

AN ALERT FROM THE BDO UNCLAIMED PROPERTY PRACTICE

BDO KNOWS: UNCLAIMED PROPERTY



► SUBJECT

PENNSYLVANIA MAKES UNCLAIMED PROPERTY LAW CHANGES

Pennsylvania House Bill 278 (Act No. 126) passed both houses and was signed by the Governor on July 10, 2014. The legislation, intended to help the Commonwealth close the budget gap, provides for (a) reduced holding periods for certain unclaimed property, (b) clarification of holding period commencement and (c) authority of the State Treasurer to assess costs of audit and non-filing penalties against the holder and hire contract auditors.

Reduced Holding Period

The bill reduces the dormancy period which will be reduced from 5 years to 3 years for certain property, including:

Property held by Financial Institutions

- Deposits (including interest thereon)
- Sums payable on checks
- Personal Property removed from safe deposit boxes due to nonpayment of box rental charges

Property held by Insurers

- Moneys held or owing under annuity contracts or life insurance policies
- Moneys held or owing under insurance policies other than life insurance

Property held by Utilities

- Customer advances, tolls, deposits, or collateral security, and other property due to or demandable by owners

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Property held by other Businesses

- Gift certificates or cards without expiration dates but with service fees
- Undelivered stock certificates
- Dividends, profits, distributions, payments or distributive shares of principal
- Principal or interest due on bonds or debentures
- Sums or certificates of participating rights due by cooperatives to patrons
- Note: Gift certificates or cards with expiration dates but no service fees will become reportable upon the later of 2 years from the expiration date or 5 years after the card was issued or funds were last loaded (in the case of store gift cards or general use prepaid cards)

Property held by Fiduciaries

- All property held in a fiduciary capacity for the benefit of another person
- IRA's and retirement plans for self-employed individuals which are not subject to a mandatory distribution requirement.

Property held by Courts, Public Officers & Public Agencies

- All property held for the owner (with certain exceptions)
- Restitution

Miscellaneous Property held for or owing to another

- All property not otherwise provided for, admitted in writing and adjudicated to be due, which is held or owing in the ordinary course of the holder's business.

Holding Period Commencement

In cases involving non-traditional property types such as checks or accounts receivable credits, the holding period does not commence until after the last activity on an account or the last "indication of interest in property." The last "indication of interest in property" means:

[A]ny contact, communication or transaction, related to property, from the owner, or involving some affirmative action by the owner, which is documented in a contemporaneous record prepared by or on behalf of the holder or in the possession of the holder

This includes electronic contacts and transactions, as well as verbal contacts and transactions.

The holding period provision for individual retirement plans does not commence until after the owner has reached 70.5 years of age.

State Treasurer Authority

If the examination of a holder's records uncovers reportable property, the State Treasurer is empowered to assess the costs of performing the audit against the holder, up to \$200/day, not to exceed the value of reportable property.

If the holder does not maintain adequate records, the treasurer is explicitly empowered to use "any reasonable method of estimation" to assess a deficiency. This amendment also authorizes the Treasurer to impose penalties up to \$1,000 per day, beginning with the day after the report should have been filed and continuing each day thereafter until a proper report is filed. This penalty may be waived for good cause.

This law also explicitly authorizes the Treasurer to contract with third party auditors who are empowered to perform examinations on behalf of the Treasurer. The legislation does not specify whether the form of payment may be on a contingent fee basis.

Finder Registration

Individuals, other than attorneys licensed to practice law in Pennsylvania, will be required to register with the State Treasurer, retain certain records and make reports if they engage in locating and recovering abandoned or unclaimed property on behalf of the owner for a fee. The maximum fee permitted to be charged by the finder remains unchanged at 15% of the recovered property.

Closing Thoughts

- The above changes will have a drastic impact on Pennsylvania application of its escheat laws and could embark on an enforcement campaign that could yield results the like of which we have seen in Delaware and other states by:
- Reducing the dormancy period for unclaimed property reporting the state accelerates more collections of dormant funds to state coffers;
- In addition to other fines and interest, establishes more stringent penalties for failure to file up to \$365,000 per year;
- Authorizes the state to use third party auditing firms that get paid on contingent fees which will make Pennsylvania incorporated organizations and entities with significant Pennsylvania activities the subject of audit target;
- Third party auditing firms use drastically different techniques for computing abandoned property to the state than those used in Voluntary Disclosure or annual compliance filings that can give rise to significant escheat assessments.

BDO's National unclaimed property group specializes in addressing escheat issues including the new law changes in Pennsylvania. BDO professionals have the knowledge and resources to provide innovative services to help manage abandoned and unclaimed property issues, including:

- Identifying unclaimed property liability and legal exclusions
- Determining compliance needs and reporting issues
- Assisting in voluntary disclosures
- Assistance with abandoned and unclaimed property examinations
- Recommending internal procedures and policies for future abandoned property compliance.

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