



Abandoned and unclaimed property.... Some fast facts

- One of the original consumer protection programs
- Every U.S. state, District of Columbia, Puerto Rico, the U.S. Virgin Islands, Quebec, British Columbia and Alberta in Canada have unclaimed property programs that actively find owners of lost and forgotten assets
- \$1.754 billion returned to the rightful owners in fiscal year 2006 from 1.929 million accounts
- \$32.877 billion is currently being safeguarded by state treasurers and other agencies for 117 million accounts
- Claims can be made in perpetuity in most cases – Even by heirs

Abandoned and unclaimed property.... Some fast facts (continued)

- Unclaimed property is not a “tax” to holders. The holder acts as a custodian for the property, and after a predetermined period of dormancy, the property is turned over to the state.
- Unclaimed property laws are being interpreted more broadly and are being more heavily enforced in the last 15 years
- Unclaimed property is a revenue generating source for states
 - On average states identify owners and return only about one-third of property that they hold
 - Large companies tend to incorporate in Delaware strategically for cost and tax benefit
 - Strengthened enforcement by hiring third party auditors to examine corporate books
 - Unclaimed property – Delaware’s third largest source of revenue (\$365 million in fiscal year end June 2007)
 - 11% of Delaware’s revenue (more than corporate income tax or state lottery!)

Jurisdictional issues: Who gets what

Sourcing of unclaimed property

- First priority rule – Jurisdiction of the owner’s last known address shown on the holder’s books and records
- Second priority rule – The holder’s state of incorporation
- Throwback rule
- Transactional based rule
- Foreign property

Priority rules – Landmark cases

- Texas v. New Jersey 379 U.S. 674 (1965)
- Pennsylvania v. New York 407 U.S. 206 (1972)
- Delaware v. New York 507 U.S. (1993)

Common abandoned and unclaimed property terms

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| <ul style="list-style-type: none">• Unclaimed Property• Escheat Property• Dormancy Period• Holder• Owner• Due Diligence• Holder Domicile | <ul style="list-style-type: none">• Activity• Custodian• Date of Last Activity• Indemnification• Tangible Property• Intangible Property• Reciprocal Agreement |
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Common forms of unclaimed property

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| <ul style="list-style-type: none">• Savings accounts• Checking accounts• Uncashed dividend checks• Uncashed payroll checks• Refunds• Traveler's checks• Unredeemed gift cards | <ul style="list-style-type: none">• Trust distributions• Insurance payments• Certificates of deposits• Customer overpayments• Utility security deposits• Stocks• Contents of safe deposit boxes |
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Compliance: Why it is important

- All 50 states require the annual filing of unclaimed property reports.
- Due diligence, which in certain circumstances requires the mailing of a first class letter to payees, is required by all states except for Delaware and Pennsylvania.
- States are placing a greater emphasis on enforcing compliance
 - Not permitting extensions with waiver of interest
 - Proof of due diligence – California

Compliance considerations

- Guidelines and procedures
- Filing methods
- Holder responsibilities
- Property dormancy periods
- Due diligence
- Statute of limitations
- Applicable fines and/or penalties
- In-house function vs. outsourcing

Voluntary Disclosure Agreements (“VDA”) and Audits

Voluntary Disclosure Agreements (VDAs)

- In cases when a holder has not previously filed unclaimed property reports and the exposure is significant, a VDA might be the best solution (there is generally no statute of limitation for companies without a filing history)
- VDAs usually involve negotiating with the state(s) to bring holders unclaimed property filings current and close out prior years
- VDAs help to manage the state’s expectations (data is reviewed prior to state’s review and issues can be researched)

State Audits

- State auditors have the ability to bind and negotiate terms.
- State auditors do not have a financial interest in the outcome of the audit and the audit remains completely confidential.
- State auditors will focus on “truly unknown” and “unknown” property.

Third Party Audits

- States often engage third party audit firms to perform unclaimed property audits for the state or most commonly a group of states.
- Concerns with this particular audit may include contingency based fees, longer review periods, and confidentiality.
- Examples of third party auditors are ACS and Kelmar Associates.

Voluntary Disclosure Agreement (“VDA”) vs. Audits

Resources

- Participation in VDA could alleviate the significant resource drain that audits generally incur (i.e., accounting, tax, IT, finance, legal). Audit defense and the gathering of accounting records can exhaust resources. (Note: Audits could begin as early as 1981, giving consideration to prior audits.)

Scope and settlement

- Since VDA’s are initiated by the company, it is an agreement between the state and the company only. Whereas, third party auditor will often be paid on a contingent basis and will be aggressive in pursuing large settlement offers. Additionally, third party auditors may seek to expand the audit to multiple states.

Review areas

- Audits can extend to the review of areas not often examined; even in a tax audit (e.g. credits in the Accounts Receivable area and outstanding checks from self insured medical plans, etc.).

Proof and support

- During a VDA, the company has an opportunity to adequately review records. Conversely, the auditor’s presumption is that the property is unclaimed unless the records and/or procedures establish otherwise. Oftentimes, records do not rebut the presumption that an item is not escheatable.

