



THE UNCLAIMED PROPERTY LEDGER

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CURRENT EVENTS

Events

Venio will be attending the National Investment Company Services Association (NICSA) Regional Meetings October 1 in Boston and November 17 in San Francisco.

October 5 Mike Ryan, Vice President of Sales will be co-presenting at the Association for Financial Professionals Annual (AFP) Conference in San Francisco. The topic will be "Unclaimed Property 101: Everything from Establishing Policies and Procedures to Recovering Funds Belonging to Your Company."

October 20-23, Venio will be attending the Stock Transfer Association (STA) Annual Conference in Amelia Island, Florida.

November 9-11, Venio will be attending the National Association of Stock Plan Professionals (NASPP) Annual Conference in San Francisco.

ABOUT VENIO

Venio finds owners of unclaimed property for banks, brokerage firms, mutual funds, insurance companies, transfer agents, and publically held companies. Its search and location, reporting, and risk management services ensure compliance with SEC regulations and state laws, reduce expenses, and improve customer and asset retention. With over 45 years of experience, Venio has recovered and restored hundreds of millions of dollars in unclaimed property for clients and their customers.

HOT TOPIC

Unclaimed Property Enforcement Questions and Answers

By *Christa DeOliveira, CIA, CCEP*

This article is the second in a two part series on state unclaimed property enforcement. It covers questions regarding unclaimed property enforcement answered for us by state officials. We extend a special thanks to the state officials who provided answers to these questions. Answers were received from Teresa Nobles of Alabama, Rob Huarte of California, Gracie Musher of the District of Columbia, Phillip Carlton of Florida, John Gabriel of Tennessee, Barbara Rice of South Carolina, and Kim Oliver of Utah.

QUESTION 1: Does your unclaimed property program have state employees that audit for the state?

QUESTION 2: Does your state contract with paid auditors? If so, can you please list the outside auditors that you currently work with?

QUESTION 3: Does your state assess penalties and interest when it is determined there is property that was not escheated correctly? What are the rates for penalties and interest?

QUESTION 4: What is your state's look back period? Is this timeframe prescribed by state statute or is it based on procedure?

QUESTION 5: If records are not available for the entire look back period, does your state make use of estimation techniques to determine an assessment amount?

QUESTION 6: Please describe any informal and/or formal appeals process available to holders for resolving audit disputes.

QUESTION 7: Is there any advice you could provide for holders that could help audits go smoothly?

QUESTION 8: Does your state offer any proactive compliance programs?

Here are the questions with answers.

QUESTION 1: Does your unclaimed property program have state employees that audit for the state?

ALABAMA: Alabama uses outside audit firms, not state employees, to conduct unclaimed property audits.

CALIFORNIA: Yes, twenty-two state positions are allocated for auditing California-based entities.

DISTRICT OF COLUMBIA: No

FLORIDA: Yes

OREGON: Yes

SOUTH CAROLINA: No

TENNESSEE: We perform desk audits and reviews.

UTAH: Yes

QUESTION 2: Does your state contract with paid auditors? If so, can you please list the outside auditors that you currently work with?

ALABAMA: Alabama currently has contracts with three paid auditors: ACS, Audit Services, and RDS.

CALIFORNIA: Yes, California contracts with four outside audit firms we refer to as "third-party contractors". The four firms are: Affiliated Computer Services, Inc.; Audit Services US, LLC; Kelmar Associates, LLC; and Verus Financial, LLC.

DISTRICT OF COLUMBIA: Yes, Abandoned Property Experts LLC, and ACS State & Local Solutions.

FLORIDA: Yes, ACS Unclaimed Property Clearinghouse, Audit Services U.S., LLC, Kelmar Associates, Abandoned Property Experts, Revenue Discovery Systems, and Verus Financial.

OREGON: None currently, we are preparing an RFP to contract for out-of-state auditing services.

SOUTH CAROLINA: We work with Audit Services only on GL audits which are preapproved by the state.

TENNESSEE: Yes. ACS, APEX, Audit Services, Kelmar, RDS, and Verus.

