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Alert

Unclaimed Property Is More Than Just The "Lost And Found"

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You are wrong if you think that unclaimed property (sometimes called abandoned property) is nothing more than umbrellas or cell phones in the lost and found bin or life insurance policies whose beneficiaries cannot be found. Unclaimed property can reside on your company's books and records in dozens of accounts, from old checks in your cash reconciliation, to credit balances in your customer accounts receivable.

Very often, unclaimed property must be turned over to your state's treasury by filing an unclaimed property report and remitting the cash value of the property to the treasury. With states struggling to balance their budgets in the dismal economy, unclaimed property is a boon to the states and an *audit risk* to businesses and their owners.

The audit risk is especially acute for companies with inactive customer credit balances, for companies that have issued checks that have not been deposited by the payee, or even companies that have issued gift cards that the recipient of the gift throws in his or her desk drawer and forgets. Unclaimed property can be any type of credit reflected on a company's books and records, and the "big four" are:

- Cash value of unused gift cards
- Customer credits (including returned goods or rebates)
- Uncashed checks to suppliers and employees
- Customer deposits

Unclaimed property laws vary from state to state. Some states exempt certain types of property from their unclaimed property laws while other states include those types of property under their statutes. The period of time before property is deemed to be abandoned varies from state to state and from one type of property to another type of property. For example, one, three or seven years may pass before property is deemed to be abandoned. The states also have different requirements regarding the holder's duty to find and notify the rightful owner regarding the unclaimed property.

One of the most troublesome areas of unclaimed property law is determining whether the holder of the unclaimed property should follow the laws of State A or the laws of State B. Where the holder of the unclaimed property and the rightful owner of the unclaimed property reside in different states, apparent conflicts between the two states' laws could arise. For example, both states could claim the unclaimed property, or, alternatively, one state could claim the unclaimed property while the other state allows the company to pocket the cash value of the unclaimed property. The holder does not want to hand the unclaimed property to the State A treasury when State B has a stronger claim to the unclaimed property. Likewise, the holder does not want to hand the unclaimed property to the State A treasury when the holder may be able to pocket the unclaimed property under the laws of its own state and disregard State A's claim.

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The cost for failing to follow the unclaimed property laws can be enormous. States are using "unclaimed property audits" to enforce their unclaimed property laws, visiting companies and examining the companies' books and records and making sure that companies follow the applicable unclaimed property laws. If the unclaimed property audit uncovers noncompliance, the cost to the company can be shocking. The company not only has to hand over to the state the cash value of the property, but the company may also have to pay interest and penalties. Depending on the state, there may be no statute of limitations on unclaimed property, meaning the audit can uncover years and years of unclaimed property, the cash value of which the company must remit to the state with compounded interest and penalties.

The need to comply with unclaimed property laws can be particularly important to the shareholders or partners of a liquidating company. If your business is winding down and liquidating to its shareholders or partners, the shareholders or partners who receive the unclaimed property may become personally liable for the company's failure to comply with a state's unclaimed property law. For example, over the company's years of operations, it likely wrote tens of thousands of checks to vendors and made a similar number of electronic funds transfers, and a few hundred of these checks may have gone uncashed or the electronic funds transfers returned. Shareholders or partners who receive liquidating distributions may be personally liable for this unclaimed property if the company does not remit it to the state.

Alternatively, at the time of liquidation, it is likely that the liquidating company will have unclaimed property on its books that is not aged sufficiently to be deemed "unclaimed property" by law, for example, checks that are less than one year old. To get these items "off the books" and protect the shareholders or partners from personal liability down the road, the company may want, to the extent allowed under the state's unclaimed property law, to report and remit these items of unclaimed property to the state.

In reporting all items of unclaimed property in connection with a liquidation, the company should take the most proactive step possible in insulating its shareholders or partners from ongoing liability relating to the company's unclaimed property. Therefore, during the liquidation process, it is important for companies to account for all items of unclaimed property and to report and remit all such items as directed by their state's unclaimed property law.

If your company has unclaimed property on its books, you should determine under unclaimed property law whether your company can pocket the cash value of this property or must turn it over to a state. Alternatively, if your company is liquidating, you should determine whether the company may distribute the cash value of unclaimed property to its shareholders and determine the shareholders' personal liability to account for this money under a state's unclaimed property laws.

We are familiar with unclaimed property laws, and we can guide you through the process of navigating state statutes. We can also assist you with an unclaimed property audit.

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