

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SUBJECT

WISCONSIN SENATOR INTRODUCES BILL WITH PROPOSED UNCLAIMED PROPERTY REFORM

SUMMARY

On April 7, 2016, Wisconsin Senator Richard Gudex (R) introduced S.B. 799, which includes numerous proposals that would reform the unclaimed property law, such as prohibit the use of third-party audit firms, establish a voluntary disclosure program, reduce the statute of limitations for assessment from five years to three years, create a business-to-business exemption, and authorize administrative appeals. If enacted, these changes would generally be effective on the day after publication.

DETAILS

Unclaimed Property Audits

As it relates to unclaimed property audits, if enacted, S.B. 799 would:

- ▶ Prohibit the use of third-party audit firms;
- ▶ Reduce the statute of limitations for assessment from five years after the duty to report arose to three years after the duty to report arose; and
- ▶ Apply the administrative and other appeal procedures that apply to income and franchise tax assessment determinations to unclaimed property determinations (currently, limited to bringing an action in circuit court).

BDO's National Unclaimed Property Practice has successfully assisted many clients in Wisconsin voluntary disclosures and unclaimed property audits, and can assist you. Should you have any questions or would like to discuss escheatment, please contact:

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Business-to-Business Exemption

If enacted, S.B. 799 would create an exemption for any of the following that is owed by a business to another business:

- ▶ Credit balance issued to a commercial customer account, except with respect to banking deposits held by a banking organization or financial organization;
- ▶ Customer overpayment;
- ▶ Security deposit;
- ▶ Refund;
- ▶ Credit memorandum;
- ▶ Unused airline ticket;
- ▶ Unidentified remittance; and
- ▶ Uncashed check, draft, or other similar instrument.

Unclaimed Property Administration

As it relates to the administration of unclaimed property, if enacted, S.B. 799 would direct the Secretary of Revenue to create a voluntary disclosure program and promulgate rules therefore, subject to the following requirements:

- ▶ Exclude a holder from participating in the program if the Secretary is conducting an audit;
- ▶ Apply a look-back period of three report years;
- ▶ Waiver of interest if the holder completes the program within the first year the program is available, and impose a three percent interest rate if the filing is completed thereafter;
- ▶ Waiver of penalties for all filings under the program; and
- ▶ A good faith reporting requirement for a holder entering the program.

If enacted, S.B. 799 would also:

- ▶ Reduce the interest rate on items filed late from 18 percent to six percent;
- ▶ Reduce the record retention requirement for all data included within a report from five years after the property is reported to three years after the property becomes reportable;
- ▶ Require holders to report owner date of birth and social security number or other tax identification number of each apparent owner, if that information is known and readily available;
- ▶ Change the reporting deadline to “no later than November 1 of each year”
- ▶ Reduce the dormancy period for a money order and other similar written instruments (other than a third-party bank check) from seven years to five years;
- ▶ Require a holder to deliver the contents of a safe deposit box to the Secretary no earlier than February 1 and no later than February 15 of the year following the year the holder was required to file the report;
- ▶ Permit the Secretary to disclose certain details regarding a claimant where two or more claimants file a claim for the same property; and
- ▶ Permit the Secretary to pursue collection actions and commence suit to recover property claimed in error.

BDO INSIGHTS

- ▶ S.B. 799 was introduced on the last day for introducing new legislation in the current legislative session, and is expected to die in committee during this session. If so, S.B. 799 will need to be reintroduced (or similar legislation introduced) at the start of the next legislative session in fall of 2016. In addition, since Senator Gudex is not running for reelection, S.B. 799 will require a new sponsor if it is to be reintroduced.
- ▶ Bills introduced in the fall of 2016 sessions may be ensnared in budget bill legislation and negotiations, which may result in amendments to the proposed changes in S.B. 799 or potentially delay its enactment (i.e., if it does not die or it is reintroduced).
- ▶ S.B. 799 includes statutory language that addresses numerous proposals for unclaimed property reform circulated by the Secretary for public comment in the fall of 2015. Several of the proposed changes vary from the ideas circulated by the Secretary in late 2015 (e.g., the Secretary was proposing an amnesty-like program with a limited time for holders to enroll and complete their voluntary filing). BDO is not aware of commentary from the Secretary regarding the unclaimed property changes proposed in S.B. 799.

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