

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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### SUBJECT

## WASHINGTON ENACTS LEGISLATION TO IMPROVE ADMINISTRATION OF UNCLAIMED PROPERTY

### SUMMARY

On July 1, 2015, Washington Governor Jay Inslee signed into law Senate Bill No. 6057, 64<sup>th</sup> Legislature, 3<sup>rd</sup> Special Session (Wa. 2015) ("S.B. 6057"). S.B. 6057 incorporates important changes that are intended to improve compliance with and the administration of Washington's unclaimed property laws. Specifically, S.B. 6057 establishes an unclaimed property amnesty program, boosts the penalty provisions, clarifies the reporting requirements with respect to gift certificates, mandates electronic reporting and payment, and creates a refund and appeal process.

### DETAILS

#### *Unclaimed Property Amnesty Program*

The amnesty program established under S.B. 6057 provides waiver of penalties and interest. In order to qualify for amnesty and the related penalty and interest waiver, the holder must, before November 1, 2016: (i) submit a completed application for a penalty and interest waiver; (ii) file a report that includes all property for which penalty and interest waiver is requested; and (iii) pay and deliver all property identified on the report. Penalty and interest waiver does not, however, apply to amounts or property that have been paid, delivered, or reported to the Department of Revenue prior to July 1, 2015, or any amounts included in an assessment or identified through an investigation or examination.

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### *Revised Penalty Provisions*

Effective, July 1, 2016, S.B. 6057 significantly revises Washington's unclaimed property penalty provisions.<sup>1</sup> These penalties are cumulative in nature. See the following chart for the revised penalties.

Type	Amount
... Failure to file, report, pay or deliver amounts or property when due	... 10% of the amount unpaid and the value of property not delivered
... Examination resulting in an assessment for amounts unpaid or property not delivered	... 10% of the amount unpaid and the value of property not delivered
... Late payment of amounts paid or property due under an assessment	... 5% of the amount unpaid and the value of property not delivered
... Willful failure to file a report or to provide written notice to apparent owners	... \$100/day report is withheld or notice not sent, not to exceed \$5,000
... Failure to file or pay electronically	... 5% of the amount payable and value of property deliverable under the report

Currently, penalties are limited to a willful failure to file a report, pay or deliver property penalty and a willful refusal after written demand penalty.

### *Gift Certificates*

S.B. 6057 clarifies that gift certificates presumed abandoned are not required to be reported as unclaimed property.

### *Electronic Reporting and Payment*

Effective July 1, 2016, S.B. 6057 requires holders to file reports and remit funds electronically.

### *Refund and Appeals Process*

Effective July 1, 2015, S.B. 6057 requires the Department to refund any amount, interest or penalty paid in excess of that which is properly due, and which it discovers upon examination of a holder's return or records. In addition, S.B. 6057 establishes procedures that allow a holder to request a refund of any amount, interest or penalty paid in excess of that which is properly due. However, the Department may not refund or return property more than 6 years after the end of the calendar year in which the payment or property delivery occurred, unless the Department receives an application for refund before the expiration of the 6 years limitation period. The Department must add interest to the amount of any refund granted, computed from the date the excess payment was received by the Department until the date the refund is issued.

Effective July 1, 2015, S.B. 6057 also establishes procedures that allow a holder to appeal the denial of a refund or an assessment. An appeal is timely if received by the Department before the due date of the assessment or, in the case of a refund denial, 30 days after the Department rejects it. The Department must conduct its review in accordance with the provisions of Sections 34.05.410 through 34.05.494 of the Revised Code of Washington. A decision of the Department is subject to judicial review under Sections 34.05.510 through 34.05.598 of the Revised Code of Washington.

<sup>1</sup> In the event that Department of Revenue is unable to "efficiently and effectively" implement these penalty provisions, they take effect July 1, 2017 instead.

Also effective July 1, 2015, S.B. 6057 authorizes a holder feeling aggrieved by a payment or delivery of property to appeal to Thurston County Superior Court. An appeal must be made within the 6 years statute for filing an application for refund or within 30 days following a refund denial, whichever is later. This appeals process is not available to a holder that has failed to keep and preserve records as required under Washington's record retention policy.

## BDO INSIGHTS

- ▶ The risks associated with an unclaimed property audit exist until a holder is in compliance with unclaimed property laws. Amnesty and voluntary disclosure offers a holder the opportunity to come into compliance with the significant benefit of penalty and interest waiver.
- ▶ Washington has indicated that it will continue to conduct unclaimed property audits during the amnesty period and has hired additional third party auditors to assist in this process. It is unclear at this time whether Washington will continue to offer its current voluntary disclosure program once the amnesty program expires, which potentially limits the window of time for achieving compliance under favorable terms. This underscores the significance of amnesty or voluntary disclosure.
- ▶ Under the new penalty provisions, Washington may impose penalties for failure to report or pay; whereas, currently Washington may not. Thus, the potential benefits of amnesty or a voluntary disclosure become even greater upon the effective date of Washington's new penalty provisions.

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