UTAH: Yes

QUESTION 3: Does your state assess penalties and interest when it is determined there is property that was not escheated correctly? What are the rates for penalties and interest?

ALABAMA: Alabama has the ability to enforce penalties and interest to companies that are in violation of not complying with state laws. However, Alabama advocates collaborating with businesses to have them in compliance, by using

Alabama's Voluntary Disclosure Agreement, so they will not accrue these penalties and interest. See The Act of 2004 Section 35-12-92 Penalties & Interests (pg. 37-38) for a description of Alabama's rates.

CALIFORNIA: Yes, California will assess interest for non-reported escheated property and fines (for willful failure to report and/or remit). Interest is assessed at 12% per annum on the property from the date the property should have been reported or paid or delivered. Fines may be assessed at \$100 per day for each day a report is withheld, not to exceed \$10,000. Fines for willful refusal to pay or deliver escheated property range between \$5,000 and \$50,000.

DISTRICT OF COLUMBIA: No

FLORIDA: We refer you to Section 717.117(3), Florida Statutes and Section 717.134, Florida Statutes.

OREGON: No, we do not assess interest or penalties, currently.

SOUTH CAROLINA: Not generally, but we would consider if the holder was uncooperative.

TENNESSEE: Sometimes. Dependent on if the holder cooperates with the audit. See link for how penalty is determined: <http://www.tn.gov/treasury/unclaim/PDFs/Penalty%20Calculation%20Sheet.pdf>.

UTAH: Penalty - 20% and Interest - 12% per annum from the time the property should have been paid or delivered (See Utah Code Ann. 67-4a-703) Pre 5-1-2007 Prime +2%.

QUESTION 4: What is your state's look back period? Is this timeframe prescribed by state statute or is it based on procedure?

ALABAMA: Currently Alabama does not have a policy on look back periods. We do support a ten year look back period as in accordance with industry standards.

CALIFORNIA: Our audit protocol prescribes a look back period of ten years. It is based on administrative procedure. We can, if warranted, go back even further than ten years.

DISTRICT OF COLUMBIA: Indefinite

FLORIDA: We refer you to Section 717.129(2), Florida Statutes.

OREGON: By policy, the audit look back period is five report years. Statute does not limit our look back.

SOUTH CAROLINA: Ten report years, our State law requires records to be kept that long.

TENNESSEE: By procedure is ten years plus dormancy. Statute does not limit look back.

UTAH: There is no statute of limitations on look back periods.

QUESTION 5: If records are not available for the entire look back period, does your state make use of estimation techniques to determine an assessment amount?

ALABAMA: Alabama accepts extrapolation techniques and encourages businesses to submit their methodology in calculating for using the look back period.

CALIFORNIA: Estimation techniques have been employed in determining amounts escheatable to California.

DISTRICT OF COLUMBIA: Not applicable

FLORIDA: We refer you to Section 717.1333(2), Florida Statutes.

OREGON: We have authority to use estimations if records are not available, but have rarely employed estimations.

SOUTH CAROLINA: South Carolina law allows for estimations.

TENNESSEE: Yes

UTAH: Yes. See Utah Code Ann. 67-4a-701 (2). "If a holder fails to maintain the records required... the administrator may require the holder to report and pay whatever amounts can be reasonably estimated from any available records."

QUESTION 6: Please describe any informal and/or formal appeals process available to holders for resolving audit disputes.

ALABAMA: All appeals process should be written to the: Director of Alabama Unclaimed Property
P O Box 302520
Montgomery, AL 36130

CALIFORNIA: California employs an audit appeal process. Holders may request an (informal) appeal of audit findings and/or interest assessment; all appeals are independently conducted by the Controller's legal office.

DISTRICT OF COLUMBIA: Higher management level, courts

FLORIDA: Informal Process- Request a conference with the Bureau of Unclaimed Property management. Formal Process- Administrative Hearing under Chapter 120, Florida Statutes.

