Unclaimed Property 101

The Essentials of Reporting & Compliance

Valerie Jundt, Managing Director
Keane Consulting & Advisory Services

May 17, 2012

Representing State Governments That Actively Find Owners
While Protecting Forgotten Funds Until Claimed
Agenda

- What is Unclaimed Property?
- Rules of Jurisdiction
- Why Should I Care?
- Applicable Property Types
- Gathering Relevant Data
- Systems Analysis and Process Improvements
- Recent Cases and Statutory Updates
- Reciprocity
- Best Practices and Next Steps
- Unclaimed Property Websites/Resources
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

- **Facts and challenges:**
  - All States Have a Law
  - No two states have the SAME law
Rules of Jurisdiction

• Where to Report – Priority Rules

Texas v. New Jersey (1965):

The U.S. Supreme 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
• *Transaction property

*1981 Uniform Unclaimed Property Act
Public Policy & Purpose of the Unclaimed Property Laws

- Not a tax
- One place to look for funds – held in custodial capacity
- Reunite lost owners (consumer protection)
- Prevent unjust enrichment
- Benefit all citizens of a particular state:
  - General fund allocations
  - Indemnification to companies for filing
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)

- Uniform Unclaimed Property Acts
  - 1954 Uniform Act
  - 1966 Uniform Act
  - **1981 Uniform Act**
  - 1995 Uniform Act
Unclaimed Property vs. Tax

- Derivative rights doctrine
- Nexus does not apply
- No statute of limitations
- Few states provide administrative remedies
- Records retention requirements
- Use of Contract Auditors
- Regulatory agencies and reporting deadlines
Regulatory Responsibilities

- Duty to file a timely report
- Duty to perform due diligence timely
- Duty to file in state mandated format
- Duty to maintain copies of the reports and supporting documentation
- Duty to protect the funds until reported and transferred to the state
Traditional Property Types

- Accounts Receivable Credit Balances
- Rebates
- Un-exchanged shares
- Unpaid dividends
- Underlying stock
- Un-cashed payroll checks
- Un-cashed vendor checks
- Unidentified cash

- Deposits
- Gift Instruments
- Un-cashed refund checks
- Unapplied payments
- Dormant accounts
- Insurance proceeds
- Commissions
Other considerations

- Federal vs. State Regs
- Sarbanes Oxley implications
- Dormancy periods
- Negative report
- Due diligence
- Aggregate amounts
- Burden of proof
- Records retention
- Settlement Agreements
Why should you care?

- It’s the law
- Generally no statute of limitations
- Historically an area that has been overlooked, misunderstood and inconsistently applied
- States estimate 70-90% General Ledger out of compliance
- Increasing audit activity
  - Potential for significant penalties
  - Reputational risk
- Sarbanes-Oxley Section 302 & 404
- FAS 5 implications
  - Material financial statement impact
State Regulations & Reporting Requirements
Reporting Requirements

Annual reports are due to most states (Fall)

- November 1
- Cut-off as of June 30
- Due diligence is required not less than 90 and not more than 120 days
  - Depending on the property type, some states require mailings be made by certified mail/advertising

- Aggregate Reporting
Reporting Requirements

• Annual reports are due to most states (All others)
  • Varies between March 1 – May 1
    ○ Cut-off as of December 31

• Texas & Michigan – July 1
  • as of March 30
Unique Differences/Requirements

- California Law (dual reports required)
- New York – Publication & Certified mailings
- Due Diligence requirements
- Various reporting deadlines
- Electronic filing requirements
- Remittance requirements (EFT)
- Third-party Administrators
- Use of NAUPA Property Type Codes may vary
- Lack of sufficient records or inconsistencies with reporting
Fines & Penalties

A holder can be assessed penalties and/or interest

- 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
Non Compliance Triggers

- Failure to file
- Filing negative or zero reports
- Filing incomplete reports
  - Missing property types specific to industry
- Filing securities-related property through TPA, but not general ledger property (or vice versa)
- Filing to the incorrect state
- Property filed late
- Reports and remittances do not reconcile
Common Reporting Errors

