

DealersEdge

The Auto Dealership and Unclaimed Property Workshop

With

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DealersEdge

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Prior to joining Dixon Hughes, Marc practiced law, specializing in state and local tax litigation, and served with two national accounting firms. He has served a number of clients in the financial services, manufacturing, technology, retail, healthcare and not-for-profit industries.

Marc is a member of the New Jersey State Bar Association and the Pennsylvania Bar Association. He received a Bachelor of Arts from Rutgers College, and a Juris Doctorate and Master of Laws (LL.M.) in Taxation from the Temple University School of Law.



Summary

- Overview of Unclaimed Property
- Definitional Terminology
- Rationale for Unclaimed Property
- Compliance
- For Compliant Dealers
- Risk Factors
- Proactive Remedies
- Conclusion



Overview of Unclaimed Property

- The area of unclaimed property is often times characterized by the public as a tax because of the administrative, procedural, and conceptual similarities to taxation.



Overview of Unclaimed Property

- Upon audit in the case of a dealer who has not filed unclaimed property returns/reports jurisdictions may require a dealer(s) to file unclaimed property reports from periods ranging from 10 years or more.



Definitional Terminology – Unclaimed/Escheatable Property

- Broadly defined as assets being held by a holder in a fiduciary capacity for an owner for which there have been no documented transactions or contact with the owners for a statutory period of time known as the dormancy period.
- Most common types are: payroll checks, credit balances, vendor payments, rebates, other types of intangible property, and certain types of tangible personal property.



Definitional Terminology – Unclaimed/Escheatable Property

Common types of unclaimed property
in the dealership arena:

- Payroll checks
- AP vendor checks
- Credit balances/memos
- “We-owes”
- F&I Product Cancellations
- Vested customer rebates
- Buyer deposits that dealers are not authorized by law to retain
- Gift certificates



Definitional Terminology – Holders

- As a general rule, a “Holder” is a person or entity in possession of property belonging to another and/or obligated to hold for the account and/or delivering to the owner.
- This includes but is not limited to dealerships, banks, insurance companies, utilities, corporations, government agencies, nonprofit organizations.



Definitional Terminology – Owners

- As a general rule, an “Owner” is the person or entity whose name appears on the records as the person entitled to property held, issued, or owing by the holder in question.



Definitional Terminology – Dormancy Period

- Dormancy period is the length of time for which there have been no documented transactions or contact with the owners prior to the holder being legally required to report and remit the property to the appropriate jurisdiction.



Definitional Terminology – Dormancy Period

- Upon the expiration of the applicable dormancy period(s), the holder of the property is required to report and remit all unclaimed property to the appropriate jurisdiction.



Definitional Terminology – Dormancy Period

- Each jurisdiction has different dormancy periods for distinct unclaimed property.
- As a general rule
 - (i) One Year = Wages
 - (ii) Three-Five Years = AP
 - (iii) Three-Five Years = IPP



Definitional Terminology – Due Diligence

- Upon the expiration of the dormancy period, most jurisdictions require holders to make a good faith effort to locate the owner.



Definitional Terminology – Due Diligence

- Each jurisdiction has distinct rules as to the method of notification, manner, length of time in which an owner must respond prior to the holder/dealer remitting the unclaimed property to the appropriate jurisdiction.
- Exhibit A – Sample Letter for NC



Definitional Terminology – Due Diligence

- As a best practices when performing due diligence:
 - (i) require owner to identify property
 - (ii) require owner to provide identification
 - (iii) Require deadline for owner to respond to notice



Definitional Terminology – Due Diligence

- In addition to civil sanctions for failure to report and remit unclaimed property, many jurisdictions have separate civil sanctions for holders who fail to perform/conduct unclaimed property due diligence.