OREGON: Generally, the administrator informally resolves appeals with holders. Oregon Administrative Rule 141-045-0126 defines an Alternative Dispute Resolution Process where both parties select a mediator and share the cost of mediation of the holder's appeal.

SOUTH CAROLINA: We have never had a dispute.

TENNESSEE: Informal:

- 1) Work with audit firm during audit. Provide documentation on any discrepancy amount.
- 2) Once the audit is completed the state will send the holder a demand letter. Holder can respond with any discrepancies.
- 3) If unable to work out any discrepancies final solution is litigation.

UTAH: If a satisfactory resolution cannot be achieved by the auditor and the holder, the audit supervisor and administrator may become involved. The holder has the right to initiate legal action at any time.

QUESTION 7: Is there any advice you could provide for holders that could help audits go smoothly?

ALABAMA: Companies are encouraged to direct all communication with the Alabama's program staff as needed.

CALIFORNIA: Communication during the course of the audit is key. So often, the auditee is given preliminary information (potential escheatable property) for further research and review which will take additional time, effort, and may involve others working throughout the organization. Coordinating and communicating this effort by the auditee will enable the audit to proceed timely and effectively. We also encourage and allow holder to reissue checks or reestablish contact with owners prior to finalizing our audit. We also provide reporting assistance to holders who are new to filing unclaimed property reports. Auditors also provide workshop/training during field work to educate holders about the unclaimed property law and their due diligence requirements.

DISTRICT OF COLUMBIA: Not applicable

FLORIDA: Cooperate with the auditor, provide requested records in a timely manner, and communicate with the auditor.

OREGON: Yes, pull the requested records before the auditor arrives to review them. If the records requested seem unrealistic or too voluminous or costly to pull, clarify what the auditor will need and let them know your concerns.

If you discover you have some unreported property when preparing for the examination, document what you have and why it happened. Let the auditor know about it early in the

examination. Auditors have to make judgments on how much audit work is needed. Many of those decisions are based on how they perceive you and your company culture. Is it well run? Are you organized? Does the company representative seem cooperative and upfront?

Waiting to see if they find the mistake is a bad bet and will probably increase the procedures they believe they need to employ after discovery.

One last tip: Keep your audit appointments if at all possible. Postponing the audit start date several times tends to make auditors grouchy. Grouchy auditors may be more suspicious and detailed when they finally do the field work.

TENNESSEE: 1) Get in compliance and avoid the audit. 2) Provide all the necessary documentation in a reasonable amount of time. 3) Stay in communication with the audit firm and don't wait to inform them of any discrepancies you may have.

UTAH: Cooperate and communicate

QUESTION 8: Does your state offer any proactive compliance programs?

ALABAMA: Alabama has a Voluntary Disclosure Agreement that will enable companies to become compliant with state laws.

CALIFORNIA: Under California law, the assessment of interest is mandatory for failure to report, pay, or deliver unclaimed property on time unless there is a showing of reasonable cause for the delay. Reasonable cause is defined in regulation as the exercise of ordinary business care and prudence. California cannot waive interest for voluntary disclosure unless there is reasonable cause for the failure to report, pay or deliver on time.

DISTRICT OF COLUMBIA: Not applicable

FLORIDA: Voluntary Disclosure Program in which the requirements to participate can be found on the Bureau's website at www.fltreasurehunt.org under the Reporting Unclaimed Property link. Companies that have not previously reported to the State of Florida can come into compliance by contacting the Bureau's Compliance Audit Section and request to participate in a Voluntary Compliance Self-Audit which is administered by the Bureau's state employee auditors.

OREGON: Yes, Oregon offers voluntary disclosure agreements for holders who discover unreported property and want to comply without fear of interest or penalty. In the state, we offer consultation visits at the holder's place of business to explain reporting requirements and answer questions. We also hold a regular series of reporting workshops.

SOUTH CAROLINA: South Carolina has an informal VDA program and routinely works with holders to assist them to come into compliance.

