Unclaimed Property 101 – The Basics

Presented by Tracey Reid

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What is Unclaimed Property?

- Definition: Intangible Personal Property that has gone unclaimed by the rightful owner (i.e. remained outstanding) for a specified period of time.
  - Tangible Personal Property Exception: Most states claim contents of safe deposit boxes/items with fair market value
  - All States Have a Law
    - No two states have the SAME law
What is Unclaimed Property?

- The definition of Unclaimed or "Escheatable" Property has 3 distinct requirements:
  - Property is considered unclaimed/abandoned if it:
    1. Is held or issued in the ordinary course of the holder’s business;
    2. Constitutes a debt/obligation of the holder to a creditor/owner, and;
    3. Remains unclaimed for more than the statutory dormancy period (determined by property type and by each state).

When is property NOT abandoned?

- The owner has increased or decreased the amount in the account
- There has been owner-initiated written communication with the holder
- The owner has indicated an interest in the property, as evidenced by memo/record in file (like telephone conversation record)
- The owner has another relationship where there has been owner-generated activity (e.g.: another active account)

WHO has to report Unclaimed Property?

- Every “holder” of unclaimed funds is required to report!
- So WHO/WHAT IS A HOLDER?—YOU!!
- A “holder” is loosely defined as any individual, business association, governmental subdivision, estate, trust, or any other type of legal or commercial entity in possession of property that belongs to another or indebted to another in most state laws
Specific Exemptions May Apply....
- Governmental Entities, Cooperatives & I.R.C. Sec. 501(c)(3) Charities: Most states do NOT provide any unclaimed property reporting exemption for special government or charitable entities
- SUMMARY: IF YOUR STATE OR THE STATE WHERE YOU SHOULD BE REPORTING THE FUNDS DOES NOT SPECIFICALLY EXEMPT YOUR TYPE OF ENTITY, YOU MUST FILE UNCLAIMED PROPERTY REPORTS.

How Does Property Become Abandoned?
- System conversions
- Owners move without forwarding address
- Name changes
- Deaths
- Owners forget
- Documents representing property are lost
  - i.e. passbooks, CD's, stock certificates, etc
- Bankruptcy
- Businesses close
- Etc.

Property Types: Are you reporting ALL of your UP?
- To properly report your Unclaimed Property, you must capture EVERYTHING that is created by your business.
- In determining your liability, look at ALL potential unclaimed property types...
Are you reporting ALL of your UP?

**Assets**
- Accounts receivable credit balances
- Unidentified cash
- Abandoned tangible personal property
  - Needs to have intrinsic fair market value or considered valuable keepsake (military medals, historic documents, Elvis concert tickets, etc)
  - Check each state’s policy

**Liabilities**
- Uncashed vendor checks
- Uncashed payroll checks
- Uncashed stock dividends and bond interest checks
- Layaway accounts
- Customer deposits
- Self-insured benefit payments
- Refund accounts
- Unpaid retirement account distributions

**Liabilities (cont’d)**
- Liquidated amounts due and payable under the terms of insurance policies
- Moneys deposited to redeem stocks, bonds, coupons and other securities to make distributions
- Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, stock purchase, profit sharing employing savings, supplemental unemployment insurance or similar benefits
Are you reporting ALL of your UP?

- Owner Equity
  - Untendered stock certificates
  - Untendered bonds
  - Transfer agents
- Income Accounts
  - Other income/miscellaneous income

Third Party Administrators

- Payroll processing
- Securities transfer agent
- Check processing
- Rebates

Are you OVER or UNDER Reporting?

- Over or under reporting can lead to audits!
  - States look for “typical” property types from many industries
  - Reporting items that should not be included or leaving off categories of property that are typically reported by your industry is a RED FLAG to administrators
- What is typical for YOUR company’s line of business?
Are you reporting OVER-REPORTING your UP?

- Reporting Exemptions/Exceptions
  - Gift Certificates
    - AL, AZ, AR, CA, FL, ID, IL, IN, KS, MD, OH
  - Also see: MN, NH, NC, ND, RI, VA, WY, TN
  - Credit Memos
    - FL (under $10), NH, NC, ND, OH, OR, RI, VA, WY
  - B2B Transactions
    - AZ, ID, KS, MD, MA, NY, NC, OH, VA, WI
  - TN & AZ require current business relationship
  - AZ must be under $50
  - State-specific exemptions
    - KY: wages under $50
    - OH: I.R.C. Sec. 501(c)(3) hospitals
  - Recommend verifying with State for Clarification

Why Must We Do This?

