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Unclaimed Property Fundamentals, Audits & Updates

National Association of Division Order Analysts

Wednesday, September 7th, 2016
Thursday, September 8th, 2016
Friday, September 9th, 2016

Notices

The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Agenda

- **Overview of unclaimed property**
- **Holder responsibilities**
- **Audit trends in oil & gas**
- **Voluntary disclosure programs**
- **Recent developments**
- **Legislative updates**
- **Today's takeaway**
- **Q&A**

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Overview

Common Terms and Definitions

- **Unclaimed/Abandoned Property:** Tangible or intangible property that is held, issued or owing in the ordinary course of business and which remains unclaimed or abandoned by the apparent owner for a designated period of time as determined by state ("jurisdictional") statutes and regulations
- **Holder:** Possessor of abandoned property
- **Owner:** Person or entity entitled to the property
- **Dormancy Period:** Specified period of time in which the property owner does not take action on his or her property (*varies by state and by property type*)
- **Last Activity Date:** The most recent date that the owner and the holder of the property made "active" contact with each other
- **Due Diligence:** The level of effort required to locate the owner prior to reporting and remitting the property to the state
- **Negative Reports**: A report to be submitted notifying the state that no property is reportable

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Overview

The concept of unclaimed property

- Abandoned Property is not a "tax"
  - But can be a source of revenue to the states
- Traditional tax nexus principles do not apply
- If efforts by holders to reunite rightful owners with their property are unsuccessful
  - After a period of time, the property must be reported and remitted to the state

Custodial laws - Derivative Rights Doctrine

- Not a true "escheat"
- Most states act as a custodian to "step into the shoes" of the owner in perpetuity

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Overview

Tax similarities

- —Key source of revenue to states
- —Annual reporting obligation to each state
- —Interest and/or penalties for noncompliance
- —Periodic audits to enforce compliance

Tax differences

- —Not a % of some base
  - Actual value of the property
- —Nexus does not apply
  - Priority Rules apply
- —No statute of limitations for property not reported
- —Audits can span over 20 years (or existence of a company)
- —Longer record retention
- —Minimal case law and court precedent for unclaimed property

Overview

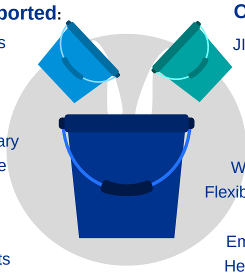
What is unclaimed property?

- —Fixed and certain obligation owed by the holder to the owner
- —Tangible or intangible
  - Intangible property—property that does not have value in itself, but that represents value (e.g., checks, suspense account balances, etc.)
    - — Majority of unclaimed property is intangible property
  - Tangible property— physical property (e.g., land, machinery, etc.)
- —Owner-generated activity ceases to occur with respect to the property
- —Property remains unclaimed by the owner for a period of time (i.e., the "dormancy" period or "abandonment period")
  - Also commonly referred to as "abandoned property"

Overview

Commonly reported:

Stale dated checks
Royalties
Mineral proceeds
Trade payables
Wages/payroll/salary
Employee expense reimbursements
Commissions
Bonuses
Suspense accounts



Often overlooked:

JIB A/R credit balances
Voided checks
Unapplied cash
Un-refunded deposits
Stock and dividends
Worker's comp benefits
Flexible spending accounts
Retirement accounts
Employee garnishments
Health savings accounts

Unclaimed Property…
Can be created by nearly every department within a company

Overview

Unclaimed property could be owed to:

— Land / property owners (working and leased)
— Mineral interest owners
— Heirs / beneficiaries
— Business partners
— Employees (past and current)
— Vendors / suppliers
— Customers
— Creditors
— Any owner of the property or having an ownership interest in the property

Overview

Supreme Court established priority rules

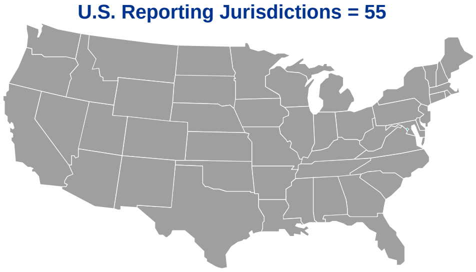
— *Texas v. New Jersey* 379 U.S. 674 (1965)
— Reaffirmed by *Pennsylvania v. New York* (1972) and *Delaware v. New York* (1993)