TENNESSEE: Yes. See following link for our Compliance Disclosure Agreement (CDA) <http://www.tn.gov/treasury/unclaim/Compliance.html>

UTAH: Utah has signed some VDAs; but, it depends upon the circumstances.

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CONTRIBUTOR'S CORNER

The Latest Trends in Unclaimed Property: What Companies Need to Know

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Unclaimed property compliance is an area that is commonly overlooked by many companies and organizations. However, it is an increasingly important statutory requirement that affects all sizes of companies in all types of industries. Three conditions have contributed to the 'perfect storm' that has made this area such an important one that it merited a front page article in the *Wall Street Journal*. First, since many states are facing economic downturns and are struggling with budget deficits, unclaimed property has become an increasingly popular way to generate a steady stream of general state revenue without increasing taxes. Second, many states have dramatically increased their enforcement efforts in this area, and, in an increasing number of cases, have employed the services of third party contract auditors. Finally, changes in the regulatory climate, such as the federally imposed internal control requirements mandated by the Sarbanes-Oxley Act, have made it increasingly important for companies to ensure they are in compliance with the various unclaimed property laws.

The purpose of this article is to identify, and examine, some of the current trends that are affecting the area of unclaimed property, particularly as it affects companies and organizations that are 'holders' of unclaimed property required to periodically report and remit unclaimed property to the various states.

One of the most noticeable trends in unclaimed property is the increasing interrelationship of the unclaimed property laws with other laws. An example of this trend can readily be seen in the area of gift cards. Thus, a recent federal law, entitled "The Credit Card Holders' Bill of Rights Act"¹,

imposes significant new prohibitions regarding the structuring of gift card expiration dates and service charges or dormancy fees. Although this law generally relates to credit cards, there are specific provisions that apply to gift certificates, store gift cards, or general-use prepaid cards, namely, that such cards, upon the effective date of the Act's provisions, generally cannot expire unless the expiration date is "not earlier than five years after the date on which the gift certificate was issued or the date on which card funds were last loaded for a store gift card or general-use prepaid card", and that generally no dormancy or other inactivity fees may be imposed unless there has been no activity for 12 months.² In addition, the new Federal law evidences Congressional intent for federal regulators to address several key areas pertinent to gift cards by regulation. For example, Congress directed federal regulators to give consideration to additional regulation in certain areas, such as the "amount of fees or charges" that may be assessed, and possible identification of amounts of "remaining value" below which fees or charges could not be assessed.³ Many states have provisions in their unclaimed property laws that provide guidance with respect to expiration dates, dormancy fees, and other terms or conditions that affect how a gift card program could be structured. Gift card issuers and their advisors may need to take into account other non-unclaimed property laws, such as the Credit Card Act mentioned above.

State consumer protection laws, which regulate the usage of expiration dates and inactivity fees by gift cards and stored value cards, also should be considered. By way of further example, analysts have noted that "state unclaimed property laws are sometimes in tension with provisions of the U.S. Bankruptcy Code...and the Federal Rules of Bankruptcy Procedure."⁴ Also, to the extent issues arise concerning the reporting and remitting of unclaimed property emanating from employee benefit plans, federal pension law (ERISA) clearly needs to be consulted.⁵ In recent years, there have also been a number of cases discussing whether the provisions of federal banking law preempt state law in this area.⁶ Companies in the surface transportation industry need to be aware of the interface of federal law with state unclaimed property law.⁷ In the healthcare area, state 'prompt payment laws' governing healthcare payments should be considered. Finally, as an increasing number of other countries are enacting unclaimed property laws, careful consideration of how such laws interface with U.S. laws may need to be considered.