- BECAUSE IT IS THE LAW.
  - All states have enacted unclaimed property laws, although NONE are the same!
  - Unclaimed property reporting is mandatory, not voluntary.
- If you are in compliance, it is SAFE TO APPLY FOR REFUNDS OF MONIES OWED TO YOUR ENTITY!
  - There are MILLIONS of dollars in state coffers waiting to be reclaimed

What Do We Owe?

- Once property has been identified as escheatable, most states require holders to perform DUE DILIGENCE
- Due diligence includes notifying the apparent owner of existence of unclaimed property
  - 1st Class Mail, direct language addressing outstanding amount due with 60+ days to respond before escheatment
  - Some states require statutory language (i.e., OH, CA)
  - Certified Mail required in some states (i.e., OH, NY, NJ)
- If you cannot resolve the matter, the items are REPORTABLE.
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.

When Do We Report?

- At Expiration of Dormancy Period, must report property
  - A dormancy period is the period of time which must elapse before property is considered unclaimed
  - Dormancy periods vary by state and by property type
  - AGGREGATE:
    - Benefits of aggregate vs. non-aggregate reporting

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
When Do We Report?
- **Due Dates**
  - In the majority of states, the reporting period is July 1 of the prior year to June 30th of the current year and the report is due November 1.
  - Exception: Life /Other Insurance Companies usually report for the prior January 1 to December 31 and reportable on May 1.
  - Non-Nov. 1 filing states: CT, DE, FL, HI, IL, MD, MN, MI, NY, OK, PA, TN, VT & PR

Where Do We Send the Property?
- **Which States get the property we’re holding?**
  - Rules of Jurisdiction
    - Primary Rule: Property escheats to the state of the payee’s last known address according to company’s books and records
    - Secondary Rule: If the payee’s address is unknown, the property escheats to the company’s state of incorporation
  - Must follow the unclaimed property law of the state receiving the property.

Where Should We Report?
- **What is the Authority?**
  - **Texas v. New Jersey** (U.S. Sup. Ct.)
    - 1965 Sun Oil Company ($26k of debts owed creditors)
      - unclaimed intangible personal property belongs to the state of the owner’s last known address
      - unclaimed intangible personal property belongs to the holder’s state of incorporation if owner address is “unknown”, “foreign”, or if no laws exist
  - **Delaware v. New York**
    - 1988: New York brokerage houses ($5m in securities)
      - New York: location of brokerage houses
      - Delaware: state of incorporation
      - Supreme Court awarded funds to State of Incorp. of Brokerage houses (DE), not the state where transactions occurred
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)
- 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.”
- Address in the Holder’s books and records controls. Holder is not required to verify its accuracy.
- If no address – to your STATE OF INCORPORATION/ORGANIZATION

SUMMARY: 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?

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.

**Private Escheat**

*Causing the Loss of the Owner’s Property Rights Prior to the Time the Property is Reportable*
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

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.
- Assess your potential liability.
- 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 access 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 (“VDA”)

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 government loan
- Pension Benefit Guarantee Fund
  Unclaimed retirement accounts from discontinued plans
  www.pbgc.gov
- Veterans Administration
  Unclaimed insurance funds held by the VA
  https://insurance.va.gov/VAEBest/DeedabilitySearch.htm
- FDIC
  Unclaimed accounts from failed banks
  www2.fdic.gov/indiv/tools/sbtdhunt.htm
- National Credit Union Administration
  Unclaimed accounts from failed credit unions
  www.ncuahousingFund/NCUAKennedy/index.htm
- US Treasury
  Unclaimed individual retirement accounts
  www.treasurydirect.gov/indiv/tools/estates.htm

Being Proactive: Voluntary Disclosure Agreements (“VDA”)

Potential Risks of VDA (if not performed properly):
- Resource Requirements
- Timing determined by VDA
- Due diligence requirements in some jurisdictions
- Full disclosure of all areas
- Affidavit of available information required in some jurisdictions
Thank you!

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