Rationale for Unclaimed Property

- The rationale for the reporting of unclaimed property to a particular jurisdiction is that while “holders” may not be in existence when an “owner” subsequently requests his/her unclaimed property, jurisdictions will be in existence.
- Rationale is that abandoned or unclaimed property is best if held and used by the jurisdiction for the betterment of all society instead of allowing a windfall/unjust enrichment for a single entity.



Rationale for Unclaimed Property

- Requiring “holders” to transfer unclaimed property to a particular jurisdiction ensures that “owners” are able to locate and claim their property.



Rationale for Unclaimed Property

- From the jurisdictions' perspective, while the escheatable/unclaimed property belongs to the respective "owners", most jurisdictions permit the interest and penalties generated from reportable unclaimed property to inure to the general fund/treasury of the particular jurisdiction.
- In addition, most jurisdictions allow for a certain percentage of unclaimed property to be transferred to the jurisdiction's general fund.



Compliance

- Three step process for owners to have an unclaimed property reporting obligation.
 - (i) Expiration of dormancy period
 - (ii) Failure to respond to holder's due diligence.
 - (iii) Verification that property constitutes unclaimed property.



Compliance

- Upon expiration of dormancy period and upon performance of due diligence, where is unclaimed property remitted?



Compliance

- While the definitions of what constitutes unclaimed property, the length of dormancy periods, and reporting dates vary among and between the jurisdictions, the United States Supreme Court, in the case, Texas v. New Jersey, 379 U.S. 674 (1965) issued guidance to the particular jurisdiction in which unclaimed property should be remitted.



Compliance

- Rule #1 – Holder is required to report and remit unclaimed property to the jurisdiction of the owner's last known address.



Compliance

- Rule #2 – In those instances in which the holder does not possess the owner's last known address, the holder is required to remit the unclaimed property to the holder's state of formation/incorporation.



Compliance Summary

- Determine which jurisdiction's rules are applicable.
- Identify type of property
- Dormancy period
- Due diligence requirements
- Filing deadlines and submission guidelines for the particular jurisdiction.



Compliance Summary

- As a general rule, upon the submission of the requisite unclaimed property report and any attendant unclaimed property, holders are indemnified by the jurisdiction for subsequent claims brought against the holder by the owner(s).



Implications/Audit Factor

- One advantage of properly complying with unclaimed property laws which many holders fail to utilize is examining whether a jurisdiction possesses unclaimed property belonging to the holder/dealer in question.



Implications/Audit Factor

Unclaimed Property -
\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$

- Each jurisdiction has a database to enable businesses and individuals to inquire if the state is holding unclaimed property belonging to the holder/dealer.



Implications/Audit Factor

Unclaimed Property - \$\$\$\$\$\$\$\$\$\$\$\$\$\$\$

- www.unclaimed.org and go to “Owners”.
- Click on the particular jurisdiction.
- Click on the jurisdiction’s hyperlink.
- Navigate the jurisdiction’s unclaimed property search data base.



Implications/Audit Factor #1

- The unwary company executive who was initially excited that the internet search that revealed that jurisdiction X was holding \$719.32 in unclaimed property may not be as enthused when they receive a notice requesting ten years worth of unclaimed property returns, interest, and penalties.



Implications/Audit Factor #2

- With state corporate income tax revenues being flat in the early part of the decade, which when combined with flat/decrease in sales/use tax collection due to remote sales, jurisdictions are focusing their enforcement resources on other forms of taxes/revenue.



Implications/Audit Factor #3

- Jurisdictions are employing third party agents to conduct unclaimed property on a findings basis.
- Since unclaimed property is not deemed to constitute a tax, prohibitions on utilizing independent contract auditors on a findings basis are generally not applicable.



Implications/Audit Factor #4

- With increased technological capacities among and between jurisdictions:
 - (i) Different departments within a jurisdictions (i.e. corporate income, sales tax, etc...) are able to review filings on a state wide basis.



Implications/Audit Factor #4

- With increased technological capacities among and between jurisdictions:
 - (ii) Jurisdictions are able to share information with each other in a more timely and expedient fashion.