AUP exposure areas by industry

Common property types associated with each Industry

<ul style="list-style-type: none"> • Banks and Financial Institutions <ul style="list-style-type: none"> - Savings Accounts - Money Orders - Cashier's Checks • Healthcare <ul style="list-style-type: none"> - Employee Benefit Plan - Pension Checks - Patient Credits • Insurance <ul style="list-style-type: none"> - Life insurance claims - Casualty claims - Agent's credit balances 	<ul style="list-style-type: none"> • Manufacturing <ul style="list-style-type: none"> - Expense Checks - Pension Checks - Unbilled Payables/Unmatched Receivers • Pharmaceutical <ul style="list-style-type: none"> - Rebates - Commissions • Publishing <ul style="list-style-type: none"> - Subscription Balances - Advertisement Balances
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AUP exposure areas by industry

Common property types associated with each Industry

<ul style="list-style-type: none"> • Retail Businesses <ul style="list-style-type: none"> - Gift Certificates/Gift Cards - Credit Memos - Layaways • Trucking <ul style="list-style-type: none"> - Payroll - Accounts Payable - Accounts Receivable Credits 	<ul style="list-style-type: none"> • Utilities <ul style="list-style-type: none"> - Accounts Payable - Payroll - Consumer Credits - Deposits • E-Commerce <ul style="list-style-type: none"> - Merchandise Bought on Credit - Gift Certificates
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Hot topics: Increased state scrutiny: Inventory

What is it?

- Unmatched receivers, receipts not billed ("RNB"), unbilled inventory
- Generally 'clearing accounts' comprising supplier credits, such as, overshipments, duplicate payments and pricing volume issues
- May extend to customer related balances (i.e., promotional programs, overshipments, etc.).

What companies does it effect?

- Retailers
- Wholesalers/Distributors
- Any company receiving product/inventory

Challenges

- Magnitude of over/under shipments – Certain industries are vulnerable to this issue (i.e., retail; consumer products; oil and gas).
- Clearing accounts are not consistently reconciled:
- Policies regarding over/under shipments may not be similar or are addressed differently.
- Due diligence and accounting research is more difficult in this area.
- Large volume of transactions run through a clearing account.
- Comparing amount ordered, shipped and invoiced don't always reconcile.
- Many variances are due to volume discounts, promotional offers and/or damaged goods.

Hot topics: Increased state scrutiny: AR credits

- States and audit firms are focusing on the areas of customer credits and accounts receivable credits.
- Result from overpayments, volume discounts, returns and other customer transactions.
- De-minimus write offs and netting of credits and debits are common business practices in this area.
 - Ex – Audit vs. Unclaimed Property Threshold
- Customer billing systems may lead to efficiencies in this area (i.e. balance forward invoicing and consistent issuance of detailed statements).
- Magnitude of exposure
- In some industries, accounts receivable could include deposits, unidentified receipts and amounts due to customers.
- Credit and debits for the same customers may be netted under certain circumstances.
- Timing of credits versus debits may also be a focus of an audit, as auditor may want to see the offsetting debit to a credit in the same period as the credit in order to avoid extrapolation.

“The Best and Worst of State Unclaimed Property Laws”

- Council on State Taxation (COST) – Research – January 2009
- The Criteria to “Make the Grade”
 - Are business to business transactions subject to escheat?
 - Does a period of limitations for unclaimed reporting requirements exist that corresponds with state tax law and normal business practices?
 - Is an independent administrative appeals process available for holders?
 - Are gift certificates subject to escheat?
 - Does the state treat both the payment of interest to property owners and the assessment of interest against holders equitable?
 - Does the state engage contingent-fee auditors in its administration of unclaimed property?

“The Best and Worst of State Unclaimed Property Laws”

Notable States

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| <ul style="list-style-type: none"> • Kansas – A • Arizona – A- • Wisconsin – A- • Indiana – B+ • Maryland – B+ • Massachusetts – B+ • North Carolina – B+ • Virginia – B+ • Texas – C • Louisiana – C- | <ul style="list-style-type: none"> • Georgia – D- • Mississippi – D- • New York – D- • Oregon – D- • Pennsylvania – D- • New Hampshire – D- • Utah – D- • Wyoming – D- • Delaware – F |
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Abandoned and unclaimed property and the individual

Common property types associated with individuals

- Gift certificates
- Payroll checks
- Dividend checks/equity property

Is the state holding my money?

- Newspaper ads
- State websites
- UPPO website
- Missing Money

How can I keep my property from becoming lost?

- Contact institutions that hold your money or property every year (especially when address or marital status change)
- Keep accurate financial records and record all insurance policies, bank account numbers with bank names and addresses, types of accounts, stock certificates, and rent and utility deposits
- Cash all checks for dividends, wages, and insurance settlements without delay
- Respond to requests for confirmation of account balances and stock holder proxies
- If you have a safe deposit box, record its number, bank name and address, and give the extra key to a trusted person
- Prepare and file a will detailing the disposition of your assets

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National organizations

NAUPA (National Association of Unclaimed Property Administrators)

- www.unclaimed.org

UPPO (Unclaimed Property Professionals Organization)

- www.UPPO.org

NAST (National Association of State Treasurers)

- www.nast.net

COST (Council on State Taxation)

- www.statetax.org

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