1. Property should be remitted to the state of the owner's **last known address** based on the holder's books and records
2. Property with no last known address is reportable to the state of the **holder's domicile**

If the state of last known address does not provide by law for the escheat of the property, the state of the holder's domicile may have the power to escheat

Overview

U.S. Reporting Jurisdictions = 55



The 50 U.S. States +
District of Columbia, Puerto Rico, Guam,
U.S. Virgin Islands, and Northern Mariana Islands

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Holder Responsibilities

Holder Responsibilities

Holder obligations

— To identify, track, and safeguard abandoned property
— To perform due diligence
— To file an annual report
— To remit property to the state after the dormancy period is reached

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Holder Responsibilities

Annual compliance requirements

— Reporting requirements vary by state and property type
- Dormancy periods and cut-off dates vary to determine when property becomes reportable
- Report due dates vary by state and industry
- Limited to banks and financial institutions in some jurisdictions
- Preliminary reports required by some states
- Negative reports required by some states
- Due diligence not required by all states for all property types

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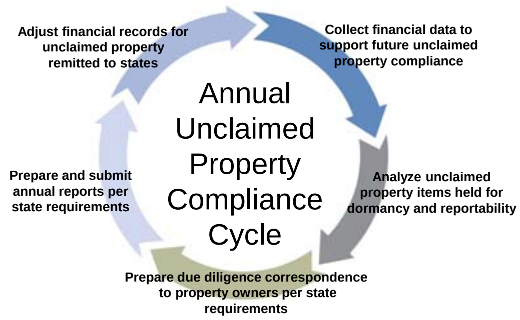
Holder Responsibilities



Holder Responsibilities

Dates for determining dormancy

—Production/sales date vs. accounting/payment date

—"Inactivity" on owner's account

- Non-return of mail does not constitute activity on an account
- In other words, you cannot assume you know the whereabouts of owners just because the post office did not return their payments, monthly statements, etc.
- When reviewing your records for dormant accounts, remember to determine last activity generated by the owner

Holder Responsibilities

Owner location requirements

—Last known address per holder's books and records

—Owner search tools

- Web-based 3rd party search tools
- Owner location service firms (fees involved)

Holder Responsibilities

Due diligence

— Most states specify certain dates and dollar thresholds that govern the due diligence letters that must be sent to owners
  - For many states, the mailing requirement is 30-90 days before the report is due
  - Threshold amount varies by state

— Some states require certain language and font size
  - Example: CA requires certain language at the top of due diligence letters

— Some states require certified mail
  - Example: NY requires an additional letter, sent certified mail, return receipt requested, for items over $1,000 if you did not receive a response to the first letter

— Good business practice to conduct due diligence in all states, regardless of the state's statutory requirement

Holder Responsibilities

Reporting exemptions and deductions

— Statutory and administrative

— Careful interpretation and application necessary

Reporting exemptions

— Business-to-business ("B2B")

— De minimis
  - Example: KY, MI and OH exempt payroll of $50 or less

— Industry specific
  - Example: Florida Surface Transportation Board

Reporting deductions

— For administrative costs of reporting
  - Example: CO allows deduction of 2% or $25 per owner (whichever is more)

Holder Responsibilities

Legal suspense

— Legal suspense items can be put into suspense for many reasons:
  - Deceased owner
  - Litigation
  - Bad address
  - No signed division order
  - Title dispute

— Merger & acquisition concerns

— Consistent use of status codes
  - Legal counsel should be consulted to determine which suspense codes are subject to escheat and which suspense codes could potentially require the company to hold the items in excess of the state statutory holding periods

— Pro-active owner location efforts

— Record retention

Holder Responsibilities

Joint-interest billing ("JIB")

— Buying and/or selling oil and gas can result in accounting adjustments or "true-ups" when invoices that were created based on estimates are adjusted to actual
  - If these adjustments are not made in a timely manner, it can create the appearance that the company is simply writing off aged outstanding credit balances, which may be an audit red flag
  - In order to determine if a credit balance on a customer account is unclaimed property, first need to determine how it was created
  - A customer overpayment or duplicate payment would result in a liability that is typically due to the customer
  - On the other hand, a promotional credit or accounting error could appear to be a potential liability but may not represent a fixed and certain obligation