A second trend is the expansion of unclaimed property laws and audits to encompass a myriad of different property types. Historically, unclaimed property was thought to encompass limited areas, such as uncashed vendor and payroll checks, forgotten bank accounts, unredeemed shares of stock, etc. Authors of a treatise in this area state "Early abandoned property statutes were of limited application and more closely resembled true escheat statutes" and, in discussing an early California law, they noted "This early statute applied only to bank deposits."⁸ In examining lists of covered property types found in state reporting instructions today, it is not uncom-

mon to see eighty to one hundred different property types listed. In addition, in recent years, non-traditional areas of exposure have surfaced during state audits. A controversial area that illustrates this trend is how to deal with the issue of GRIR property (goods received -- invoice received). Due to the common nature of this property type, GRIR has recently become a prominent issue within the unclaimed property arena. What is GRIR property? In general terms, it represents variances resulting from shortages or overages in the purchase of inventory, or when goods are received, with no subsequent receipt of a vendor invoice. For example, GRIR balances can arise when there is a quantity difference between goods received and the invoice subsequently received for the related purchase order, which can result in a balance on the holder's account. According to analysts in this area, it may be commonly accounted for as unbilled payables, uninvoiced receipts, unvouchered payables or goods received-not invoiced.⁹ Contract auditors are increasingly inclined to include a review of this property type in their unclaimed property audits.

The potential liability associated with this new property type may be quite extensive—partly due to the fact that unlike state tax, state unclaimed property laws do not have statutes of limitation and that many companies historically have not considered GRIR property to be unclaimed property. This controversial area of unclaimed property exposure becomes especially difficult to remediate due to the fact that audits are retroactive, and reliable physical tallies of inventory can no longer be performed. Analysts in this area summarize this area as follows: “This is a relatively new issue that has recently surfaced in a number of unclaimed property audits. There are numerous unresolved legal issues regarding whether these items are in fact unclaimed property.”¹⁰

Other areas that traditionally were not addressed in unclaimed property audits also have increasingly become ‘front and center’ news. For example, the recent Young America Corporation Iowa litigation concerning amounts emanating from the uncashed checks issued to consumers in connection with merchant rebate programs also illustrates the wide variety of property that can be, and is, turned up by unclaimed property auditors. A key issue in this area is “who is the holder?” Is it the entity in possession of the funds, e.g., the rebate fulfillment house? Or, is it the original obligor who has contracted out this area to the fulfillment house? This case is scheduled for trial this fall; presumably the decision in that case may provide additional guidance with respect to who is defined as the holder under unclaimed property law. Additionally, the widespread auditing of Individual Retirement Arrangements (IRAs) by a number of states, apparently being done through a major contract auditing firm, illustrates the wide variety of other property types that are potentially subject to audit.

A third trend we have noticed is the increased visibility of the owner notification requirements sometimes referred to as ‘due diligence’ laws, as evidenced by the number of recent cases

litigating this very issue. As stated by the authors of the BNA C.P.S. Treatise, ‘due diligence’ may be defined as the “... degree of effort required by law that a Holder must perform to locate the Owner before reporting/remitting property to the state. Generally speaking, the required activity involves the Holder sending some form of written notice to the Owner. Most states have specific Due Diligence provisions that address the timing of the notice, the manner of mailing the notice, etc. Many jurisdictions have a monetary threshold relieving the holder of the Due Diligence requirements for small dollar amounts.”¹¹ For example, Texas recently enacted legislation requiring a statutory form of due diligence/owner notification to be made by holders before reporting unclaimed property to the state. Therefore, the law provides that a holder who on June 30 holds abandoned property valued at more than \$250 must, on or before August 1, mail a notice to the last known address of the missing owner, stating that: “the holder is holding the property, and the holder may be required to remit the property to the Comptroller on or before November 1 if the property is not claimed.”¹² The law further states: “A holder that provides notice under this section may charge the cost of the postage as a service charge against the property.”¹³ Proper owner notification is important to ensure that owners are not wrongly deprived of their property, to maintain relations with customers and vendors, and because some states have penalties for failure to provide such notices. Proper utilization of owner notification/due diligence efforts is also important to holders for another important reason: Without such efforts, the indemnity from the state for subsequent claims to the property may not be forthcoming. This issue was central to an important recent litigation case decided by the California Supreme Court. Specifically, that court was asked to address whether the statutory immunity under its Unclaimed Property Law was available to a holder who had not complied with the due diligence/owner notification provision. It ruled as follows: “We conclude that a corporation is entitled to section 1532’s immunity only if it complies with other provisions of the UPL.”¹⁴ A similar issue is pending in a New York federal court case. In that case, the federal court certified four questions to the Delaware Supreme Court involving interpretation of the Delaware owner notification statute. The Delaware court heard oral arguments on the case in July, and is expected to provide its answers to the New York federal court within the next several months.

