• Unclaimed Property Reporting: What You Need To Know!
I Am Responsible for What? Escheatment?

- You are at the starting blocks of this race to become an expert on unclaimed property reporting and you’ve never even heard the word ESCHEATMENT, much less how to spell it...

- Let’s get started...
Agenda

1. What is unclaimed property?
2. Why should I be concerned about compliance?
3. Where do I need to report?
4. What are my essential responsibilities?
5. How do you become compliant?
What is Unclaimed Property?
What Is Unclaimed Property?

- Financial obligations generated during the course of an organization’s daily operations that is due and owing to another party (customer, vendor, employee, investor, etc.) is potentially “unclaimed property”.
  - Intangible property (moneys or rights to moneys) not in possession of the rightful owner
  - Exception – safe deposit boxes
- Failure to recognize the obligations of managing and timely reporting unclaimed property to the states puts your organization at risk of a state audit and fines and penalties
  - Sarbanes-Oxley implications
- Unclaimed property is not a tax!
What Is Unclaimed Property?

• Every U.S. state, District of Columbia, Puerto Rico, the U.S. Virgin Islands – and Quebec, British Columbia and Alberta in Canada – have enacted unclaimed property laws

• Despite most states’ unclaimed property laws being modeled after the four Uniform Unclaimed Property Acts, no two state laws are alike
  – Even states with the same model act laws can differ because states craft laws to meet the needs of their citizens
  – Compliance with all the different state laws is complex
# Common Types of Unclaimed Property by Industry

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<th>BANKS</th>
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<th>OIL/GAS</th>
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<td>Checking and savings account</td>
<td>Accounts Payable/Vendor Payments</td>
<td>Individual or group policy benefits</td>
<td>Net revenue interest</td>
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<td>Matured CD’s</td>
<td>Payroll</td>
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<td>Safety deposit contents</td>
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<td>Money orders</td>
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<td>Traveler’s Checks</td>
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<td>Demutualization</td>
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<th>RETAIL</th>
<th>UTILITY</th>
<th>BROKERAGES/FINANCIAL INSTITUTIONS</th>
<th>THIRD PARTY ADMINISTRATORS</th>
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<tr>
<td>Accounts receivable (huge issue)</td>
<td>Gift cards</td>
<td>Utility deposits</td>
<td>Dividends</td>
<td>Verify liability</td>
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<tr>
<td>Accounts payable</td>
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<td>Membership Fees</td>
<td>Stocks</td>
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<tr>
<td>Payroll</td>
<td>Accounts payable</td>
<td>Refunds/Rebates</td>
<td>Bonds</td>
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<td>Credit memo’s</td>
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• **Public Policy & Purpose of the Unclaimed Property Laws**
  
• Reunite lost owners with their property (consumer protection basis)

• Prevent unjust enrichment or “windfalls” for companies

• Benefit all citizens of a particular state:
  – General fund allocations
  – Indemnification to companies for filing

• “Business Nexus” is usually NOT a consideration in determining whether the holder is required to report unclaimed property items to the state
• Why Should You Be Concerned About Compliance?
• **Why Should You Be Concerned About Compliance?**

• To be “in compliance” requires:
  - Reporting each and every year as required by the state
    - Exception-Mississippi every 3 years (2014 reporting year)
    - “Negative” reports
  - Adhering to the unclaimed property laws and requirements of all 54 states and U.S. territories
  - Reporting and remitting every applicable property type generated by the organization
  - **IGNORANCE OF THE LAW IS NOT AN ACCEPTABLE EXCUSE FOR NON-COMPLIANCE!**
Why Should You Be Concerned About Compliance?

States have the authority, and ability, to audit to determine compliance and are increasing their efforts to identify non-compliant holders.

State audits may be implemented in a variety of ways:

- Third Party Audit – the state authorizes an independent firm to audit on their behalf
  - Audit may be conducted for multiple states
  - Generally, paid on a contingency basis of 10-15% of the funds delivered to the state. Creates an incentive to maximize the unclaimed property uncovered

- Desk Audit – usually performed by state staff auditors
  - Holder is required to furnish documents/data to be examined at the auditor’s office
  - Can result in a multitude of requests for documentation

- Field Audit – performed by either state staff auditors or third-party auditors
  - Auditor “sets up shop” in holder’s place of business
Why Should You Be Concerned About Compliance?

• In most states there is no statute of limitations, which can result in decades of accumulated unclaimed property liabilities.