— Netting or "offsetting" operating expenses against receivables

Holder Responsibilities

Current pay rules

— Also referred to as "current balance" rules

— Series of payments to be made to an owner that triggers all subsequent payments to become reportable regardless of whether residual payments have individually met the dormancy period

— Several states have adopted current pay rules

— Reporting on a current pay basis can be complex and requires careful review of each state's reporting instructions
  - Example: Texas utilizes NAUPA code MI10 to be used solely for the reporting of mineral proceeds on a current pay basis

Holder Responsibilities

California

— Interest is statutory in California at 12% per annum
  - Abatement of interest is difficult

— Dual reporting process
  - Diligence notice be sent to the owner's last known address not less than 6 months nor more than 12 months before the property becomes reportable (i.e., by April 30)
  - Notice Report due before November 1 of each year
  - Final Remit Report due between June 1 and June 15

— Payment via ACH for remittances totaling $20,000 or more
  - Payment must be made by electronic funds transfer (EFT) instead of a check
  - Failure to do so may result in a 2% penalty pursuant to Civil Code of Procedure section 1532(g)

Holder Responsibilities

Delaware

— SB141 annual reporting implications
  - State Escheator required to send annual notices to holders, reminding the holder of their obligation to file unclaimed property reports prior to March 1
  - Holders must designate an individual employee to serve as the contact for all correspondence with the State

Holder Responsibilities

Oklahoma

— Requires different types of mineral proceeds to be reported on different forms

— Requires mineral proceeds that emanate from "forced pooled" situations to be reported to the Oklahoma Corporation Commission instead of the Oklahoma State Treasurer's office

Holder Responsibilities

Oklahoma forced pooling provisions

— Oklahoma Unclaimed Pooled Monies Act
  - **52 O.S. Sections 551 et seq**. regulates the disposition of unclaimed mineral proceeds emanating from forced pooled oil and gas interests located in Oklahoma where the owners of such proceeds cannot be located or are unknown
  - **52 O.S. Section 87.1** requires the holder to establish an escrow account for the benefit of the rightful recipient of the monies and report and remit the funds to Oklahoma

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Audit Trends in Oil & Gas

Unclaimed Property in the News

Unclaimed Property Hunger Games: States Seek Supreme Court Review in 'Official Check' Dispute

Blog Inside SALT

McDermott Will & Emery

Alito, Thomas: Court Should Apply Due-Process Scrutiny To Unclaimed Property Laws

States Going After Billions In Unclaimed Property To Fill Coffers

October 19, 2015 12:36 PM

Plains All American Takes on Delaware Over Unclaimed Property

Broker-Dealers — Unclaimed Property Audits

Law360, New York (April 10, 2015, 10:55 AM ET) --

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Audit Trends

Common Audit Triggers

- Holder's state of incorporation
- Company size/revenue (Larger = Riskier)
- Late reporting
- Failing to report all property types common for the company's industry
- Reporting errors and improper formatting
- Merger and acquisition activity
- Media coverage/company publicity (layoffs, bankruptcy, stock-splits, etc.)
- Industry trends & issues:

Healthcare (Insurers & Providers)	Oil and Gas	Retail
Internet & Technology	Broker/Dealers & Securities	Life Insurers

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Audit Trends

Overview of typical unclaimed property audit

— Most states either use their own audit staff or hire third party audit firms to conduct unclaimed property audits
— Audits can be challenging and time consuming
— Audit look-back periods can be extensive, covering many years
— No statute of limitations for unclaimed property not reported
— Assessments, including penalties and interest, can be substantial
— Important to secure end-of-audit “Closing Agreements”

Audit Trends

Some states seek to collect unclaimed property as a source of “revenue”

Contingent Fee Audit
Compensation dependent on outcome of audit
Other states solicited to participate
Can be contentious and lead to litigation

State Audit
Representing one state yet can take more time
Single state focus generally won’t capture exposure to other states

Self-Audit
Self-determined assessment with state guidance
Can obtain end of audit closing agreement

Some states seek to return unclaimed property as a way to stimulate local economies