A fourth trend is the increasing importance of state Voluntary Disclosure Agreements and Amnesty programs, in part because of the increased enforcement efforts of the states and their contract auditors. This area gained momentum when the National Association of Unclaimed Property Administrators (“NAUPA”) launched a major amnesty program in the late 1990s that an overwhelming number of the states participated in. These types of programs appear to be ‘win/win propositions’ for both holders and states. Why? Holders can utilize them to come into compliance, and in many instances, obviate the interest and penalties that may otherwise be applied in an

unclaimed property audit. For example, if a major acquisition is made, particularly a stock acquisition or merger, and the acquiring company later discovers significant instances of non-compliance residing with the entity it acquired, these types of agreements are most helpful. Similarly, from a state's perspective, these types of agreements encourage holders to come into compliance, and free up state audit resources for other audits.

A fifth trend is the increasing involvement of industry groups, such as the Unclaimed Property Professionals Organization (UPPO) and the Council on State Taxation (COST), in unclaimed property matters. UPPO, for example, has recently restructured its operations, and now has a Government Relations and Advocacy Committee (GRAC). GRAC, in turn, has two subcommittees that will monitor new developments in this area, i.e., the Emerging Issues Subcommittee, and the Awareness/Advocacy Subcommittee. UPPO also is working with NAUPA to facilitate common reporting requirements among the various states. COST has also become increasingly active in this area. In addition, the Network Branded Prepaid Card Association issued a recent 'white paper' on "Abandoned Property Laws and Network Branded Prepaid Cards" which delineates various questions and concerns raised when trying to fit cards into the existing abandoned property legal framework.¹⁵

A sixth trend is the fact that certain professional groups, such as the American Bar Association (ABA), have recently shown increased interest in this area. For example, the Unclaimed Property Subcommittee of the ABA's Business Law Section recently submitted a proposal on behalf of the Subcommittee to revise the Uniform Unclaimed Property Act to the Uniform Law Commission. In addition, the ABA Subcommittee also has started work on a Model Uniform Unclaimed Property Act.

Finally, another trend is the increasing realization by the holder community that formal appeals procedures, much like we see in the tax arena, are needed to provide a forum for resolution of issues raised within unclaimed property audits. Although a few states, notably California, New York, Oklahoma and Pennsylvania have formal administrative appeal procedures in place to address unclaimed property disputes, a number of states do not. For example, as stated in the ABA Unclaimed Property Subcommittee Proposal, "Currently, the only recourse available to a holder involved in an unclaimed property dispute in most states is to litigate the matter in court. However, such action can be extremely costly, particularly where the holder is being audited by multiple states simultaneously, and therefore would need to file a separate lawsuit in each state's courts. An administrative appeals process would provide the holder with a much less expensive and burdensome alternative."¹⁶

In summary, these trends illustrate that unclaimed property is increasing as a dynamic and critical area of focus for compliance by the holder community. It is also an important law for states and the holder community. It continues to gener-

ate tremendous interest amongst state legislatures, the holder community, missing owners, industry groups, and professional associations, as noted above.

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¹See The Credit Card Holders' Bill of Rights Act, H.R. 627, 111th Congress (2009). The provisions of the Act related to gift cards will be effective 15 months after its enactment on May 23, 2009. Gift card provisions are found in Title IV of the Act. Certain exceptions to the general rules are provided in the Act; disclosure requirements also are provided in the Act.
²Id.

³Id.

⁴See M. Houghton et al., *Unclaimed Property*, 74-2nd C.P.S. (BNA Rev. 2008), at p. A-52.

⁵Id., at p. A-50, contains an excellent discussion of the interface between ERISA and unclaimed property.