• If an audit uncovers property that should have been reported, the state can impose fines and interest:
  – Interest generally applied at 10%–25% of property value
  – Penalties may include:
    o $100 – $200 per day ($10,000 maximum)
    o Plus a fine of $1000 – $25,000 (some states assess an additional 25% of the value of the property)
  – Can be considered a Class B misdemeanor in some states
  – Several states also assess the cost of the audit
  – Interest, costs and fines can exceed the amount of past due unclaimed property!
• **Why Should You Be Concerned About Compliance?**

  • Situations and events that may bring a state auditor to your door:
    - Failure to file or filing late
    - Filing negative reports year after year
    - Filing incomplete reports or reports that don’t match the remittance
    - Not filing in the state’s required format
    - Not reporting property types that are standard for your industry
    - Reporting much less than similar organizations
    - Reporting limited property types (i.e., securities, payroll) through a third-party administrator but not filing reports for the organization’s other probable property types.
    - Filing to the incorrect state
    - Mergers and acquisitions
    - Claiming property without being compliant
Why Should You Be Concerned About Compliance?

• Possible Sarbanes-Oxley Ramifications
• The cumulative effect of years of non-compliance, plus applicable penalties and interest, could be material resulting in an overstatement of corporate earnings and potentially false financial statements
• Section 404 of Sarbanes-Oxley requires public companies to have adequate internal controls to ensure the accuracy of financial statements
• The certification requirements in Sections 302 and 404 require careful consideration of procedures for ensuring escheat law compliance
Where Do I Need To Report?
• Tell Me How This Started…

The History

• British Common Law
  – Escheat
  – Transformed in US to custodial

• Unclaimed Property Acts in the United States
Where Do I Report?

1st Priority Rule

TX v. NJ Supreme Court Case 1965

- Remit to property owner’s last-known address, as shown by the holder’s books and records
- What constitutes the last-known address?
  - An address sufficient for the delivery of mail (1981 Act)
  - 1995 Act is silent – remit property to state of owner’s last known address
Where Do I Report?

2nd Priority Rule

TX v. NJ Supreme Court Case 1965

• If the holder’s records contain no owner information or the jurisdiction of last known address does not provide laws for escheat –
  – Bad addresses will still revert to first priority rule

• 1981 & 1995 Acts added clarification for non-corporate entities
  – “Domicile” defined as the “state of incorporation for a corporation and the state of principal place of business of an unincorporated person”
What Are My Essential Responsibilities?
• **Identify Property**

• Review all property types

• Information to collect:
  – Owner ID (SS# or FEIN#), Name, Address, City, State, Zip, Property ID (check #, account #, etc.), Last Activity Date
  – Amount, and Shares

• 170 property type codes added over 4-year span
  – Educational Savings Accts, HSA, ROTH IRA

• Mergers and Acquisitions
• **Once Data Has Been Identified, Determine if Owner Is Really Lost**

  • Check vendor master list
    – Secondary address
    – Address of a parent company
    – Related subsidiary

  • Payroll
    – Terminated
    – Transferred
    – Access retirement info

  • Use free Internet sources to find a new address (i.e., anywho.com, free-peoplesearch engines.com, switchboard.com)

  • If practical, use a tracing firm or government or commercial database searches (credit bureaus, etc.)
• Third-Party Administrators (TPAs) - Many companies utilize TPAs to outsource disbursement functions within the companies’ various departments or benefit or non-benefit functions (i.e., payroll, rebates, 401(k), stock transfer, etc.)

• States’ Position on Reporting Obligation is that the party that has “made a promise to pay” (i.e., ”the obligor”) is ultimately responsible for reporting any uncashed checks as unclaimed property

• VERIFY CONTRACT LANGUAGE

• Termination provisions should be reviewed closely, as they will often involve a transfer of liabilities back to client

• Indemnification and fee provisions should be reviewed
• Review Legislative Changes and Potential Exemptions
  • Identify the relevant jurisdictions and review data file for possible omissions
    – Business to Business
    – Wage exemptions
    – CO standard deductions
    – FL $10 exemption for credit balances and customer overpayments
    – Gift Cards
  • Review your state of incorporation’s statutes
Review Any Dormancy Period Changes

- States are tightening their belts and tightening holding periods
  - New legislation adding Savings Bonds as new property type
    - AR, IA, IN, KY, LA, MO, NC, NH, NV, and SD
  - PA reduced many dormancy periods from 5 to 3 years
    - Payroll is still 2 years, Accounts Payable is now 3 years
• Perform Timely Due Diligence Review

• Due Diligence Requirement: The degree of effort required by law that an unclaimed property holder must exert to find the rightful owner before the property is sent to the state. Usually this is in the form of a “Due Diligence Letter”

• Basic mailing requirements
  – A first class mailing to the owner at the last known address in the records of the holder. (Some states, i.e., NJ, OH, NY, IA (banks/financial institutions) require a certified mailing under specific circumstances)
  – Publication—DE, NY, and PR require publication in newspapers based on specific industry classifications
  – No due diligence requirement for PA, DE but recommended
Due Diligence Review

