Update on Revisions to the Uniform Unclaimed Property Act

NAST Treasury Management Training Symposium
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Panelists

• Moderator: Hon. Don Stenberg, Nebraska State Treasurer, NAUPA Senior Vice President

• Michael Houghton, Esq. — Partner, Morris, Nichols, Arsht & Tunnell - Co-Chair, Uniform Law Commission (ULC) Drafting Committee for the Revision of the Uniform Unclaimed Property Act (UUPA)

• Hon. Beth Pearce, Vermont State Treasurer-NAUPA Advisor to the ULC’s UUPA Drafting Committee

• Carolyn Atkinson, Esq. — Deputy Treasurer for Unclaimed Property, WVSTO- NAUPA Advisor to the ULC’s UUPA Drafting Committee

• Lynden Lyman, Esq.- Special Counsel to the ULC’s UUPA Drafting Committee
Panel Topics

Overview Materials
• Michael Houghton-Background of ULC’s Role and Activities of ULC to date
• Carolyn Atkinson-Overview of NAUPA’s involvement with UUPA
• Questions and Answers
Background of ULC’s Role and Activities

• The Uniform Law Commission, now 121 years old, is one of the oldest state organizations designed to promote uniformity of laws among the states.
• The ULC is comprised of Commissioners from the 50 states and three U.S. territories. All Commissioners are licensed attorneys and receive no salary or compensation for their work with the ULC.
• The ULC has drafted hundreds of uniform laws on numerous subjects and in various fields, including the Uniform Unclaimed Property Act (UUPA).
Brief History

• The ULC has led in the area of unclaimed property law since the original act was drafted in 1954, the Uniform Disposition of Unclaimed Property Act, which was later revised in 1966.
• The ULC followed with the Uniform Unclaimed Property Act (UUPA) in 1981 and a revision in 1995.
• Most states have adopted one or more version of the uniform act on unclaimed property.
• The UUPA is not the law in any state or territory unless and until enacted into law in a particular jurisdiction.
UUPA Enactment Statistics

- 16 states* - 1981 Act (29 orig).
- 8 states* - unique legislation.
- 11 states* - mixed.

*States may also include the US Territories: District of Columbia, Puerto Rico and the U.S. Virgin Islands
Map of states’ acts

1954/66 Act

1981 Act

1995 Act

Custodial

No Act
2009 to 2011 ULC receives proposals to revise

2010-NAUPA advises not to proceed

2012 ABA examines development of a model act

ULC reexamines the timelines of a revision

NAUPA endorses ULC proceeding with a revision

Summer 2013-ULC decides to proceed

Feb 2014-initial meeting in DC
Actions to Revise the UUPA

• It has been 19 years since the last revision of the UUPA and there have been numerous changes in business practices affecting unclaimed property, as well as in this area of law, within that time.

• In 2009 through to 2011, various parties and organizations asked the ULC’s Scope and Program Committee to consider revising the 1995 UUPA. The ULC decided not to proceed with revisions to the UUPA, in part due to NAUPA’s concerns as to the appropriateness of a revision in 2011.

• In 2012 NAUPA reconsidered the issue of a UUPA revision and indicates support for a revision at the 2013 ULC mid-year meeting.

• 2013- ULC determines to proceed with a revised Act.
Who is on the committee?

- The ULC Drafting Committee is comprised of:
- 12 Uniform Law Commissioners
- Reporter: Charles Trost
- 4 ABA Advisors: Ethan Millar, Charolette Noel, Scott Heyman and Alexandra Darraby
- 2 NAUPA Advisors: Beth Pearce, VT State Treasurer; Carolyn Atkinson, Deputy Treasurer for UP in WV
- Staff Liaisons
Michael Houghton – Co-Chair – Delaware Commissioner and Immediate Past President of ULC
Rex Blackburn – Co-Chair – Idaho Commissioner
Charles Trost – Reporter for the Drafting Committee – Tennessee Commissioner
Anita Ramasastry – Chair of ULC Scope and Program Committee – Washington Commissioner
Howard Swibel – served on the 1981 Act Committee – Illinois Commissioner and Past ULC President
Raymond Pepe – Pennsylvania Commissioner – served on the 1995 Act Committee
Gene Lebrum – South Dakota Commissioner and ULC Past President
Floyd Lewis – North Carolina Commissioner
Nora Winkelman – Pennsylvania Commissioner
Mike Sullivan – Minnesota Commissioner and ULC Past President
Bob Tennessen – Minnesota Commissioner, Past Chair of the ULC Legislative Committee
Claire Levy – Colorado Commissioner
Lyle Hillyard – Utah Commissioner
Reporter’s Role with the Uniform Act

