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ACCOUNTANTS & ADVISORS

Guide to Unclaimed Property Laws in New York, New Jersey and California

Each state has its own unclaimed property laws. Your business may be liable for penalties and interest, if it fails to timely report its unclaimed property. To help your business with its compliance obligations, this article covers some of the major unclaimed property laws in three states, California (CA), New Jersey (NJ) and New York (NY), and helps clarify the what, when, and where questions that often plague businesses with unclaimed property.

All states have unclaimed property laws. To qualify as unclaimed property, each state imposes general requirements. Unclaimed property is typically intangible property such as credit balances and uncashed payroll/accounts payable checks. There must be a fixed and certain legal obligation between the holder and owner of the property. Property must remain unclaimed by the owner for a set statutory or dormancy period, and during the dormancy period, there must be no contact between the holder and the owner otherwise the dormancy period can reset.

The owner has a legal right to the property. The holder is the party who is legally obligated to deliver unclaimed property to its owner. The states hold the property in question as custodians for the owners until the owners claim the property. The statutory dormancy period begins on the date of the creation of the property type and ends on a specific date (i.e., the statutory period is typically 1-5 years). The dormancy period for wages/accounts payable checks (in years) in CA, NJ and NY is 1 year/3 years (1/3), 1 year/3 years (1/3), and 3 years/3 years (3/3), respectively.

States typically impose one or two different types of compliance requirements for holders of unclaimed property. One type of compliance requirement is that holders must report and remit the unclaimed funds

to the state of the owner's last known address, as that state has the power to escheat the unclaimed property. If, however, that state does not have a law covering the property in question or does not have a record of the owner's last address, then the state in which the holder is incorporated has the power to escheat the unclaimed property. If the state of incorporation does not escheat the property type, then it may be sourced to the state where the transaction took place.

Note also that some states exempt holders from reporting certain types of unclaimed property involving business to business transactions, typically accounts receivable credit balances. These states believe that unclaimed property laws were designed to protect consumers, not credit balances arising between businesses. The filing and reporting obligations for CA, NJ and NY are: November 1 filing to cover property unclaimed as of June 30; November 1 filing to cover property unclaimed as of June 30; and March 10 filing to cover property unclaimed as of December 31 of the preceding year, respectively.

In addition, some states have aggregate and negative reporting requirements. Aggregate reporting allows holders to report smaller amounts in the aggregate, with some states requiring that the holder provide owner information. The aggregate reporting thresholds for CA, NJ and NY are: less than \$25; less than \$50; and \$20 or less, respectively. Negative reporting requires holders to file reports confirming that they do not have any unclaimed property on their books and records. CA and NY do not have a negative reporting requirement, but NJ does.

The second type of compliance requirement is a due diligence requirement. As opposed to requiring holders to simply report and remit the unclaimed property, some states require that the holder perform a due diligence search of the owner by sending letters to the last known address. Due diligence typically applies when property values exceed a specified dollar amount. In CA, holders are required to send notices to owners of property with a value of \$50 or more between 6 to 12 months prior to remitting the property to the state. In NJ, holders are required to send certified letters (Return Receipt Requested) to owners of property with a value of \$50 or more between 60 to 120 days prior to reporting the property to the state. Finally, in NY, holders are required to mail letters to owners regardless of property value at

least 90 days before reporting, and send certified letters to the owners, for all property of \$1,000 or more at least 60 days prior to reporting.

Failing to timely report is grounds for incurring penalties and interest. The penalties and interest for noncompliance in CA, NJ and NY are as follows: 1) In CA, the penalty for failing to report is \$100 per day with a maximum of \$10,000; the penalty for failing to deliver unclaimed property to the state, of which you are in possession, is between \$5,000 and \$50,000, and interest is at 12%; 2) In NJ, the penalty is \$200 per day, with a maximum of \$100,000, while fraud penalty is \$1,000 per day, with a maximum of \$250,000, plus 25% of the property value, and the interest is 10% above the annual US Treasury bill discount rate; and 3) In NY, the penalty for willful failure to report is \$100 per day, and interest is 10%.

Holders who have failed to comply with a state's unclaimed property reporting laws may be eligible to enter into a voluntary disclosure program. CA does not currently have a voluntary disclosure program for unclaimed property. NJ does have a program, but does not advertise the details. NY has a program waiving penalties and interest with a look back period to 1992.

Each state's requirements for entering the voluntary disclosure program are different. The requirements can include: that the holder has not been contacted by the state regarding unclaimed property matters; that the holder has not entered into any voluntary disclosure agreements with the state on other matters; that the holder be a first time filer; and that the holder comes forward in good faith. While there are advantages to entering the program, one notable disadvantage is that entry can alert the state about other related entities or other tax matters.

Lastly, unclaimed property audits of holders by states are on the rise because states are low on revenue. The process can be very costly and lengthy with look back periods typically ranging between five and twenty-two years, and substantial penalty and interest charges may be imposed.

In closing, the unclaimed property laws amongst the states can be complex. If you have unclaimed property on your books, then you need to be aware of your compliance responsibilities. Further, even if you know that you have no unclaimed property on your records, you may still have an obligation to report this information. Lastly, if you realize that you are delinquent in your unclaimed property reporting obligations, seek the guidance of your tax professional to determine whether you may qualify to enter into a voluntary disclosure program.

For More Information

If you have questions about the information contained in this communication or any state or local tax matter, please contact [Steven P. Bryde](mailto:sbryde@markspaneth.com), JD, Tax Principal, by phone at 212.503.8806 or by email at sbryde@markspaneth.com.

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