Implications/Audit Factor #4

- With increased technological capacities among and between jurisdictions:
 - (iii) Some jurisdictions are incorporating unclaimed property audits as part of their multidisciplinary state and local tax enforcement efforts.



Implications/Audit Factor #5

- Some jurisdictions inquire and examine unclaimed property filings as part of withdrawal/tax clearance process.
- See Exhibit B (PA Tax Clearance Application)



Implications/Audit Factor #6

- Many jurisdictions permit compensation to the public and/or disgruntled employees/whistleblowers for noncompliance/malfeasance in the unclaimed property arena.



Proactive Remedies

- Among the most beneficial remedies is requesting permission from a jurisdiction to participate in an amnesty program commonly known as a voluntary disclosure agreement (“VDA”) program.



Proactive Remedies

- While each jurisdiction has guidelines as to the terms and conditions for allowing a company to participate in their unclaimed property VDA program, some jurisdictions will permit a holder to anonymously come forward and participate provided that they have not received a notice from the jurisdiction and/or have not previously registered and filed unclaimed property reports/returns.



Proactive Remedies

- At its core, a VDA usually permits a holder to conduct a self audit and report all unclaimed property due and owing for a specified period, commonly known as the “look-back” period.



Proactive Remedies

- For periods prior to the “lookback” period, unclaimed property principal, interest, and penalties are usually “forgiven” pending successful completion of the VDA. On an ongoing basis and as part of the terms and conditions of the VDA, a holder has to agree to prospectively file their unclaimed property reports/returns.



Proactive Remedies

- From the jurisdiction's perspective, such an amnesty program is beneficial to the jurisdiction since it facilitates increased taxpayer compliance without significant expenditures of the jurisdiction's resources.



Proactive Remedies

- In addition, the jurisdiction is able to secure the outstanding unclaimed property to hold in its fiduciary capacity on behalf of the owners and recognize any interest arising from said unclaimed property.



Proactive Remedies

- From the holder's perspective, participation in a VDA program usually permits the holder to secure an abatement of penalties as well as limit its exposure for the years prior to the "lookback" period.
- An additional advantage of a VDA program is securing fiscal certainty with respect to potential unclaimed property exposure.



Proactive Remedies Audit Defense

- Verify last known address.
- Verify due diligence notification.
- Verify whether item is duplicative payment/cancelled check.
- Verification that item is deemed unclaimed property.
- Verification that audit methodology accurately reflects unclaimed property liability.
- Examination of potential abatements of penalties.



Conclusion

- With the increasing use of outside unclaimed property auditors who are often times compensated on a contingent basis combined with improved technological capabilities to monitor reporting compliance, jurisdictions are more vigorously enforcing their unclaimed property reporting statutes.



Conclusion

- While some holders may believe their potential unclaimed property liability to be insignificant, the number of years which a jurisdiction can audit, which when combined with the imposition of interest and penalty, may be significant.



Conclusion

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**North Carolina Department of State Treasurer
Unclaimed Property Program**

**Guide to Unclaimed Property
Due Diligence**

Refer to North Carolina General Statute 116B-59 — Notice by holders to apparent owners

When the owner's money has escheated, they often become upset when they discover that the holder has not made a diligent effort to contact them about their property, especially when their address has not changed. For items \$50 and greater, the law requires that written notices be sent to the owner's last known address on the holder's records, informing them that there is property being held for them. As the law requires simultaneous reporting and remittance, it is important to practice "due diligence" in trying to locate owners prior to reporting their funds to the Escheat and Unclaimed Property Program. It is imperative that the holder mail notices well in advance of the November 1 report due date (May 1 if the holder is a life insurance company). This will allow the owner(s) time to respond. A sample due diligence letter is below.

