

Unclaimed property

Windfall for states ... a disaster for taxpayers **Interviewed by Steve Trusty**

Unclaimed property, sometimes called abandoned property or escheated property, is an extrapolation of common English law. In general, an unclaimed property issue may arise whenever the proper owner has not claimed or taken some form of action to indicate his/her interest or ownership in the property. The holder of the property must protect it until the rightful owner claims the property, or if a certain period of time lapses, then the property must be turned over to the state. In that case, the state will hold on to the property until the rightful owners make a claim to receive the property. Failure to comply with these statutes may subject companies to significant liabilities including interest and penalties.

Smart Business spoke with Mike Goral, principal at Berenfeld Spritzer Shechter & Sheer LLP, about unclaimed property issues, which are oftentimes overlooked by corporate accounting staff and management.

What kinds of property can be unclaimed property?

It's amazing that this event occurs as often as it does and how many industries are affected by unclaimed property issues. Unclaimed property is normally limited to tangible and intangible property. But unclaimed property can range from the following:

- an uncashed payroll or vendor check
- unused gift cards
- items left in safety deposit boxes
- security deposits
- monies deposited to redeem stocks, bonds or other securities
- unused airline tickets
- amounts distributable from a trust or custodial fund
- vacation, profit-sharing and other benefits

What laws govern unclaimed property?

As early as 1908, Massachusetts enacted the country's first unclaimed property



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statute for unclaimed bank deposits. In 1911, the U.S. Supreme Court heard its first case on this issue. However, it was not until the 1954 Uniform Disposition of Unclaimed Property Act that the majority of states adopted formal statutes on this issue. The act was revised in 1966, 1981 and 1995. States have recently discovered this new windfall of opportunity as a new source of revenue.

What are the requirements?

In general, the owner of the property has not made contact or the holder of the property has not been able to contact the rightful owner. The holder of the property must then protect and hold the property for the rightful owner for a specified period of time. The type of property determines the length of time the property must be held. For example, wages and deposits to a utility are one year, but traveler's checks can be as long as 15 years. Once the property is reported to the state, the state has an obligation to try to contact the rightful owner. The type of notification varies by state. If the state does not locate the owner within a period of time ranging from one to 15 years, then the hold-

er must turn over the property to the state. The state then holds the property in perpetuity until the owner proves his or her rightful claim to the property.

What are the most common mistakes that companies make with this issue?

During the course of business, a check or deposit goes unclaimed. When it is time to close the books for the year, many companies simply add these unclaimed amounts as income on their books. As a result, the funds get comingled with other corporate monies and the records of the unclaimed amount are not kept. When a subsequent audit is performed by the state and the company lacks the proper records, the state can make a jeopardy-type assessment whereby the state makes an estimate of the total unclaimed property that is due to the state.

The burden of proof then shifts to the company to prove that the state is incorrect. But remember, in most cases, the company does not have good records and therefore the state usually prevails. In addition, interest and penalties can significantly increase the company's liabilities and can sometimes double or triple the original amount due. What complicates this issue further is that the company does not need to have physical presence in a particular state for this reporting requirement, and there is no statute of limitations period if a report has not been made.

What action should companies take?

Companies should segregate unclaimed property and maintain good records. Unclaimed property returns should be filed on a regular basis. Companies in the retail, restaurant, construction, banking and brokerage industries should pay particular attention to this matter since these industries are frequently targeted by state auditors. <<

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