011	1	6-30-2010

Commonly Asked Questions

- What constitutes last contact?
- Can an e-mail be used as proof of contact?
- Does the Holder need to retain the 'return from post office/undeliverable' letters?
- Are Holders required to file 'negative reports'?
- What are the "aggregation rules"?
 - Most states \$50

Commonly Asked Questions (cont.)

- How far back does a first time filer have to go?
- Can a Holder report all of its unclaimed property to one state regardless of last known address (reciprocal reporting)?
- Reporting process and requirements
- Are non-profit organizations required to file?
- What does the state do with the money collected?

Important Points to Consider

- Failure to properly account for an unclaimed property liability could be in violation of Generally Accepted Accounting Principles (GAAP)
- Unclaimed property compliance is required under all state statutes
- Sarbanes-Oxley Act
 - Section 302 requires that CEOs and CFOs include, with any periodic financial report filed at the SEC, a written statement certifying the accuracy of report
 - Internal control is a significant focus of Sarbanes-Oxley due to recent financial and accounting scandals
 - Section 404 review includes identification and testing of the internal controls that have been implemented
 - Compliance by SEC registrants is non-negotiable

State Enforcement on the Rise

- Many states now view the enforcement of unclaimed property laws as a means to generate additional "revenue" with little downside to political risk. (Delaware includes projected unclaimed property "revenues" as a budget item)
- Although held in a custodial capacity for the true owner, most property is never claimed
- The majority of the states engage third-party contract auditors to perform audits on their behalf. Contract auditors are usually compensated on a "percentage" basis
- State authorities are becoming more proactive in litigation!
 - Bankers Trust
 - Bank of America
 - Computer Associates
 - McKesson

Unclaimed Property Audits

- Key problem indicators
 - What triggers a state audit
- Contract auditors
 - Who are they?
 - Why should you care?
- What sort of oversight does the state exercise over contract auditors?
- What do auditors do in the absence of records?
- How and when are interest and penalties assessed?
- What recourse is available for a holder who disputes a state's audit findings?

When the Auditor Calls

DO

- Take the audit notice seriously
This is a state audit
- Assess your potential liability
Have an idea what the potential assessment may be
- Determine how you will handle the audit
Internally or outside consultants
- Make sure the scope of the audit is clearly defined

DON'T

- Assume you don't have a liability
Virtually every company has some degree of liability
- Ignore the audit notice
The auditors represent the states
- Use stall tactics
The state has authority to assess interest and penalties
- Give the auditor unsupervised access to your records
Assign one point of contact to assist

Fines & Penalties

A holder can be assessed penalties and/or interest for:

- Failure to report/remit the property
- Failure to comply with the statute
 - Interest generally applied at 10%–25% of property value
 - Civil/Criminal penalties for failure to report/remit/deliver
 - OR filing a fraudulent report may include
 - \$100 – \$200 per day (\$10,000 maximum)
 - Varies from \$1000 – \$25,000 fine plus some states assess an additional 25% of the value of the property
 - Some States – Class B misdemeanor

Amnesty vs. Voluntary Disclosure Initiatives

- AMNESTY
 - Statutory or Administrative Amnesty
 - Specific conditions are posted
 - Deadlines are provided
 - Generally no “pre-authorization” required
- VOLUNTARY DISCLOSURE AGREEMENTS (“VDA”)
 - Formal vs. informal
 - Conditions include reach-back and pre-authorization
 - Formal signoff and release from penalties/interest
 - Ability to conduct audit is generally preserved

Internal Controls/Fraud

- Until the property is transferred, ensure that proper internal controls are in place!
- Set up specific procedures for claims processing
- Finders and fees
- Whistle blower laws!

Voluntary Disclosure Agreements

- Benefits of VDA:
- Limited reach back
- Self review process
- Waiver of penalties/waiver of interest (most states)
- Release/Indemnification
- Opportunity to implement a comprehensive unclaimed property compliance program!

Surfing the Internet for Unclaimed Property

- Unclaimed Property Professionals Organization
- www.UPPO.org
- Housing and Urban Development
- Refunds for mortgage insurance obtained by a gov't loan
- www.hud.gov/offices/hsg/comp/refunds/index.cfm
- Pension Guarantee Benefit Fund
- Unclaimed retirement accounts from discontinued plans
- www.pbgc.gov
- Veterans Administration
- Unclaimed insurance funds held by the VA
- <https://insurance.va.gov/inForceGiSite/liability/ufsearch.htm>
- FDIC
- Unclaimed accounts from failed banks
- www2.fdic.gov/funds/index.asp
- National Credit Union Administration
- Unclaimed accounts from liquidated credit unions
- www.ncua.gov/AssetMgmtCent/unclaimed/unclaimed.html
- US Treasury
- Undeliverable US savings bonds or bonds no longer earning interest
- www.treasurydirect.gov/indiv/tools/sbtdhunt.htm

Unclaimed Property Websites and Resources

- www.uppo.org-website
- www.NAUPA.org-website
- www.missingmoney.com

Questions?



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