

Are You in Possession of Unclaimed Property?

SmithAmundsen Financial Services Alert

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Each state has unclaimed property laws for the purpose of assisting its citizens with locating and recovering their unclaimed property. Under these laws, financial institutions as well as other businesses, commonly referred to as “holders,” are required to file annual reports with, and as appropriate, deliver unclaimed property in their possession to, the unclaimed property administrators of various states.

Generally, unclaimed property consists of interests in intangible personal property; however, it may also include tangible personal property held in a safe deposit box, or a similar safekeeping depository. By way of example, interests in dividends, unpaid wages, deposits, and stocks are all subject to unclaimed property laws.

Property is subject to the custody of a state as unclaimed property, and is required to be reported and delivered to the state by a holder, once it is presumed to be abandoned. A presumption of abandonment arises once there has not been owner-generated activity for a prescribed period of time. This period of time varies on a state by state basis and differs depending on the type of property, but it typically falls within the range of one to fifteen years, with three years being common.

In most cases, unclaimed property is subject to the custody of the state of the owner’s last known address; however, under certain circumstances, unclaimed property may be subject to the custody of the state of the holder’s domicile (which is often its state of incorporation) or the state in which the transaction which resulted in the unclaimed property occurred. As a result, a holder may be required to report unclaimed property to multiple different states.

Holders who fail to comply with their reporting and remittance obligations may be subject to civil penalties, interest on unpaid amounts, and, in limited circumstances, criminal liability. Specific penalties can vary from state to state. Further, state attorneys general are typically given authority to audit and examine holders to determine compliance.

Each state has its own requirements with respect to reporting and remitting unclaimed property which must be analyzed to ensure a holder has satisfied its obligations. At a minimum, the following steps should be taken as a starting point:

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1. Identify and track potential unclaimed property
2. Identify the appropriate state(s) for reporting purposes
3. Perform any required due diligence
4. File a report with and, if appropriate, remit unclaimed property to the appropriate state(s) by the applicable filing deadline(s)

Most financial institutions as well as other businesses are in possession of unclaimed property. By keeping in mind the above points, you will be on the path to compliance and will avoid unnecessary penalties and/or audits.

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