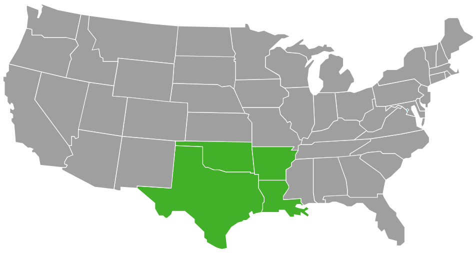
Audit Trends

States’ right to estimate

— Many states provide for estimations for years where detailed records are not available or deemed incomplete
— No formal guidance from states related to estimation techniques
  - Base periods to be used for testing
  - Definition of complete and researchable records
  - Error rate calculation
  - Statistical sampling
— Some states require “Record Availability Attestation” letter to justify estimations

Audit Trends

TOLA Audits



Texas – Oklahoma – Louisiana - Arkansas

Audit Trends

Contingent-fee audit

— Use of existing contracted third-party auditors
— Emergence of new contracted third-party auditors
— Compensation is contingent upon outcome of the audit
— Other states are solicited to participate
— State of incorporation serves as "mandate state"
— Burden of proof is on the company to remediate exposure

Audit Trends

Typical audit consists of the following:

— State issues audit notice and authorization letter
— Company is contacted by state or third party audit firm representing the state
— Opening conference meeting between auditor and the company
— Information Document Requests ("IDRs") issued in phases
— IDR response due within auditor established timeline
  - Typically 30 days
— Task Management Report ("TMR") and periodic status meetings
— Preliminary audit assessment provided
— Company finalizes remediation efforts
— Final audit assessment issued
— Settlement process / appeals process
— Closing agreement and payment

Audit Trends

Common audit-related issues include:

- Lack of records and supporting documentation
- Insufficient resources to complete audit requests
- Difficulty ascertaining proper audit scope and estimation approach
- Dispute over sampling and testing methodologies
- Potential inconsistency in application of state reporting requirements:
  - Legal suspense
  - Current pay rules
  - Forced pooling provisions
  - Dates for determining dormancy

Audit Trends

Delaware

- **Delaware SB141** places limitations on Delaware audits
  - Reduces audit look-back period from January 1, 1981 (or 34 years) to 22 years on phased basis as follows:
  - Ongoing audits (at time SB141 passed) = January 1, 1986
  - Commenced before December 31, 2016 = January 1, 1991
  - Commenced January 1, 2017 or after = 22 years from when the audit commences
  - Interest Imposed on late-reported property
    - Section 1159, relating to penalties and interest, amended to once again allow interest
    - Applies to all late property reported after March 1, 2016
    - Rate of 0.5% per month, not to exceed 25% of late reported amount

Audit Trends

Delaware

- **Delaware Escheat Examination Manual**
  - Proposed draft recently released to satisfy the statutory requirement of 80 Del Laws. c. 2 passed in early 2015
  - Intended to provide procedural guidelines for the conduct of Delaware unclaimed property examinations
  - Adoption of these positions as regulations may negatively affect holders under examination because of the judicial deference normally afforded to agency regulations
  - Would allow the Department of Finance the authority to issue Statement of Findings and Requests for Payment with regard to segments of an audit rather than only at the end of an entire audit

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Voluntary Disclosure Programs

Oil & Gas Industry: Unclaimed Property

Voluntary Disclosure Agreements

State voluntary disclosure agreements ("VDA")

—VDAs (formal or informal) are available in most states, although the process varies by state

—As the term indicates, it is a voluntary process through which a company may report past due unclaimed property

- Promised future compliance
- Self review of certain books and records for defined scope period
- Requires evaluation of all potential areas of unclaimed property

—Estimations may be required

Voluntary Disclosure Agreements

State voluntary disclosure agreements ("VDA")

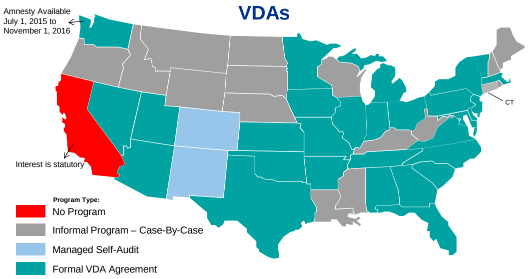
—Statutory programs (formal)

- Signed contractual agreement
- Established guidelines and expectations
- May require a presentation of analysis performed

—Administrative programs (informal)

- Cover letter submitted with voluntary report and remittance
- First time filing (FTF) with cover letter

Voluntary Disclosure Agreements



Voluntary Disclosure Agreements

VDAs can be a beneficial way to get into compliance, BUT do it right!