• Reporting Property Too Early
• Reporting to the wrong state (i.e. SC vs. SD)
• Learn and Keep Updated on:
  – Due Dates
  – Report Cycles
  – Dormancy Period
• Incorrect File Format
  – Paper Report - Property Limits
  – Not in NAUPA Format
Common Reporting Errors

- Invalid Property Type Codes
- Invalid Date of Last Transaction
- Invalid Joint Owners/Relationship Codes
- Lack of Social Security Number
- Owner Date of Birth Not Provided
- Not Following State Specific Requirements
Common Remittance Errors

- A check for each property on the report
- Check made payable to the owner vs. the state
- Remittance not with the report
  - *Exception for California Notice Report*
- Proof of securities remittance not included with report
Performing Due Diligence

- Generally, in most states, requirement applies to property having a value of $50 or more
- Adhere to additional state requirements
  - Newspaper publication: New York
  - Written notice to owner by certified mail: New Jersey, New York, Ohio
  - Specific letter content and/or format: California, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, South Dakota, Tennessee, West Virginia
Systems Analysis & Process Improvements

• Challenges

• Core business systems do not properly codify data to make unclaimed property identification easy
• Unclaimed property analysis repositories are not seamlessly integrated with core business systems or unclaimed property reporting systems
• Processes do not exist to update core business systems with result of unclaimed property reporting cycles
Conducting a Communication Campaign

- Specific reference to item in question (amount/date of issue/payee name)
- Responses must be in writing
- Allow enough time for receipt & slow responses
- Provide multiple opportunities for responding (fax, email)
- Emails are OK if the email address clearly identifies the owner
  - harrycarry@aol.com would probably not be accepted
Other Recent Developments
Current Trends & Regulatory Environment

- Focus on Insurance Industry practices
- New York – Subpoena’s issued to Life Insurance
- Minnesota – AG has teamed with Commissioner of Commerce – focus on insurance companies
- Michigan – Amnesty ended 12/31/2011 – multiple reporting requirements within the same 12 month period and lowered their dormancy period “retroactively”
- New Jersey – Gift Card Legislation
- Texas – Multiple filing deadlines and dormancy reduction
  - Report for 2012 will be due November 1, 2012
  - Subsequent report due on July 1, 2013
What’s New!!
Applicable Property Types

Health Savings Plan
HS01 – Health Savings Account
HS02 – Health Savings Account Investment

Traditional IRA
IR01 – Cash
IR02 – Mutual Funds
IR03 – Securities

Roth IRA
IR05 – Cash
IR06 – Mutual Funds

Educational Savings Accounts
CS01 – Cash
Equity Related Issues

- States’ enforcement measure of the “Return by Post Office” (“RPO”) standard appears to be shifting to a standard of “Inactivity”:
  - More accounts are deemed eligible for reporting using inactivity as the trigger for reporting
  - RPO reporting significantly reduced as a direct result of the SEC 17AD-17 requirements
- Increased state scrutiny on “due diligence” as a direct result of successful security-related litigation. Holders are required to meet the due diligence requirements in order to gain states’ indemnification.
New Federal Requirement

- Restoring American Financial Stability Act of 2010
  - New requirements under SEC Rule 17Ad-17 in regard to uncashed checks
  - Must be formulated by the SEC by 7/21/2011
  - Rule 17ad-17 is to be extended to apply to brokers and dealers
  - “Paying agent’ is defined as any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security
New Federal Requirement

- Restoring American Financial Stability Act
  - Paying agent required to send notice to each “missing security holder” when a check over $25 due to that security holder goes un cashed
  - Required notice shall advise the security holder that the check has gone un cashed and must be sent within seven months of the issuance
  - “Missing security holder” defined as a payee that does not cash a check before the earlier of a) 6 months after the check was issued or b) the issuance of the next regularly scheduled check
  - In case of 6 month rule, means paying agent will only have one month to comply
Business-to-Business Exemptions