August 15, 20XX
(February 15, 20XX if life insurance company)

Owner Name
1234 Any Road St. N
Anytown, NC 99999-9999

We are holding unclaimed property in the amount of \$_____ or Described as to the person listed above. The owner may claim this property by contacting us at the address and/or telephone number listed below.

ABC Corporation
1st Avenue S.
Big City, US 99999-9999

If satisfactory proof of claim is not presented by October 1, 20XX (April 1, if holder is a life insurance company), the law requires us to submit this property to the North Carolina Department of State Treasurer to whom all further claims must be directed.

Sincerely,

XXXXXXXXXXXXXXXXXX



Guides to Unclaimed Property are published by the Department of State Treasurer, Unclaimed Property Program. Comments and questions should be addressed to Department of State Treasurer, Unclaimed Property, 325 North Salisbury Street, Raleigh, North Carolina 27603-1385 or call (919) 508-1000.

www.nccash.com

EXHIBIT A

17 Number of employees and total gross payrolls during the last five operating years (as reported to the Social Security Administration).

YEAR	TOTAL EMPLOYEES	PA EMPLOYEES	TOTAL GROSS PAYROLL	PA GROSS PAYROLL
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

18 Have the officers received any remuneration, either in cash or other remuneration, for services performed in Pennsylvania during the current calendar year or during any of the preceding four calendar years?
 Yes No

19 Were any remunerated services performed for the business in PA, which you believe did not constitute "employment" as defined in the PA Unemployment Compensation Law? Yes No
 If yes, explain:

20 A. Average number of stockholders during the last five years: _____
 B. Number of stockholders as of this report: _____
 C. List names and home addresses of stock transfer agents who have handled the corporation's stock:
 Name: _____ Address: _____

 D. Were all shares presented and property redeemed from any stock called for redemption or retired? Yes No

21 The figures below must agree with the last corporate tax report filed with the PA Department of Revenue.
 Date of Report: _____ Total Liabilities: _____
 Total Assets: _____ Total Equity (net worth): _____

22 A. List the amount of corporate bonds issued and still outstanding as of this report. (Show each issue separately and include name and address of any transfer or paying agents)

(Issue)	(Agent)	(No. of Outstanding Bonds)	(Amount)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. List names and addresses of transfer or paying agents (not listed above) who have handled corporate bond issues.
 Name: _____ Address: _____

23 Have you consumed or used in Pennsylvania any tangible personal property or acquired, (after March 6, 1956), on which no PA Sales or Use Tax was paid? If yes, please explain
 Yes No

24 Do you have within your custody, possession or control, any abandoned and unclaimed (escheatable) funds or assets? (e.g. dividends, payroll, deposits, outstanding checks, stock certificates, unidentified deposits, accounts payable debit balances, gift certificates, outstanding debentures or interest, royalties, mineral rights or funds due missing shareholders or other unclaimed amounts payable.)
 Yes No

25 Has the business filed a PA Abandoned and Unclaimed Property Report for the preceding year?
 Yes No

26 CERTIFICATION I certify that the information provided (including Schedules, if applicable) on this application has been examined by me and is, to the best of my knowledge, true and correct. (Certification must agree with individuals listed in question 4.)
 Print Name _____ Original Signature _____
 Print Name _____ Original Signature _____

This form will serve as an application for clearances from both the PA Department of Revenue and PA Department of Labor and Industry.
NOTE: ● Submit typed original to the PA Department of Revenue (address on Page 1) and one copy to the Department of Labor and Industry, Bureau of Employer Tax Operations, Clearance Unit, Labor and Industry Building, Room 916, 7th and Forster Sts., Harrisburg, PA 17121. Retain a copy for taxpayers' record.
 ● Direct telephone inquiries to the PA Department of Revenue (717) 783-6052 or (717) 783-6055, TT# 800-447-3020 (Services for Taxpayers with Special Hearing and/or Speaking needs only) and the PA Department of Labor and Industry (717) 787-6637, TT# (717) 783-3545 (Hearing Impaired).