- Keep state apprised during the self-review process
- Avoid aggressive reporting positions
- Disclose where records are limited
- Negotiate and agree on assumptions
- Retain all records used to calculate liability
  - Executed agreement, any demand for payment or other documentation and records demonstrating payment was made
- Report on time and stay in compliance
- Develop ongoing compliance process and policies and procedures

Recent Developments

Legislative and Statutory Updates

ARIZONA H.B. 2343, May 2016

— Initiated to prohibit contingent fee audits, but instead resulted in the Department of Revenue being required to:
  - Develop standards and metrics to evaluate auditors' performance
  - Provide holders with a notice of their rights during an audit
  - Issue a request for information to gather data about possible non-contingency arrangements to explore the feasibility of alternatives to the current contingency fee payment model for contracted auditors

ARKANSAS H.B. 1782, July 2015

— Reduces dormancy period from five (5) to three (3) years, including "catch all" property type
  - Exceptions include certain "SC" and "SD" NAUPA codes

— Holders reporting unclaimed mineral proceeds must now include additional information when reporting

— Requires reports to be submitted electronically in the NAUPA standard format

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Legislative and Statutory Updates (continued)

COLORADO H.B. 1090, August 2016

— Limits the "finder's fee" that can be charged for offering unclaimed property asset recovery services for the balance of the purchase price of foreclosed property based on time property has been in custody of the State and public trustee:
  - Reduces the time period the public trustee must hold funds from 5 years to 2 years.
  - Voids any contract for payment of a finder's fee during the first six (6) months of the public trustee's custody of the funds or the first two (2) years of the state treasurer's custody.
  - Caps percentage of payment based upon number of years state Treasurer has custody of the funds
    — 20 per cent when property has been in custody for more than two (2) years
    — 30 per cent when property has been in custody for three (3) years or more

CONNECTICUT H.B. 5564, April 2016

— Requires issuers of gift cards to provide the purchaser:
  - Electronic or paper copy of proof of purchase or gift receipt to purchaser
  - Cash refund if gift card balance is less than $3 and aforementioned proof of purchase is produced

DELAWARE S.B. 285, July 2016

— Fiscal Year 2017 Appropriation Act, but allows state to provide compensation for maintaining abandoned property payment systems

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Legislative and Statutory Updates (continued)

FLORIDA S.B. 966, April 2016

— Requires life insurance companies to compare its policies against the Death Master File annually

— Dormancy period trigger for life insurance policies and annuity contracts has been changed to the "date of death of the insured, annuitant, or retained asset account holder" (vs. previously "due and payable")

— Adds a new dormancy trigger by explicitly providing that an insurance policy or annuity contract is "deemed matured" upon reaching its maturity date

MICHIGAN H.B. 5017, March 2016

— A credit union may allow a member to designate an account as "inactive"

— If the designation is not removed within five (5) years, account must be escheated

MICHIGAN S.B. 538, December 2015

— Streamlined audit process whereby goal is to complete within 18 months
  - Must execute a nondisclosure agreement (NDA) within 30 days
  - Checks voided within 180 days of issuance are excluded from testing requirements

— Exempts reporting of property valued $25 or less (excludes equity-related property)

— Limits state action or proceeding respected to any duty of a holder under the Act more than four (4) years if the holder is enrolled in the streamlined audit process

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Legislative and Statutory Updates (continued)

MISSOURI H.B. 2150, June 2016

— Creates the Unclaimed Life Insurance Benefits Act

— Requires life insurance companies to review the Social Security Administration's Death Master File on at least a semiannual basis and make good faith efforts to locate the beneficiary of the policy

PENNSYLVANIA H.B. 1605, July 2016

— State Treasurer may obtain possession of unredeemed and unclaimed U.S. Savings Bonds on behalf of Commonwealth residents if:

1. Bonds are more than three (3) years beyond the date of final maturity, unless owner has, within the three-year period:
   — increased or decreased the principal;
   — accepted payment of principal or income distributions; or
   — otherwise indicated an interest in the property or in other property of the owner in the possession, custody or control of the holder

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Legislative and Statutory Updates (continued)

PENNSYLVANIA H.B. 1605 *continued*

2. Owner has not indicated an interest in such bond
   — U.S. Mail: communication to the owner by the holder is undelivered
   — Electronic Mail: communication was not received by the owner or owner is unresponsive, then written notice must also be sent via mail if possible

— Due diligence requirements
- Holder of abandoned property valued at $50 or more send notice to the owner, not more than 120 days nor less than 60 days prior to the date in which the corresponding report is to be submitted
- Written notice must be sent by first class mail, unless the owner has previously agreed to a method of electronic notice that remains valid to contact the owner
- Annual filing must include attestation of compliance with the new requirements

— Roth IRA
- Provides that the dormancy period for a retirement account is triggered when the holder "has lost contact" with the owner, which is evidenced by one or possibly two instances of returned mail ("RPO")

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Legislative and Statutory Updates (continued)

PENNSYLVANIA H.B. 1605 *continued*

- An IRA would be reportable three years after such contact has been lost provided there has been no intervening owner contact or activity. This standard replaces the previous standard that required an IRA to be escheated 3 years after the owner turned 70 1/2 or last indicated an interest in the account or plan (or other property held by the holder).

RHODE ISLAND H.B. 7838 & S.B. 2753, July 2016

— Requires the escheatment of U.S. Savings Bonds after three (3) years

TENNESSEE S.B. 1633, May 2016

— Electric cooperatives may hold onto abandoned property rather than escheating to the state throughout the specified period of notice and publication
- Once this period has expired, funds can be used by the cooperative for charitable purposes, economic development, low-income energy assistance or educational purposes

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Legislative and Statutory Updates (continued)

TEXAS S.B. 1589, June 2015; effective January 1, 2016

— Requires that a holder of unclaimed mineral proceeds include information related to the well, lease, and property from which the unclaimed mineral proceeds were generated in the unclaimed property report attached to the proceeds

WISCONSIN A.B. 721, March 2016

— Requires the escheatment of U.S. Savings Bonds five years after the date of final maturity
  - The Act defines "final maturity" to mean the date on which a bond stops earning interest upon reaching its final extended maturity date.\

WYOMING H.B. 95, March 2016

— Removes the scheduled repeal date of July 1, 2019 on provisions related to the abandonment of gift certificates, merchant stored value cards and credit memos.

Legislative and Statutory Updates (continued)

Proposed legislation:

NEW YORK S.B. 7803, *proposed* May 2016

— Dormancy period <u>increase</u> from three (3) to five (5) years for many property types

WISCONSIN S.B. 799, *proposed* May 2016

— Implementation of a voluntary disclosure program (VDA Program)

— Record retention requirements modified (maintain reporting history with all information for 3 years vs. only name and address for 5 years)

— Reduces dormancy period for money orders and similar instruments from seven (7) to five (5) years

— Exempts credit balances issued to a commercial customer account, customer overpayments, credit memorandum, unidentified remittances and uncashed checks, drafts or other similar instruments (B2B exemption)

Legislative and Statutory Updates (continued)

New amnesty program:

WASHINGTON AMNESTY PROGRAM

— One-time unclaimed property amnesty program for holders in advance of the restructuring of its penalty provisions
  - Holders have between July 1, 2015 and November 1, 2016 to qualify for a waiver of penalties and interest
  - Holders may not receive amnesty for any amounts included in an assessment or identified through an audit or investigation, amounts previously paid to the state, or seek refund of any amounts paid under the amnesty filing

Change in reporting requirements:

MANDATORY ELECTRONIC REPORT SUBMISSION

— Indiana (2013), Texas (2014), Oklahoma (2014), Nevada (2016), Montana (2015)

— Tennessee (effective for reports filed after 12/31/16)

