

Escheatment Rules

Each State's Regulations Don't All Travel Down the Same Highway

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EXECUTIVE SUMMARY

ESCHEATMENT REGULATIONS AND THE REQUIREMENTS FOR THE FINANCIAL INDUSTRY

Whenever a financial institution holds unclaimed property such as uncashed checks, unclaimed dividends, benefits, account balances or security deposits and so on... The financial institution is mandated by regulations to return the property to the rightful owner. State laws governing unclaimed property requires financial institutions to locate the property owner in a legally defined procedure called "due diligence". If the property remains unclaimed for a certain period of time, known as the "dormancy period", then the State gains defaulted rights (escheat) to the unclaimed property.

The property is then classified as abandoned and the financial institution remits the property to the State where the owner last resided. If the property owner's State is unknown, then the property is remitted to the State of the corporate headquarters of the financial institution. A majority of States conform to the Uniform Unclaimed Property Act. The Uniform Unclaimed Property Act requires that any property owed by a customer has a dormancy period of three years. Nevertheless, dormancy periods may range between one year and five years depending upon each State regulation.

REGULATIONS:

There are numerous standardized regulations to direct the disposition of unclaimed property between the States. At the Federal level, Congress passed the Unclaimed Deposits Amendments Act of 1993, Uniform Unclaimed Property Act of 1995, the Uniform Unclaimed Property Act of 1981 and the Uniform Disposition of Unclaimed Property Act of 1954. Various components of the aforementioned Federal statutes have been incorporated into each State's unclaimed property regulations.

Notwithstanding, unclaimed property regulations and the enforcement thereof remain at the State level. The underpinnings of the various unclaimed property regulations are constant throughout the States; they all embody requirements to reunite the rightful owner with their property while limiting the liability of the financial institution (holder), and providing the State with a source of revenue.

REPORTING:

As a general rule, the property owner's location governs a State's rights to succession for unclaimed property and the dormancy period. Dormancy periods are defined by State regulations and are measured by the date that a financial institution (holder) comes into possession of the unclaimed property and the date that the property must be reported to the State.

A majority of States require a final notice period whereby a financial institution (holder) must provide a notice to the property owner that said property is subject to escheatment. The various State's final notice requirements range from 60 days to 120 days prior to escheatment of property if minimum monetary threshold requirements are met. Under limited circumstances, a financial institution (holder) may impose fees to maintain the unclaimed property during the dormancy period. In order to impose a fee during the dormancy period, a financial institution must have a contractual agreement with the property owner, regularly impose said fees, and the amount of fees is not unreasonable and/or unconscionable.

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As a general rule, the owner's domicile governs a state's rights to succession of unclaimed property. The primary rule requires reporting the last known address of the owner as documented by a banks records. If the identity and address of the owner is not known or foreign, then the secondary rule awards the right to escheat to the banks state of corporate domicile. It is important to note that a banks corporate domicile governs which property is required for reporting purposes, not the owner's domicile.

Financial institution must submit an annual report to the State in which the property escheats. Some States require "negative filing". Negative escheatment reporting outlines that a financial institution is not in possession of unclaimed property. The financial institution should file an annual report using the forms and/or media that are provided by each State. Currently, each State establishes a method to report unclaimed property; a State's reporting method can be either paper and/or media. In order to develop a uniform standard amongst the States for unclaimed property reporting, several States have adopted the National Association of Unclaimed Property Administrators (NAUPA) reporting standards. NAUPA is a non-profit organization comprising of National Association of State Treasurers.

Credit balances and credit memos resulting from business to business transactions are not necessarily exempt from reporting. Although certain states have excluded this property from reporting requirements, the majority of states require reporting business-to-business transactions as well.

COMPLIANCE:

Compliance with States unclaimed property regulations are mandatory and audited by bank examiners. There are considerable penalties for non-compliance with State reporting requirements. State fines range from simple interest to the full value of the unclaimed property. In addition, some states impose daily penalties. Moreover, if a financial institution willfully or fraudulently files a report, then the penalties may exceed \$1,000 per day. Additionally, the 1995 Uniform Unclaimed Property Act imposes fines up \$25,000, plus 25 percent of the property value and 12 percent interest. In recent years, some financial institutions have tried to avoid turning property over to a State by including contractual provisions that causes the property owner to lose their rights to the property prior to the time the property would be escheated. For example, a financial institution may include a statement on a written instrument declaring that the owner's failure to negotiate an instrument within a certain period of time constitutes private escheatment, thereby reverting the property back to the financial institution. A majority of Courts conclude that this practice circumvents public policy and constitutes an attempt to avoid compliance with unclaimed property regulations.