

Unclaimed Property 101

The Essentials of Reporting & Compliance

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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 after a specified period of time
- Has its roots in English common law
 - Escheat vs. Custodial
- Governed and enforced at the state level
- Fifty-four (54) reporting jurisdictions including, DC, Puerto Rico, Guam and U.S. Virgin Islands
 - No two laws are exactly the same

Uniform Unclaimed Property Act

- 1954
- 1966
- 1981
- 1995

Rules of Jurisdiction

- Texas v. New Jersey 379 U.S. 674 (1965)
 - State of owner's last known address
 - State of holder's incorporation or domicile if address not known
 - *State of holder's incorporation or domicile if address of apparent owner is in a foreign country and if holder is incorporated or domiciled in the U.S.

* *Provision added in the 1981 Uniform Act*

How Unclaimed Property differs from a Tax

- Derivative rights doctrine
- Nexus does not apply
- With few exceptions, there is no statute of limitations
- Records retention requirements
- Few states have a formal administrative appeals process
- Use of contract auditors

Compliance Requirements

- Annual filing obligations
- Dormancy periods
- Negative reports
- Due diligence
- Aggregate amounts
- Burden of proof
- Record retention

Purpose of the Unclaimed Property Laws

- One place to report/reunite unclaimed funds
- Reunite lost owners with their property
- Prevent unjust enrichment of companies
- Benefit all citizens of a particular state
- Release/Indemnification

Why Should I Care?

- It's the law!
- States estimate that only 20% of companies are fully compliant
- Increasing audit activity
- Increase in number of contingent fee auditors
- Sarbanes-Oxley implications
- Reputational Risk
- Financial Consequences can be significant
- Whistleblowers

Applicable Property Types

- Un-cashed checks
- Deposits
- Customer credits
- Refunds
- Unapplied payments
- Dormant accounts
- Benefit payments
- Accounts receivable
- Accounts payable
- Retirement assets
- Workers' Comp
- Travelers' checks
- Matured bonds
- Un-exchanged shares
- Unpaid dividends
- Underlying stock
- Other general ledger items
- Tangible property
- Commissions
- Rebates
- Un-cashed payroll
- Unidentified cash/credits

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

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

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

Benefits of Voluntary Compliance

- Accurate financials (SOX)
- Penalty and interest abatement
- Limited “look-back” period
- Reduced assessments
- Risk of Audit is reduced
- Avoid laborious auditor requests
- Timetable for compliance
- Avoid whistleblowers
- Avoid potential litigation

Conducting A Self Review

- Testing current procedures
- Analyze corporate structure
- Understand and document the current and historical policies and procedures
- Document and review historical unclaimed property reporting history
- Identify potential types of unclaimed property your company may generate
- Quantify the potential liability for each property type
- Research items to verify that they are unclaimed and pay owner where possible

Gathering Relevant Data

- Corporate Structure
- Merger & Acquisition History
- General Ledger / Chart of Accounts
- Bank Reconciliations / Outstanding Check Lists
- Journal Entries
- Accounts Receivable Aging Reports
- Deminimis / Automatic system write-offs
- Contracts w/applicable service providers

Quantifying Potential Liability

- Identify periods where detailed records are available
- Review records and schedule items that are potential unclaimed property. For example:
 - Stale dated outstanding checks
 - Voided checks that were not reissued
 - Stale dated credit balances
- Research items to determine if they represent a fixed and certain obligation
- Third-party paying agents

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

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

Unique Challenges

- 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

Reporting to California

- Common Mistakes
 - Sending property with the report
 - What happens in these situations
 - Interest assessments will apply

Other....

What California wants you to know

What's New in this March 2011 Issue- Holder Handbook Updates

- An Electronic Funds Transfer section formerly provided as the EFT Information Guide and updated EFT forms
- Updates to the Remitting Securities sections and Remitting Mutual Fund Account Registration and Networking Instruction
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- New NAUPA Property Type Codes for educational savings, health savings, and Individual Retirement Accounts (IRAs).