⁶Id., at p. A-54, provides an excellent discussion of the interface between state and federal law.

⁷See Fla. Stat. Ann., Title 40, Chapter 717, Sec. 717.117(7)(b), which provides for a type of Business-to-Business exemption for entities subject to the U.S. Surface Transportation Board. See also Ind. Code Ann., Sec. 32-34-1-17(c).

⁸See A. Andreoli and J. Brooke Spotswood, *Unclaimed Property Laws, Compliance, and Enforcement*, CCH (2002) at p. 6.

⁹See M. Houghton et al., *Unclaimed Property*, 74-2nd C.P.S. (BNA-Rev. 2008), at p. A-64.

¹⁰Id.

¹¹Id., at p. B-1002.

¹²See Texas Senate Bill No. 1589, Section 2, amending Texas Property Code, Subchapter B, Chapter 74, by adding Section 74.1011 thereto. Note: The Bill is effective Sept. 1, 2009. A recent document found on the Texas State Comptroller's website captioned "Quick Start Reporting Guide 2009/2010" summarizes pertinent parts of the legislative changes as follows: "In reports submitted after September 1, 2009, holders must report driver's license numbers and e-mail addresses if their records contain such data. Effective for the 2010 reporting cycle, holders reporting to Texas will be required to mail a notice in July to all owners of property over \$250 that are due to be included on their November 2010 report."

¹³See Texas Senate Bill No. 1589, Section 2.

¹⁴See *Azure Limited v. I-Flow Corporation*, S164884 (July 16, 2009).

¹⁵See NBPCA White Paper, March 9, 2009; such paper can be accessed via their Website at www.NBPCA.com.

¹⁶See Unclaimed Property Subcommittee of the Business Law Section of the ABA Proposal to Uniform Law Commission (June 18, 2009) at p.4.

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LEGISLATIVE UPDATES



This web edition includes highlights of recently passed legislation impacting unclaimed property; it does not convey legal advice. Previous legislative updates are available in the first and third quarter online editions of our newsletters at www.venio.com/news.html. (Budgetary legislation is only cited when there are peripheral provisions that might be of interest.)

ALABAMA

HB 222 effective date 1/1/11: Assets of dissolved corporations that should be transferred to a creditor, claimant, or shareholder who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the State Treasurer for safekeeping. If the assets are not claimed after three years, they are presumed abandoned and are subject to the Uniform Disposition of Unclaimed Property Act.

ARKANSAS

HB 1483 adopted 4/7/2009: Arkansas Code § 18-28-201(13), concerning the definition of property, is amended so that the definition does not include a patronage dividend, capital credit, customer deposit, or non-negotiated payment check that does not exceed \$100 held or owing by an agricultural farm supply cooperative association organized under the laws of Arkansas.

SB 809 adopted 4/1/2009: When a cooperative formed under §23-17-240, has issued stock and thereafter declares, by providing notice to all shareholders of record at their last known address, that the stock is being redeemed by repurchase, the stock shall not be deemed unclaimed or abandoned property under §18-28-201.

HAWAII

HB 2559 effective 7/1/09: This legislation establishes a new Uniform Unclaimed Property Act based on the Uniform Unclaimed Property Act of 1995. The entire legislation can be reviewed at [www.capitol.hawaii.gov/session2008/bills/HB2559_SD1 .htm](http://www.capitol.hawaii.gov/session2008/bills/HB2559_SD1.htm).

ILLINOIS

HB 2636 effective 7/1/2009: Limits fees that can be charged to assist in recovery of pre-escheat property to 25% for living owners and 33% for deceased owners. Legislation requires written disclosure discussing eventual delivery to state administered unclaimed property program and the ability to recover from the program without a fee and other required disclosures.

LOUISIANA

HB 65 adopted 6/18/2009: R.S. 156(7) is amended to include, as a form of property subject to state's custody, cashier's checks, teller's checks, or other official bank issued checks purchased in the state or when the issuer has its principal place of business in the state and the issuer's records do not show the state where the instrument was purchased or when the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property.

