Unclaimed Property – What is it and how do we deal with it?

April 21, 2022
Jennifer Fine
Senior Director
State and Local Tax
Chicago, IL
jennifer.fine@rsmus.com
312.634.4490
<table>
<thead>
<tr>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclaimed Property Overview</td>
</tr>
<tr>
<td>Current Trends and Landscape</td>
</tr>
<tr>
<td>Best Practices</td>
</tr>
<tr>
<td>Questions</td>
</tr>
</tbody>
</table>
Unclaimed Property Overview
Overview of Unclaimed Property

• Fixed and certain liability owed to another party that has remained unclaimed for a specific period of time (a.k.a. dormancy period)
  – Dormancy periods vary by property type and state
  – Payroll typically 1 year; most other property typically 3 or 5 years
• Can be tangible or intangible property
• Not a tax
  – Tax concepts like “nexus” are not relevant
  – Pass through status is irrelevant
  – Not-for-profits have reporting obligations just like for-profits
• Purpose of these laws
  – To reunite lost owners with their property
  – To protect the holder from subsequent claims by owners
  – To ensure that any economic windfall benefits the state and its citizens
Why is Unclaimed Property Important?

- All U.S. jurisdictions have unclaimed property laws
- Annual compliance is mandatory if you have property to report
  - Some states require annual reporting even if no property to report (Illinois)
- Significant audit risk for non-compliance or under reporting
  - Penalties and interest
  - Long lookbacks under audit
    - Typical is 10 years plus dormancy (13 – 15 years)
    - Poor record retention makes it harder to defend audit with passage of time
    - Estimation is performed where there are record gaps
- There can be financial statement impacts as unclaimed property is often not accurately reflected on the books/records of a company
Examples of Unclaimed Property – Community Colleges

Unclaimed Property

- Travel and Expense Reimbursement Checks
- Payroll
- Accounts Payable
- Workers’ Compensation
- Benefit Payments (non-ERISA)
- Small Balance Write-offs
- Tuition Refunds
- Student Account Balances
- Tuition Deposits or Overpayments
Sourcing Unclaimed Property (Intangible)*

Sourcing priorities originally determined by the U.S. Supreme Court in *Texas v. New Jersey*, 379 U.S. 674 (1965), re-affirmed in 1972 and 1993:

**First Priority**
- State of last known owner's name and address

**Second Priority**
- Holder’s state of incorporation/registration/principal place of business (domicile), if last known address of owner is unknown
- If state of last known owner name and address does not provide for the escheat of the property, state of domicile has power to escheat
- May also attempt to claim estimation in cases of lack of records and foreign-addressed property.

*Note: Tangible property is based on the state in which it is located*
Examples

- Payroll check issued 4/6/18 to John Jones who lives in at 123 Main St in Chicago, IL
  - IL has jurisdiction; dormancy period for payroll in IL is 1 year
  - Check remains uncashed – becomes dormant on 4/6/19
  - IL uses a calendar year cycle with a report deadline of May 1 (most industries)
  - Check was due to IL on 5/1/20

- AP check issued on 4/6/18 to ABC Corp which is located at 5644 Park Ave in Indianapolis, IN
  - IN has jurisdiction; dormancy period on AP is 3 years in IN
  - Check remains uncashed – becomes dormant on 4/6/21
  - IN uses a 6/30 year end cycle with a report deadline of Nov 1 (most industries)
  - Check will be reportable to IN on 11/1/21
Current Trends and Landscape
Current Landscape

- **New self-review programs in several states (with third party auditors)**
  - Illinois is working with Kelmar Associates
  - Expect a full review with estimation to fill record gaps – 10 prior report years

- **Audit activity**
  - Often third-party audit firms, which bring multiple states
  - Typical lookback is 10 years plus dormancy (13 – 15 years total)
  - Can often go on for 3 – 5 years (sometimes longer)
  - Estimation is sometimes performed where records are lacking (if second priority state is participating)

- **Wisconsin has a new VDA program – February 1, 2022 – February 28, 2023**
  - Lookback is five prior report periods (total reachback will be six to ten years, depending on dormancy)
  - Waiver of penalties (no interest provision anymore)
  - Waiver of audit for periods included
  - Must report within 60 days (extension request limited to 60 additional days)
  - Must maintain compliance for next four report years

- **Delaware VDA program – invitation letters sent February 18, 2022 (next batch May 20, 2022)**
  - 90 days to sign-up for face audit
  - Lookback is 10 years plus dormancy (15 years for most property)
Best Practices
Best Practices

- Start reporting in applicable jurisdictions
  - Be aware of states that require negative reporting (Illinois)
- Create written policies and procedures for unclaimed property
  - Consider a small committee of a few people from different departments who are going to be impacted (payroll, AP, AR, etc.)
- Designate employee(s) (by title) to be responsible for reporting and remitting
  - Make it part of their job description
- Follow-up on property early
  - Set timelines for outreach in the aforementioned policies and procedures
  - 90 days for payroll; 180 days for vendors; students, etc.
- Make sure that you keep records of communications and research on open items in the even to audit
  - Includes e-mails, due diligence letters, void request forms, invoice adjustments, etc.
  - Make sure you can tie check reissues to originals
Best Practices

• Follow your record retention policies carefully and consistently
  – Many states, including Illinois, actually expect you to maintain unclaimed property related records for at least 10 years after reporting
  – When records are lacking, states will use estimation to fill record gaps, so you want to make sure that you have complete and researchable records for all periods being utilized

• Do not write off small balances or old property
  – Most states do not have de mimimis exemptions for unclaimed property, so even if the balance is $0.01, it should be reported and remitted
  – Unknown address and foreign address property are not exempt from this – second priority state will claim
  – These can blow-up on you in an audit, especially when estimation is applied due to a lack of records

• Be wary of fraudulent claims after due diligence – consider requiring proof of ID or other legal records in certain cases, particularly when dealing with third party claimants
  – When in doubt, just report it to the state and let the owner claim it there