• Exemptions differ based upon property type, state interpretations and other criteria
• Few exemptions are retroactive (Ohio the exception)
• Informal B2B recognized by some states where relationship is ongoing (TX, NY)
Other Types of Exemptions/Deductions

- Gift certificates with inactivity fees or expiration dates – retailers beware!
  - 38 states currently impose conditions or restrictions on imposition of expiration dates and service charges
- Property held, due and owing in a foreign country and arising out of a foreign transaction
- Wages under $50.00 (OH, KY and MI)
- Deduction of due diligence costs
Other Misc. Exemptions/Deductions

• CO- allows a holder to deduct and retain the greater of 2% of the value of property or $25 per GL item prior to delivery of the property
• AK/ID – unused or nonrefundable airline tickets
• FL – Disney/theme park exemption
• OH – tax exempt hospitals
• NV – unredeemed gaming chips/tokens
• TN – retail layaway accounts
• WA – pari-mutual tickets
Federal Law

- FRB Credit Card Act of 2009
- Effective August 22, 2010 no fees on branded and retailer GC’s unless:
  - consumer has not used for one year
  - clear disclosure of the fees on the card
  - only one fee is charged per month (but no $ limit is specified)
- Cards cannot expire before 5 years
Amnesty vs. Voluntary Compliance Programs

- Amnesty
  - Broadly applied
  - Can be initiated by the agency or legislature
  - Not eligible if already selected for an audit

- Voluntary Compliance Initiatives
  - Formal
  - Informal
  - Not eligible if already selected for an audit
  - Right to examine generally preserved
Unclaimed Property Audits

- State Audits vs. Contract audits
- Authority to estimate – when and how
- How and when are interest and penalties applied
- What options/recourse is available for a holder

- NOTEWORTHY: Many if not all states may have the right to conduct an audit. Most states also outsource enforcement to and through a third party.
Audit Triggers

- State registration and payment of other taxes with no unclaimed property compliance history
- Filing only negative unclaimed property reports
- Failing to file all property types
- Claiming property without being compliant
- Merger & acquisition history
- Transient workforce
- State of incorporation
- Media event / publicity
Benefits of Voluntary Compliance

- Accurate financials (SOX)
- Improved chance of penalty and interest abatement
- Limited “look-back” period
- Reduced assessments
- Risk of Audit
- Avoid laborious auditor requests
- Set own timetable for compliance
- Avoid whistleblowers
- Avoid litigation
Best Practices

- Establish and TEST internal policies & procedures
- Early remediation
  - Employ internal research and external communication efforts
- Reconcile vendor and customer files
- Motivate staff to consistently engage in remediation
  - Staying current is easier than researching in audit mode
- Maintain documentation – this is critical
Best Practices (cont’d)

- Confirm your company’s filing status
- Proactive due diligence (M & A)
- Identify areas of potential exposure
- Consider voluntary compliance programs in jurisdictions where exposure exists
- Implement policies, procedures and mechanisms through which to report
- Establish a Committee approach
NEXT STEPS

• Be PROACTIVE
• Create an unclaimed property committee and delegate responsibilities
• Review past filings and current liabilities
• Adopt written policies and procedures – Sec. 404 reviews will require
• Seek professional assistance
  Including: Legal issues, Accounting issues and Audit issues.
  Note: This may require 3 different firms.
• Communicate with others in the industry

Unclaimed Property Committee should have these areas represented:

• Legal Department
• Chief Accounting Officer, Controller, CFO
• MIS – Systems support is critical
• Treasury – Most U/P is some form of unclaimed check
• Human Resources – employee benefits/payroll
• Accounts Payable – Credit balances, unidentified receipts
• Corporate Secretary – Dividends, Stock, Mergers & Acquisitions, etc.
Additional Unclaimed Property Websites/Resources

NAUPA

www.unclaimed.org

Unclaimed Property Professional’s Organization

www.uppo.org
Questions

Valerie M. Jundt
Managing Director
1-800-848-8896 x 3728
vjundt@KeaneUP.com