

AN ALERT FROM THE BDO UNCLAIMED PROPERTY PRACTICE

BDO KNOWS:

UNCLAIMED PROPERTY



SUBJECT

ILLINOIS TREASURER SUES SPRINT FOR UNCLAIMED CUSTOMER REBATE CHECKS

SUMMARY

On February 9, 2016, Illinois State Treasurer, Mr. Michael W. Frerichs, filed a complaint in the Circuit Court of Cook County, Illinois on behalf of the state, in which he names Sprint Spectrum, L.P. and Young America Corporation as defendants. The Treasurer claims that Sprint and Young America are in possession of uncashed customer rebate checks escheatable to the State, and requests that the court issue an order commanding that each defendant allow the Treasurer to examine their business records and deliver any property presumed abandoned that had not previously been reported.

DETAILS

Background

According to the complaint, Sprint, a provider of digital wireless and cellular/data telephone services, is a Delaware formed limited partnership that is authorized to do business in Illinois, and its principal place of business is located in Missouri. Sprint does business and maintains retail stores throughout Illinois, including Cook County. Young America, a rebate clearinghouse, is a Minnesota formed corporation that was authorized to do business in Illinois until 2004, and has its principal place of business in Minnesota.

Sprint issued rebates to customers as an incentive to purchase Sprint's products and services. A customer who purchased a Sprint product or service mailed a rebate form with proof of purchase, and was issued a rebate check to be cashed within the time period stated on the check. Sprint engaged Young America to process and verify rebate requests and to issue the rebate checks. The rebate checks were drawn on Young America's bank account, and Sprint

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advanced funds to Young America to cover the rebates. Young America retained the value of any uncashed rebate check. Sprint had a similar arrangement with Parago, Inc. Under that arrangement, Parago returned uncashed rebate checks to Sprint related to the period January 1, 2003, through June 1, 2005. For the other periods during which Parago and Sprint had a business relationship, Parago retained the value of uncashed rebate checks. The Treasurer previously settled the claims it had with Parago for those periods, so Parago is not included as a defendant in the complaint.

Relevant Federal and Illinois Law

Illinois requires a holder to report and remit property presumed abandoned to the Treasurer where a holder includes any legal or commercial entity that is in possession of property belonging to another.¹ Reportable property includes tangible and intangible property, including customer credit checks, which are generally presumed abandoned after five years.² Property of an owner whose last known address is outside Illinois or is unknown is generally not reported and remitted to the Treasurer where the holder is incorporated under the laws of a state other than Illinois.³

The Treasurer's Complaint and Requests

In its complaint, the Treasurer alleges that Sprint and Young America are in possession of reportable abandoned uncashed rebates owed to Illinois customers. The Treasurer further alleges that, in 2008, the state commenced an examination of Sprint and Young America for failure to report and remit unclaimed rebates, and that Sprint and Young America refuse to deliver unclaimed rebates required to be remitted to the Treasurer.

With respect to Sprint and Young America, the Treasurer requests from the court an order:

- ▶ Commanding each defendant allow the Treasurer to examine their business records;
- ▶ Commanding each defendant deliver any property presumed abandoned that had not previously been reported;
- ▶ Declaring and fixing the unclaimed property obligations of Sprint and Young America; and
- ▶ Assessing interest and civil penalties for failure to report and deliver the unclaimed rebates.

BDO INSIGHTS

- ▶ The Illinois Treasurer is actively pursuing unclaimed property audits similar to the audits of Sprint and Young America. This case further illustrates the Treasurer's desire to collect money through enforcement of unclaimed property laws, and the lengths to which the state is willing to go to enforce such laws.
- ▶ If the ultimate outcome of this matter results in a decision favorable to the Treasurer and Illinois, the result could empower the Treasurer to pursue other companies that issue customer rebate checks or other instruments similar to those issued by Sprint, and pursue legal action against holders that are uncooperative with data requests arising during an unclaimed property audit.

¹ 765 ILCS §§ 1025/1(d) and (g), 1025/11(a), and 1025/13.

² 765 ILCS §§ 1025/1(l), 1025/2a(a), and 1025/9.

³ *Texas v. New Jersey*, 379 U.S. 674 (1965); 765 ILCS § 1025/10.

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