

UNCLAIMED PROPERTY NOTICE

► SUBJECT

PRESSING NOTICE CALIFORNIA UNCLAIMED PROPERTY AUDITS LOOMING

California recently re-instated its audit contract with Kelmar Associates, LLC (Kelmar) and others to conduct unclaimed property examinations on behalf of the state. With hundreds of ongoing unclaimed property audits, and often compensated on a contingent-fee basis, there is an increased risk that non-compliant holders may be targeted for audit.

History of California Unclaimed Property

The California State unclaimed property laws and regulations have gone through substantial changes over the years. The State Controller's office has made efforts to educate the unclaimed property ("UP") holder community doing business in California regarding its UP laws. Below is a timeline of significant changes to holder outreach and unclaimed property laws that may impact companies holding unclaimed funds due to California:

- 2000 - State of California statutorily established unclaimed property amnesty program that ended in December 2002. The amnesty program provided an opportunity for holder to come forward and report property without having to pay interest and penalties at 12% per annum.
- 2007 - District Court ordered the unclaimed property program to seize its collection of unclaimed property until changes could be made to the existing process to improve the manner in which the state notified owners of property prior to funds being turned over to the state. The court's injunction led to significant changes to the notification and reporting requirements impacting both the holder community and the state¹.
- Fall 2008 - Holder Outreach Unit introduced their quarterly outreach newsletter focused on providing holders with up-to-date information on changes pertaining to unclaimed property laws and reporting requirements.
- 2008 - California launches investigation of several life insurance carriers focused on practices related to re-uniting beneficiaries with insurance death benefits that continues on today,



BDO SUPPORT:

If you have received a notice, have not addressed your unclaimed property posture, or would like to learn more about California and other state's escheat climate, we urge you to contact BDO to discuss this as soon as possible. There is still time to mitigate exposures, comply with the laws efficiently and drive long term practice.

JOSEPH R. CARR

Tax Partner, National Unclaimed Property Practice Leader
312-616-3946
jcarr@bdo.com

RICARDO GARCIA

Tax Senior Manager, West Coast Unclaimed Property Practice Leader
714-668-7308
rigarcia@bdo.com

¹ No. Civ. S-01-2407 WBS GGH (U.S. Dist. Ct. E.D. Cal. June 1, 2007)

- January 2010 - New law changes impacting:
 1. Notification requirements
 2. Safe Deposit Box Properties
 3. Property held or owned by business associations for owners of Individual Retirement Accounts
 4. Holder Liability for Property Escheated
 5. Holder Extension for Remit Reports
 6. Application of Interest to Notice Reports
 7. Holder Due Diligence
- 2011 - California announces multi-million dollar settlement with insurer John Hancock resulting from investigations commenced in 2008.

Potential Risks for Unclaimed Property Holders

- Piggyback audits performed by contingent fee auditors representing in some cases over 25 states on a single audit.
- Historical experience tells us that the number of audits will increase as a result of the additional resources available to the state.
- California interest is assessed at 12% per annum of the amount of the property beginning on the date the property should have been reported or paid or delivered. Penalties can range from \$100 - \$10,000 plus fines between \$5,000 and \$50,000.
- Look-back period for California audits is generally 10 report years (13 year look-back for 3 year property). However, if warranted, look-back can go even further than ten report years.
- For California sanctioned audits (as is common with many other jurisdictions), if records are not available for the entire look-back period, estimation techniques may also be employed in determining liability.

What can holders do to address non-compliance with State of California Unclaimed Property law

Unfortunately, the State of California does not currently have a formal or informal voluntary disclosure program. However, companies may reduce risk by conducting the following:

Step 1: Completing review of its books and records to determine amounts due, if any, under California unclaimed property law (including estimates for periods where records are unavailable).

Step 2: Conduct comprehensive outreach process to re-unite owners with their property.

Step 3: Submit Notice Report to the State of California in accordance with reporting requirements.

Step 4: Return funds to owners who respond to California's due diligence notification.

Step 5: Submit Remit Report to the State of California in accordance with reporting requirements.

It must also be noted that for companies already under examination, California offers holders under audit an audit appeals process that is conducted by the State Controller's Office legal office to address disagreement in audit findings.

By conducting the above procedures holders may accomplish the following:

- Reduce risk of future audit.
- Stop interest from accruing on unreported amounts.
- Leverage knowledge acquired through internal review to develop strong unclaimed property policies and procedures to prevent future over/under reporting.

² [Cal. Civ. Proc. Code §1576](#), [Cal. Civ. Proc. Code §1532\(g\)](#), [Cal. Civ. Proc. Code §1577](#)

Closing Considerations

Lastly, the following are key considerations which detail best practices:

- Ongoing compliance
- Policy and procedures
- Robust record retention policies
- Application of Void Form to void process
- Due diligence letter process for resolving outstanding checks or credits in Account Receivables in a manner that will suffice escheat reviews.
- Process for identifying unclaimed property risk as a result of M&A activity.

For companies headquartered/domiciled in California that are incorporated in the State of Delaware, please review the following links as Delaware's deadline to enter into the new VDA program is swiftly approaching.

BDO Links for Delaware Incorporated Companies

[DE Pressing Notice](#)

[DE VDA Decision Tree](#)

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