• Reporter’s role with UUPA
  – Bifurcated into two parts: that of Reporter and Draftsman.
  – The Reporter’s role is to solicit from interested parties suggestions of issues to be considered and changes to be made to the most recent Uniform Unclaimed Property Act (1995), obtain information relevant to resolution of the issues, and compile the results. From these sources will come a Report to the Drafting Committee in the form of the Comments to the first draft of the Revised Act.
  – The role of the Draftsman is to research the case law and legal literature in the subject area, review solutions to issues and language used in other acts on the same subject, and from them prepare a first draft of the Revised Act which will be formatted as a redlined version of the 1995 Act showing the additions and deletions made to that Act in the Revised Act in order to express in statutory language the policy decisions arrived at after consideration of the input from the stakeholders, observers, and members of the Drafting Committee.
Future activities of ULC UUPA Drafting Committee

Initial Drafting Committee Meeting
- Following the first meeting of the Drafting Committee held in Washington, DC on February 21-22, 2014, the Draftsman and legal interns, working in coordination with the Co-Chairs of the Drafting Committee and the Division Chair, will prepare a first draft of the Revised Uniform Unclaimed Property Act (2016) for circulation to the observers and members of the Drafting Committee early enough to include their suggestions in the working draft which is anticipated to be posted on the ULC Website for review by interested parties and stakeholders well in advance of the next meeting of the Drafting Committee (tentatively planned for a weekend in October or November of 2014).

“First Reading” at ULC Annual Meeting, 2015
- The first reading of the version of the draft Act that comes out of that meeting will be up for first reading at the Annual Meeting of the ULC to be held in early July, 2015 in Williamsburg, Virginia.

“Second Reading” at ULC Annual Meeting, 2016
- Following that meeting, the Revised Draft will be edited to make changes suggested from the floor in preparation of a third meeting of the Drafting Committee to be held sometime in late 2015 or early 2016 in order to be ready for second (and likely final) reading in the summer of 2016 and approval by the ULC sitting as a committee of the whole.

Final Approval – Vote by State
- Thereafter, it will be submitted to the ABA for approval and released to the States for introduction and enactment.
76 Issues

• These issues were raised at the meeting February 21 & 22.
• There is still time for input.
• NAUPA and UPPO are working together to resolve certain issues. (highlighted in red on slides below).
Threats to owners’ rights

• Derivative rights doctrine
  – Gift cards
  – Anti-limitations provisions
  – Fees
  – Burden of proof

• Business to business transaction exemption

• Life insurance proceeds reporting

• Third priority rule

• Estimation
Areas of potential agreement

- Administrative appeals for examinations
- Earlier due diligence
- Earlier voluntary reporting
- Holder records retention requirements defined
- Statute of limitation possibly shortened
On the cutting edge

• Define new property types-
  – Health Savings Accounts
  – College Savings Plans
  – Other tax-advantaged plans, e.g., Roth IRAs
  – Gift card, payroll card, other types of cards
  – Facebook credits
  – cloud-based products
Audit issues

- Estimations for audit
- Time limit on scope of audit
- Contract Auditors
Administrative provisions

- Lengthen corporate bond abandonment
- Give states more authority for US Savings Bonds
- Aggregate reporting - include detail
- Publication by administrator
- Electronic record retention by states
- Electronic auctions
Clarification issues

• Define address
• Define gift card, payroll card, other card types
• Define money order
• Define holder, holder domicile
• Define worthless, non-transferrable securities
Abandonment issues

- Electronic contact issues
- Shortening dormancy periods
- Appropriate triggering events
- Securities abandonment trigger
- Tax-advantaged assets
Questions?