

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SUBJECT

DELAWARE REQUESTS INJUNCTIVE RELIEF TO ENFORCE AN ADMINISTRATIVE SUMMONS FOR UNCLAIMED PROPERTY RECORDS

SUMMARY

On November 20, 2015, the Delaware Department of Finance filed a Complaint for Injunctive and Declaratory Relief in the Court of Chancery for the State of Delaware to enforce an administrative summons the Department had issued to Blackhawk Engagement Solutions (DE), Inc. (f/k/a Parago, Inc.) more than 9-months earlier in connection with an ongoing unclaimed property audit. According to the Complaint, Blackhawk did not comply with the Department's summons, which seeks sworn testimony and the production of documents as it relates to certain uncashed rebate check payments. The Department requests an injunction from the court compelling delivery of the requested information.

DETAILS

Background

Blackhawk is a Delaware-formed and Texas-headquartered corporation that provides global rebate fulfillment capabilities to its retail clients, including Bed, Bath & Beyond, Macy's, Verizon, Staples, and others. In 2014, Blackhawk Network acquired all of the stock of Parago, Inc. and changed Parago's name to Blackhawk Engagement Solutions (DE), Inc.

The Audit and Summons

On February 18, 2011, the State Escheator issued a notice of examination to Blackhawk. Pursuant to its authority to examine records under Del. Code Ann. tit. 12, sec. 1155 (1974), the Department issued a summons on February 12, 2015, seeking sworn testimony and the production of documents as it relates

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to uncashed rebate check payments that were returned to Blackhawk's clients or subject to an express per-transaction fee to its clients representing anticipated slippage. Delaware alleges that Blackhawk did not respond to the summons other than to indicate that it would not comply unless a court directed it to do so.

The Department's Request for Relief

The Department filed the complaint seeking an injunction restraining Blackhawk from disregarding Delaware's escheat law and compelling the delivery of the requested information. In addition, the Department seeks an order that establishes, among other things, that Blackhawk is subject to Delaware escheat law and that Blackhawk has no legal authority to disregard the summons.

BDO INSIGHTS

- ▶ It is unclear from the complaint whether Blackhawk's refusal to respond to the summons relates to an outright objection to Delaware's ability to summons the requested information or more nuanced issues that may arise in a rebate context, such as whether Blackhawk is the holder that is subject to audit or whether it has title to the records being requested.
- ▶ While the decision of the court to issue the requested relief in this case may not have precedential authority, backing from the court in this case regarding its summons power could embolden the Department to use injunctive relief more often when dealing with a holder who refuses to respond to requests for information. This, in turn, may increase the audit costs to such a holder.
- ▶ This complaint should serve as an example of the lengths to which the Department may go to obtain unclaimed property records - i.e., more than simply issuing a letter request or a summons.

BDO's National Unclaimed Property Practice is comprised of over 20 professionals dedicated to assisting clients with its escheatment matters. With over 100 years of combined experience in our team, our practice has helped organizations voluntarily comply with multi-state escheatment laws, defend against multi-state audits, prepare policy and procedures, file and manage compliance return process, along with other planning and consulting. Should you have additional questions regarding the *Blackhawk* case or other escheatment issues generally, please contact Joe Carr, National Unclaimed Property Practice leader at 312-616-3946 for further information.

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