

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

# BDO KNOWS:

## SALT



### SUBJECT

## U.S. SUPREME COURT GRANTS LEAVE TO FILE COMPLAINTS BY A GROUP OF STATES AGAINST DELAWARE AND CONSOLIDATES APPEALS IN UNCLAIMED PROPERTY DISPUTES

### SUMMARY

On October 3, 2016, the U.S. Supreme Court, in the exercise of its original jurisdiction to hear disputes between states, granted leave to file complaints by 24 states in unclaimed property disputes between 23 states and Delaware over abandoned MoneyGram Payment Systems, Inc. (“MoneyGram”) “official checks.”<sup>1</sup> The Court also consolidated Delaware’s complaint against Pennsylvania and Wisconsin with the multiple-state complaint filed against Delaware earlier in 2016, and requires all parties to file answers to the complaints and counterclaims within 30 days.<sup>2</sup> The conflict between the 23 states and Delaware involves unclaimed “official checks” remitted to Delaware under the second priority rule for reporting unclaimed property that was established by the U.S. Supreme Court in *Texas v. New Jersey* in 1965.<sup>3</sup> The complainants argue against Delaware that such checks should be remitted to the state where the checks were purchased in accordance with the Disposition of Abandoned Money Orders and Traveler’s Checks Act (“Federal Disposition Act”).<sup>4</sup>

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<sup>1</sup> *Arkansas, et al. v. Delaware*, U.S. No. 220146 and *Delaware v. Pennsylvania and Wisconsin*, U.S. No. 220145.

<sup>2</sup> *Pa. Treas. Dep’t v. Gregor*, No. 1:16-cv-00351 (M.D. Pa. filed Feb. 26, 2016); *Wis. Dep’t of Revenue v. Gregor*, No. 16-cv-281 (W.D. Wis. filed April 27, 2016); *Arkansas v. Delaware*, Motion for Leave to File Bill of Complaint (U.S., No. 220146 filed June 9, 2016).

<sup>3</sup> 379 U.S. 674 (1965).

<sup>4</sup> 12 U.S.C. §§ 2501-2503 (1974).

## DETAILS

### **Background**

All states and the District of Columbia have enacted unclaimed property laws, under which a company holding such property (the “holder”) must report and remit the property to the appropriate state after the time prescribed by that state has passed. The U.S. Supreme Court established priority rules to determine the states’ jurisdiction to take custody of unclaimed property in *Texas v. New Jersey*. Under the priority rules generally, the state of the rightful owner’s last known address receives first priority. If the holder’s records do not reflect a last known address, the property is reported to the holder’s state of legal domicile or incorporation.

Following the second priority rule, MoneyGram remitted “official checks” with an unknown owner address to Delaware, the company’s state of incorporation. Official checks are similar to money orders in that the customer pays the value of the official check plus a transaction fee for an instrument that is pre-printed with the value of the customer’s remitted payment. In addition, MoneyGram is directly liable for the pre-printed value of its official checks. The only substantive differences between money orders and official checks are where they are sold, and the value that can be reflected on them.<sup>5</sup>

The complaints of the 24 state group have been accumulating for several months. See the [BDO SALT Alert](#) that discusses the Pennsylvania complaint filed on February 26, 2016.

### **States Filing Complaints**

The states filing complaints against Delaware claim that the official checks should be remitted to the state of purchase under the Federal Disposition Act. The Federal Disposition Act grants unclaimed property jurisdiction to the state of purchase for an abandoned “money order, traveler’s check, and other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable,” to the extent of that state’s laws. The complainant states assert that although “other similar written instrument (other than a third party bank check)” is not explicitly defined, MoneyGram official checks are substantially similar to money orders and should fall under the Federal Disposition Act.

### **Delaware’s Arguments**

Delaware claims that MoneyGram remitted the official checks appropriately in accordance with the second priority rule and the decision in *Pennsylvania v. New York*, 407 U.S. 206 (1972), in which the U.S. Supreme Court held that the state of incorporation had the right to escheat sums owed on an uncashed money order where the owner’s address is unknown.

Delaware acknowledges that the Federal Disposition Act effectively overturned the U.S. Supreme Court’s holding in *Pennsylvania v. New York* for money orders. However, Delaware argues that the official checks in this case qualify as “third party bank checks” and, thus, are explicitly excluded from the Federal Disposition Act. In addition, Delaware argues that official checks were known and recognized monetary instruments at the time the Federal Disposition Act was enacted, and yet they were not specifically included. Finally, Delaware asserts that official checks differ from money orders and traveler’s checks in many ways and, therefore, do not fall under the “other similar written instrument (other than a third party bank check)” provision in the Federal Disposition Act.

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<sup>5</sup> MoneyGram money orders are generally subject to low face-value limits, whereas official checks are not. In addition, money orders are generally sold at traditional retail locations, while official checks are sold at financial institutions.

## BDO INSIGHTS

- ▶ Unclaimed property holders should monitor these consolidated cases as they proceed, because the outcome will impact the unclaimed property laws of many states and holders.
- ▶ The eventual outcome of this case could assist in interpreting and applying the various state unclaimed property laws, which can be difficult to navigate. The outcome is still uncertain and original jurisdiction cases can take a significant amount of time to resolve, but states and holders are eager for the Court's guidance.

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