NEBRASKA

LB 432 adopted 5/26/2009: Records, kept in regards to the Uniform Disposition of Unclaimed Property Act, of social security numbers, dates of birth, amounts due, and last known addresses of owners shall be subject to the same confidentiality as tax returns information held by the Department of Revenue, except the Auditor of Public Accounts shall have unrestricted access.

Professional finder's fees are limited to 10% of the dollar amount of the property presumed abandoned. Claiming such a fee requires disclosing to the owner the details of the property and the fact that it may be claimed individually from the state free of charge.

NEVADA

SB 313 adopted 5/29/2009: The following property will not be considered abandoned because of inactivity or failure to make a demand: An account or asset managed through a guardianship; an account blocked at the direction of a court; a trust account established to address a special need; a qualified income trust account; a trust account established for tuition purposes; a trust account established on behalf of a client; or an account of fund established to meet the costs of burial.

SB 418 adopted 6/4/2009: The period for the Administrator of Unclaimed Property to bring an action to enforce provisions relating to unclaimed property is reduced from ten to seven years.

NORTH CAROLINA

HB 723 adopted 6/26/2009: Holders of property presumed abandoned reporting 50 or more properties shall file the report in an electronic format. Holders reporting less than 50 properties may also file electronically. All electronic reporters may file an electronically signed affidavit to comply with this section.

SB 1021 adopted 7/17/2009: Fee agreements to locate property must clearly state the fees and costs for services. The total fees and costs are limited to the lesser of \$1,000 and 20% of the value of the property recovered. The agreement must disclose that the property is being held by the North Carolina Department of State Treasurer's Unclaimed Property Program. The finder may receive cash property, but not tangible property or securities on behalf of the owner and shall not be authorized to negotiate a check made payable to the owner.

Failure to comply with the provisions of this section renders agreements void and unenforceable and constitutes an unfair or deceptive trade practice.

NORTH DAKOTA

HB 1137 adopted 3/19/2009: Agreements to locate property that are entered on or after August 1, 2009, are enforceable only if the agreement: Is in writing; sets forth the nature of the property; describes the services to be performed; states the value of the property; describes the amount of the fee; is signed by the apparent owner; states that the property, absent the program, would go to the state and could be recovered free of charge; and provides contact information for the state-administered unclaimed property program.

TEXAS

SB 1589 effective 9/1/2009: Reports of unclaimed property must know include, if known by the holder, the driver's license or state identification number and email address of each apparent owner.

Holders of unclaimed property holding property on June 30 valued at more than \$250 shall on or before the following August 1, mail to the last known address of the known owner a notice stating the holder holds the property and the holder may be required to deliver the property to the comptroller on or before November 1 if it is not claimed. This does not apply if the holder has already provided notice or does not have an address for the owner. The holder may charge the cost of postage as a service charge against the property.

UTAH

SB 270 effective July 1, 2011: Gift certificates, gift cards, and credit memos are exempted from the unclaimed property act.

VERMONT

HB 588 effective 7/1/09: Property held by a museum that is not subject to a loan agreement and has been held for 10 or more years and has remained unclaimed during that time shall be deemed to be abandoned. The property shall become the property of the museum, provided the museum has given notice as required. Property in the possession of a museum subject to a loan agreement shall be deemed to be donated to the museum, provided no claim is made after the termination of the loan, the museum adheres to notification requirements, and no assertion of title is filed within the required timeframe responding to the notices.

VERMONT

SB 26 adopted 5/9/2009: If the treasurer holds unclaimed property in the name of a deceased owner valued at less than \$5,000 (changed from \$2,500), the treasurer may deliver the property in accordance with the probate court decree of distribution.

If the treasurer holds unclaimed property valued at \$250 or less which more than one person owns, the treasurer may deliver it proportionately to each of the persons who own the property and file a claim when it has been listed for less than one year. When it has been listed for a year or more, the treasurer may deliver it to the first person who files a claim and who owns at least a share of the property.

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