Legislative Updates

Arkansas HB 1782

— Passed March 2015 and is now Act 1039
  - Effective 90 days after adjournment of the 2015 Legislature or effective July 22, 2015
— Reduced dormancy periods from 5 to 3 years for mineral interest, "catch-all", and other property types.
— Removed an annual report to the Oil and Gas Commission required for escrow accounts holding mineral interests
  - Mineral interests would still be reportable as unclaimed property
— Reporting of mineral proceeds must include:
  - Name and last known address of the property owner; the applicable well name, uncontrolled lease name, or unitized area name as recognized by the Oil and Gas Commission; either the county, section, township, and range of the well or the county, section, township, and range from which the abandoned minerals were severed or produced; and any other information required by the Auditor of the State

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Legislative Updates

Nevada S.B. 348

— Date signed: 06/09/2015; date effective: 07/1/2015
— Establishes B2B exemption for any credit memoranda, overpayments, credit balances, deposits, unidentified remittances, non-refunded overcharges, discounts, refunds and rebates due or owing
  - Does not apply to outstanding checks, drafts or other similar instruments
  - Ongoing business relationship shall be deemed to exist if the holder has engaged in at least one commercial, business or professional transaction involving the sale, lease, license or purchase of goods or services with the business association or a predecessor-in-interest of the business association within each 3 year period that follows the date of the transaction giving rise to the property interest

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Legislative Updates

Texas S.B. 1589

— Date signed: 06/15/2015; date effective: 01/01/2016
— Requires that a holder of unclaimed mineral proceeds include information related to the well, lease, and property from which the unclaimed mineral proceeds were generated in the unclaimed property report attached to the proceeds

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Temple-Inland v. Cook No. 1:14-CV-654-SLR (U.S.D.C. DE)

Following a multi-year unclaimed property audit, Temple-Inland filed suit alleging several constitutional violations in Delaware's unclaimed property law.

— Accounts payable and payroll audit commenced in 2008 and a single item with value of $147.30 owing to Delaware missed in prior compliance history was identified yet estimation and extrapolation resulted in preliminary assessment in excess of $2 million

— Following a small reduction of the assessment via the administrative appeals process to $1.4 million, Temple-Inland filed suit

— In March 2015, case survived Delaware's motions to dismiss

— June 28, 2016: Court ruled on cross-motions for summary judgment on three (3) constitutional issues:

- Substantive due process – Granted in Temple-Inland's favor
- Takings clause – Denied; factual issues remain
- Ex post facto clause - Denied Temple-Inland's motion and granted in favor of Delaware

" To put the matter gently, defendants have engaged in a game of "gotcha" that shocks the conscience." - Judge Gregory M. Sleet

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Temple-Inland v. Cook, (Contd.)

Combination of multiple factors contribute to the Court's finding:

— Waited 22 years to audit plaintiff

— Exploited loopholes in the statute of limitations

— Never properly notified holders regarding the need to retain unclaimed property records longer than is standard

— Failed to articulate any legitimate state interest in retroactively applying Section 1155 except to raise revenue

— Employed a method of estimation where characteristics that favored liability were replicated across the whole, but characteristics that reduced liability were ignored

— Subjected Plaintiff to multiple liability

Remedies: TBD

Update

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Other Topics in Active Litigation

Active litigation across the country continues to delve into areas that may have broad applicability to holders in multiple industries, including:

— Constitutionality of state escheat programs

— Retailer gift card structures and merchandise return credits

— Jurisdictional priority rules

— Constitutionality of audit procedures and methodologies

— Administrative subpoena powers

— Scope of audit requests

— Claims to non-U.S. last known addressed property

— Liquidation of securities property

— Consumer protection nature of statutes

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The Revised Uniform Unclaimed Property Act

Many states have adopted some version of a Uniform Unclaimed Property Act (UPA). Beginning in 2013, the Uniform Law Commission (ULC) appointed a special committee to examine a revision of the 1995 UPA.

— Three years of meetings and stakeholder input have culminated in an approved draft as of July 13, 2016

— Important changes include:

- Due diligence, including electronic due diligence
- Statute of limitations and record retention
- Audit transparency and other reforms
- Handling of remitted securities and dormancy period
- Pay cards
- Gift cards and B2B exemptions
- Virtual currencies

— Looking forward to the 2017 legislative season

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Q&A

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Q&A (continued)

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