

AN ALERT FROM THE BDO UNCLAIMED PROPERTY PRACTICE

# BDO KNOWS: UNCLAIMED PROPERTY



## SUBJECT

### A CALIFORNIA SUPERIOR COURT HELD UNREDEEMED MERCHANDISE RETURN CREDITS ISSUED BY BED, BATH & BEYOND DO NOT QUALIFY AS ESCHEATABLE PROPERTY

## SUMMARY

On March 4, 2016, the Superior Court of California, County of San Diego Central issued its decision in *Bed Bath & Beyond Inc. v. John Chiang*, No. 37-2014-00012491-CU-MC-CTL (Cal. Super. Ct. Mar. 04, 2016), in which it held that merchandise return credits (“MRCs”) issued to California customers by Bed Bath & Beyond (“BB&B”) are gift certificates exempt from California’s Unclaimed Property Law. The court awarded BB&B a \$1.8 million judgment, the amount it reported and paid to the state between 2004 through 2012 with respect to MRCs.

## DETAILS

### **Background**

BB&B operates a chain of retail stores that sell domestic merchandise and home furnishings. BB&B customers must present an original receipt when returning merchandise to obtain a cash refund.<sup>1</sup> As a matter of courtesy, however, BB&B provides MRCs to customers without receipts, which may be redeemed at BB&B and its affiliates for merchandise, but not cash.

BDO’s National Unclaimed Property Practice has successfully assisted many clients in California and other states with unclaimed property audits and refunds, and can assist you. Should you have any questions or would like to discuss escheatment, please contact:

**JOSEPH CARR**  
Partner and National Unclaimed  
Property Practice Leader  
(312) 616-3946  
jcarr@bdo.com

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<sup>1</sup> BB&B would owe cash to the customer if the value owed is less than \$10, and the customer requests cash back. However, Chiang did not present evidence that either scenario was present with respect to the money that is the subject of the lawsuit.

BB&B filed suit (and later a motion for summary judgment) against John Chiang in his official capacity as Controller of the State of California, requesting a \$1.8 million refund with respect to \$1.8 million in MRCs it reported and paid to the state between 2004 and 2012. BB&B claimed it had mistakenly remitted the \$1.8 million because the MRCs were not properly escheatable to the state.

### ***California Court's Holding and Analysis***

The court granted BB&B's motion for summary judgment, and found that BB&B was entitled to the \$1.8 million judgment. The court first concluded that because the MRCs are not redeemable for cash, BB&B does not owe money to the owner of an MRC. Therefore, there is nothing owed to the owner that would be escheated.

In so concluding, the court rejected Chiang's argument that BB&B would owe the owners of MRCs cash when the value is less than \$10 and the customer requests cash, or when the customer provides an original receipt, because Chiang offered no evidence to suggest either scenario was present with respect to the MRCs at issue. The court also took issue with a conflict in the law. On the one hand, BB&B is authorized under California law to maintain its return policy of no receipt, no cash. On the other hand, under Chiang's analysis, MRCs could be escheated to the state and made available to the customer as cash when the customer was never entitled to cash.

Next, the court concluded that MRCs are not escheatable to the state because gift certificates that do not expire are not escheatable under California law, and MRCs bear the "same" characteristics as gift certificates. The court conceded that MRCs are not obtained for purposes of gifting, but the court pointed out that California law recognizes that the classification of a "gift certificate" includes those that are distributed by the issuer to a consumer in non-gift situations, such as pursuant to an awards, loyalty, or promotional program.

## **BDO INSIGHTS**

- ▶ A retailer with a return policy similar to BB&B's MRCs program that has paid money to California as unclaimed property should evaluate whether it may have mistakenly paid money to the state. If so, the retailer may be entitled to a refund. If such a retailer is presently under audit by California, and the state is arguing that MRCs or their equivalent are escheatable, the retailer may be able to use this decision as support that it is not.

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