What California wants you to know

Latest Notice to Holders about remitting securities and revised SS-1 Form can be found on our website at: [http://sco.ca.gov/Content-Images/Content-Images/Notice to Holders New SS1 Form \(4-11-2011\).pdf](http://sco.ca.gov/Content-Images/Content-Images/Notice%20to%20Holders%20New%20SS1%20Form%20(4-11-2011).pdf)

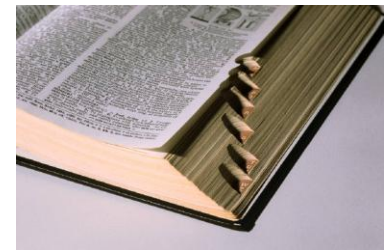
Recently issued another Notice to Holders to try and help with getting securities properly remitted. You can see the details here: [http://sco.ca.gov/Content-Images/Content-Images/guide rptg securities.pdf](http://sco.ca.gov/Content-Images/Content-Images/guide_rptg_securities.pdf)

We are strongly encouraging holder to remit EFT payments via the ACH-Debit process. Due to the ease and cost effectiveness for the holder and the state. This is a one-time set up rather than an annual process for a Fedwire payment.

Definitions

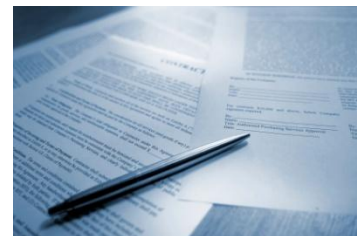
- **Reciprocity**

Process whereby states who routinely accept property belonging to other states annually forward that property to the appropriate states.



Reciprocity

- History of “Reciprocal” or “Exchange” Agreements between States
- NAUPA/UPPO Joint Standardization Committee
- Intent and Purpose

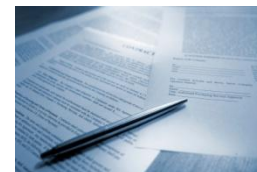


Reciprocity

- Most states accept Incidental property:
 - 10 owners or less
 - Under \$1,000.00
- National Reciprocity Matrix
- California does not allow reciprocity reporting to another state due to owner notice requirements per California Law

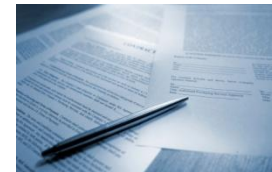
Reciprocity Considerations

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



RECIPROCITY IS NOT INTENDED FOR:

- Reporting most, if not all, property to a state solely on the basis of that state's willingness to accept property for a lot of other states.
- Reporting past due property to a state other than the Entitled state to avoid penalties and interest.
- Reporting to a state other than the Entitled state because you like its laws better.



Actions Holder Can Take

- Develop an unclaimed property program
- Prepare an unclaimed property manual
- Establish written procedures
- Conduct internal training
- Identify personnel responsible for preparation of reports
- Develop strong internal control
- Utilize internal audit function

Amnesty vs. Voluntary Disclosures

- Amnesty
 - Statutory or Regulation
- Voluntary Disclosure Agreements
 - Formal vs. Informal

Actions Holder Can Take

- Monitor stale dated checks
- Balance general ledger liability to unclaimed property database
- Procure technical assistance
- Monitor changes in unclaimed property laws
- Identify unclaimed company assets held by third parties
- Utilize computer systems that track the date of last contact with the account owner

Actions Holder Can Take

- Include escheatment information in company newsletters
- Make address change forms available – be prompt updating your systems
- Perform due diligence
- Retain supporting documentation
- Communicate with owners
- Coordinate external audits
- If in doubt – confirm with state authority

Best Practices & Next Steps

- Determine your company's filing status
- Identify areas of exposure
- Consider voluntary compliance programs in jurisdictions where exposure exists
- Implement policies, procedures and mechanisms through which to properly report

Online Help and Information

- **Individual State websites**
 - <http://www.unclaimed.org/>
- **Unclaimed Property Professional's Organization**
 - <http://www.uppo.org>
- **NAICS Codes**
 - <http://www.census.gov/epcd/www/naics.html>



QUESTIONS/CONTACT INFORMATION

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