Abbreviated Unclaimed Property Dormancy Periods

STEPHEN G. HARRIS AND PHYLLIS J. SHAMBAUGH

States are seeking ways to get more money faster. As the authors explain, one method they are using is to speed up their unclaimed property windfall by reducing dormancy periods.

Every year, states collect hundreds of millions of dollars in unclaimed property from businesses.[1] At least theoretically, states hold this unclaimed property for the benefit of the rightful owner.[2] However, only a fraction of owners ever claim their property. Accordingly, unclaimed property collections effectively result in interest-free loans that a state may never be required to repay.

By increasing enforcement of the unclaimed property laws already on the books, states are often able to generate increased revenues without the political baggage of new or increased taxes. Tired of waiting to cash in, states are looking for ways to get the money flowing into the coffers faster. One method states use to speed up the unclaimed property windfall is to reduce dormancy periods. Utah is the latest to take this approach.

UNCLAIMED PROPERTY REPORTING

All 50 states plus the District of Columbia, Puerto Rico and the

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Stephen Harris is an associate at Jones Day in Dallas and Phyllis Shambaugh is a senior staff attorney at Jones Day in Columbus. The authors can be reached at sgharris@jonesday.com and pjshambaugh@jonesday.com, respectively. The views set forth in this article are the personal views of the authors and do not necessarily reflect the opinions of Jones Day or its clients.

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U.S. Virgin Islands have enacted unclaimed property laws addressing the disposition of unclaimed property.[3] These laws require companies to report and remit to the state property owed to others after the property becomes abandoned.

Although state unclaimed property laws do vary, the basic principles of unclaimed property reporting are consistent throughout the United States. State unclaimed property laws generally require businesses (holders) that possess intangible property belonging to or owed to other persons (owners) that is unclaimed by the owner for a certain period of time to remit the property to the state with the superior claim to the property. The highest priority state is the state of the last known address of the owner as shown on the holder's books and records. If the holder does not have an address for the owner, the state of the holder's domicile may claim the property.

Property subject to a state's unclaimed property law is presumed abandoned or unclaimed if the owner fails to take any action evidencing a continuing interest in the property for a statutorily defined dormancy period, generally ranging from one year to 15 years. During the dormancy period, holders are generally required to make a limited attempt to locate the owner and return the property. If an owner cannot be located, the holder is required to remit the property to the appropriate state. The state then holds the property for the benefit of the owner.

DORMANCY PERIODS GENERALLY

Property is presumed unclaimed and subject to a state's unclaimed property reporting requirements if it remains inactive for a statutorily-defined dormancy period. Dormancy periods vary by property type and by state, and generally begin at the time the property is initially payable or deliverable to the owner. Typical dormancy periods for bank deposits, checks, drafts, credit memos, credit balances, and similar property range from three to five years. The longest dormancy periods are reserved for money orders and

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travelers checks, typically seven years and 15 years respectively. Unclaimed wages and other forms of compensation are subject to the shortest dormancy period, generally becoming reportable after one year.

The trend among states is to shorten dormancy periods. As partial justification for the reduction of dormancy periods, in 1981 the National Conference of Commissioners on Uniform State Laws ("NCCUSL"), the group that developed the uniform unclaimed property laws upon which most state unclaimed property laws are based, stated:

> The [1981 Uniform Unclaimed Property Act] reflects a tendency among state legislatures in recent years to reduce dormancy periods. The current high inflation rate exacts a severe penalty from one who holds money or its equivalent for extended periods; an inference of loss or abandonment may be drawn more quickly than in 1966 when the value of money was more stable.[4]

NCCUSL also cited the increased mobility of the population (and presumably the resultant decrease in the likelihood that owners will claim property after many years), and the reported experience among states with shorter dormancy periods that substantially more property is returned to owners after dormancy periods are reduced, as reasons for the reduction in dormancy periods.[5] While this reasoning may be accurate, at least one commentator has stated that the primary reason for the reductions in dormancy periods is so that the states can offset budget deficits.[6]

UTAH REDUCES DORMANCY PERIODS

Following this trend, the Utah legislature recently amended the Utah Unclaimed Property Act, reducing dormancy periods for several common property types.[7] Effective April 30, 2007, the dormancy periods for the following property types were reduced from five

JPSL Vol 3 No 1 JulyAugust 2007.54 54 7/18/2007 10:34:45 AM

years to three years:

1. Net intangible property (intangible property plus any income derived from it);

2. A bank draft (e.g., checks, drafts, cashier's checks or certified checks);

3. A deposit in a financial institution (e.g., demand, savings, or matured time deposit, any interest or dividends on a deposit, and any automatically renewable deposit);

4. Mineral proceeds (e.g., net revenue interest, royalties, overriding royalties, production payments, and all obligations for the acquisition and retention of a mineral lease, including bonuses, delay rentals, shut-in royalties, and minimum royalties);

5. A stock, shareholding, or other intangible ownership in a business; and

6. Intangible property or income held in an agent or fiduciary capacity.

In addition, the dormancy period for unclaimed funds held or owning under a life endowment insurance policy was reduced to three years.[8]

OTHER RECENT EXAMPLES OF SHORTENED DORMANCY PERIODS

Utah is just the latest of several states to reduce dormancy periods, and thus decrease the amount of time the state must wait before getting the beneficial use of an inactive account. The following is a sample of recent state reductions in dormancy periods:

Iowa reduced the dormancy period for wages, payroll and salary from three years to one year;[9]

Louisiana and Tennessee reduced the dormancy periods for securities, stock, dividends, and other distributions from five years to three years;[10]

Florida reduced the dormancy period for unclaimed stock or equity interests and also for unmatured or unredeemed debt, and matured or redeemed debt from five years to three years;[11]

Oklahoma reduced the dormancy period for unmatured or unredeemed debt, and matured or redeemed debt and also for unclaimed stock or equity interests from seven years to five years; and[12]

Kentucky reduced the dormancy period for property held or owing by a financial institution (*e.g.*, checks, money orders, drafts and certificates of deposit), other than traveler's checks, from seven years to three years.[13]

STATES BECOMING MORE AGGRESSIVE

Because imposing new taxes and increasing existing taxes are not popular options, states are forced to generate revenue from less offensive sources. With increasing frequency one source being tapped is the state's unclaimed property receipts. For example, in his January State of the State address, the Nevada Governor remarked that his budget earmarked $5.6 million of unclaimed property receipts to shore up a state scholarship program, and an additional $10 million of unclaimed property receipts for the development of an economic development program aimed at high-tech/biotech and renewable energy industries.[14] As states continue to face increasing pressure to provide services while simultaneously experiencing decreases in federal funding, states may more aggressively enforce existing unclaimed property laws, making unclaimed property compliance in all jurisdictions even more important for all companies.

NOTES

1 California holds over $5 billion in unclaimed property. http://www.sco.ca.gov/col/ucp/aboutucp.shtml.

2 *But see, Taylor v. Westly,* No. CIV. S-01-2407 WBS GGH (E.D. Cal. Jun. 1, 2007), where a federal court recently ordered California's Controller to cease collecting unclaimed property and barred further sales of property currently in its treasury because California's process was held to violate the Due Process clause of the U. S. Constitution.

3 In today's international marketplace, a company may incur unclaimed property reporting obligations in foreign jurisdictions. For example, New Zealand, Malaysia, Ireland, and all five Australian states have unclaimed property statutes.

4 Uniform Unclaimed Property Act (NCCUSL 1981), Introductory Note.

5 *Id.*

6 *See* David J. Epstein, *Unclaimed Property Law and Reporting Forms*, Section 1.06[3][c] (Matt. Bend. 2007).

7 The amendments also, among other things, (1) moved the report filing deadline from May 1 to November 1; (2) increased the aggregate reporting amount from $25 to $50; and (3) set the interest rate imposed on holders that fail to pay or deliver unclaimed property by the deadline at 12% per annum. *See* H.B. 219, 2007 UT H 219 (Feb. 27, 2007).

8 *See* Utah H.B. 219, 2007 UT H 219 (Feb. 27, 2007); *see also*, Utah Code §§ 67-4a-102.

9 *See* Iowa Stat. § 556.9(1), as amended by L. 2003, c. 46, effective July 1, 2003.

10 *See* La. Rev. Stat. Ann. § 9:154(A)(3), as amended by Louisiana S.B. 140, 2006 Regular Session, Act 573, effective August 15, 2006; Tenn. Code Ann. § 66-29-107, as amended by Tennessee H.B. 3182, Laws 2006, effective July 1, 2006.

11 *See* Ch. 163 (H.B. 1527), Laws of 2005, effective June 8, 2005.
12 *See* S.B. 451, Laws 2005, effective November 1, 2005.
13 *See* H.B. 380, Laws 2006, effective July 12, 2006.
14 A transcript of the Governor's remarks is available at http://gov.state.nv.us/.