- Each state has established a timeframe in which letters should be sent. As a general rule, many states require the letter to go out no more than 120 but less than 60 days prior to reporting.
- Friendly/customer service letter options
- Colored envelopes to increase return %
- Determine what proof of identity is required-fraud prevention
- Deductions allowed by CA, IA, IL, NY, OH, and OK
Due Diligence Compliance Push

• Due diligence attestation language added to state report cover sheets

• Most states have penalties for failing to perform due diligence
  – VA fine not to exceed $50 for each account upon which due diligence was not performed
  – MA subject to fine of $1.00 for each owner whose property is remitted to the Division by the holder, or $1,000, whichever is greater
• **Understand When and How to File Report**

  • Review states’ requirements
    – Dormancy periods
    – Preliminary and/or final reports
      o Preliminary reports only required in PR and CA
  
  • Type of report formats— Diskette, CD, On-line
    – Shift toward electronic upload
  
  • Aggregate limits – Dollar threshold at which holder still remits property but does not supply name and address detail in holder report
  
  • Negative reports
• **Reporting Tips**

  • Ensure the report reflects the same dollar amount as remittance
  • Use state-prescribed cover sheets and/or holder numbers
  • Make sure your reports/cover sheets are completed and signed (and notarized if required)
  • Request filing extensions within the states’ prescribed periods prior to the filing deadline
  • Ensure that all property types are included on the report, as states have benchmarks for industries
• Remit Property Based on States Requirements

• Remittance
  – Typically, payment is generated in the form of a check sent to the state official
  – However, payment may be required to be sent via wire transfer over certain dollar amount (CA, DC, ID, MA, NJ, and TX)

• Schedule time in advance for necessary signatures / notary

• Delivery of report and remittance is on or before state-specific deadline
• **Keep Copies of Reports**

  • Keep copies of reports and due diligence responses for audit trail
  • Common record retention timeframe minimum 10 report years—we suggest FOREVER!
  • Document changes in business
    − Acquisitions/mergers
    − Number of employees
    − Number of vendors
• How Do You Become Compliant?
How Do You Become Compliant?

Voluntary Compliance Initiatives

- Amnesty
  - Generally available for a specified period of time
  - Penalties and interest waived on property reported under amnesty
- Ongoing Voluntary Disclosure Programs
  - Formal
    - Require signed agreements and set procedures and deadlines
    - Interest and penalties waived or reduced
    - Limited “look back”
    - Not eligible if already selected for an audit
    - Right to examine generally preserved
  - Informal
    - Interest and penalties waived or reduced even though no formal program is offered
Performing a Self Review

• Analyze corporate structure
• Understand and document the current and historical policies and procedures
• Document and review historical unclaimed property reporting history
• Gather relevant data
  – Merger & Acquisition history
  – General Ledger / Chart of accounts
  – Bank reconciliations / outstanding check lists
  – Journal entries
  – Accounts receivable aging reports
  – De-minimis/automatic system write-offs
  – Contracts with applicable service providers
Performing a Self Review

- Identify potential types of unclaimed property your company may generate
- Quantify the potential liability for each property type
- Research items to verify they are unclaimed
- Pay owner where possible
- Report and remit property to the appropriate state
• **Best Practices**

• Implement strong written policies and procedures to identify, track, and report unclaimed property
  – Periodically test the procedures to ensure they are still relevant

• Motivate staff to consistently engage in remediation
  – Staying current is easier than researching in audit mode

• Support proactive due diligence to maintain contact with vendors and customers
  – Reconcile and update vendor and customer files

• Maintain documentation
• **Best Practices**

• Create an unclaimed property committee
  – Include representatives from each department – don’t forget IT!
  – Meet periodically to address changes that could impact unclaimed property compliance
    o New state laws or Federal regulations/legislation that would alter the definition of unclaimed property or how it is reported
    o Corporate events like mergers & acquisitions, accounting program changes, new IT systems
• **Educational Sources**

• Stay informed!
  - Unclaimed Property Professional’s Organization  [www.uppo.org](http://www.uppo.org)
    o Membership Contact Number
      - 763-253-4340
    o “Members only” benefits on Website
  - NAUPA [www.unclaimed.org](http://www.unclaimed.org)
  - MarketSphere [www.unclaimedpropertyspecialists.com](http://www.unclaimedpropertyspecialists.com)
• Final Review of the Benefits of Compliance….

• Accurate financial statements
  – Sarbanes-Oxley
• Preserve valuable customer relationships
• Reduce potential negative publicity
• Prevent fraud, funds misappropriation and identity fraud
• Uniformity across departments
• YOU’VE CROSSED THE FINISH LINE…….
Questions?