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UNCLAIMED PROPERTY TOPICS IN BANKING FOR 2018

Unclaimed property remains a growing area of concern for the banking and credit union industries

With the rise in unclaimed property audits, shrinking dormancy periods, and ever-changing regulations, financial institutions are having to devote more time and resources than ever before to stay on top of unclaimed property requirements. Given the amount of activity to date, there is no doubt 2018 will prove to be a very lively year for unclaimed property professionals. Here are the trends that are likely to continue throughout 2018 based on the current unclaimed property landscape:

Varying versions of the Revised Uniform Unclaimed Property Act (RUUPA) will continue to be enacted by states

The Uniform Law Commission (ULC) passed the Revised Uniform Unclaimed Property Act (RUUPA) in 2016. While this is an effective tool for model legislation, it does not become law in any state until enacted partially or totally by legislation. Delaware, Pennsylvania and Illinois have already passed versions that deviate significantly, while Tennessee, Utah and Kentucky passed laws that were most similar to the ULC version of RUUPA. Several additional states are likely to pass legislation this year that will rewrite their current unclaimed property laws. For instance, Washington, Colorado, Nebraska, Tennessee, Utah, Maine, Minnesota, Vermont and the District of Columbia have proposed bills for consideration.

In addition to states having the option to adopt RUUPA or specific provisions in the act, it should also be noted that the American Bar Association (ABA) is proposing their own version of a model act. This will give state legislatures more options and decisions to make, and make the job of tracking the various regulatory frameworks more complex for financial institutions.

What this means for financial institutions:

As states continue to rewrite their current laws, banks and credit unions should be prepared to enhance their systems. While it would be ideal if all states would enact the same version of the RUUPA, it is not likely, so system and reporting flexibility will continue to be critical for compliance.

States are revising dormancy standards to include returned mail components

Most states currently hold financial institutions to a standard of inactivity (or no owner generated contact) as the basis in determining when property is escheatable. This has been problematic for many property types, such as IRA's and securities, as they tend to represent long-term savings which do not require frequent contact from customers. With the passage of RUUPA, many states are now putting returned mail requirements back into their statutes. When mail is returned from the post office, it is a strong indication that a person has moved and not updated their address. Using the standard of returned mail gives holders the ability to determine dormancy faster and provides them with a higher confidence level when turning over property to the state.

What this means for financial institutions:

As this standard becomes more prevalent, financial institutions should proactively implement the returned mail component into their policies and procedures.

The push by states for Death Master File (DMF) matching is a growing challenge

Death Master File matching has been a controversial issue in the unclaimed property industry for the past several years. The DMF includes information on a decedent available to the Social Security Administration (SSA) such as name, social security number, date of birth, and date of death. It can only be accessed by certified persons. However, while potentially helpful in providing a single reference point for holders seeking information about whether an account owner has passed away, the Social Security Death Master File website itself states "The SSA does not have a death record for all persons; therefore, SSA does not guarantee the veracity of the file."

States and audit firms have advocated for requiring holders to match customer files against the DMF to determine/verify an individual's life status. This is problematic for banks and other holders of property where knowledge of death does not constitute an obligation to pay (i.e some insurance policies, IRA accounts, securities, etc.) Additionally, most banks cannot transfer accounts to the rightful heir(s) until a certified death certificate and/or other legal documentation has been received.

More than one third-party audit firm has been known to request owner social security numbers. Since this information is not needed to determine escheatment eligibility, firms will push back on the auditors in effort to protect their customer's data. Auditors continue to search the DMF with the owner names, which can result in multiple false positive results. This practice creates an unnecessary burden on financial institutions.

What this means for financial institutions:

DMF matching is certain to remain a sensitive subject of debate in the future. While not including this requirement in RUUPA, at a minimum, states are requiring holders to take additional actions when an indication of death arises. For instance, Illinois requires an accelerated dormancy period for property of deceased owners.

Decreasing dormancy periods

There is no question that states are in need of additional revenue, and although unclaimed property laws were established to protect owners, states continue to view enforcing unclaimed properly compliance as a revenue opportunity.

In addition to revenue from escheatment, audits, interest, and penalties, states have increased receipts by lowering the period of time property must remain dormant before it is eligible for escheatment. The average dormancy period for banking assets used to be seven years, but since 2012 the average has decreased to five years. Many states are reducing dormancy periods for certain asset types to as low as three years, and more states are expected to join this trend towards reduced dormancy periods in 2018.

The pool of firms being targeted for audit is expanding

Most states utilize third-party auditors to ensure compliance with unclaimed property laws. Doing so eliminates the cost of auditing for the state, since auditors are only paid based on a percentage of the property that they recover. When audit enforcement accelerated several years ago, the states and audit firms primarily targeted larger banks and insurance companies. States are now expanding their audit pool to a broader base of bank sizes, targeting smaller and mid-sized banks as well. It is also becoming more common for financial institutions to be under audit by multiple audit firms representing different states at the same time.

The continued growth in audit activity means holders should evaluate internal processes, reviews, and controls to determine the merits of signing up for a Voluntary Disclosure Agreement (VDA) to mitigate audit risk when applicable.

Litigation

Over the past few years, litigation has become more common as holders are taking a stand by challenging legal issues. Below is a brief description of some of the recent litigation:

Marathon Petroleum v. Secretary of Finance et al. (December 4, 2017)

The issue:

Marathon and Speedway are Delaware corporations with their principal places of business in Ohio. They challenged Delaware's right to conduct an audit examining whether certain funds paid for stored-value gift cards issued by their Ohio-based subsidiaries are held by Marathon and Speedway and thus subject to escheatment. Their argument relied on the Supreme Court precedent that lays out a strict order of priority among states competing to escheat abandoned property.

The outcome(s):

- Established that private parties do have a standing to enforce the federal common law in Texas v. New Jersey and Delaware v. New York
- Confirmed the ability of states/auditors to look at subsidiaries to confirm they are legitimate entities.

Delaware v. Arkansas, et al.

The issue:

Multiple states are in a dispute with Delaware regarding the reporting of MoneyGram official checks. MoneyGram has reported over $150 million in owner unknown uncashed official checks to the state of Delaware, as its state of incorporation. The other states are taking the position that the MoneyGram official checks are similar to money orders, and therefore should have been escheated to the state in which they were sold.

The outcome(s):

This case has not yet been decided but could impact the reporting of cashiers checks and other official bank checks.

BBB Value Services Inc. v. Treasurer, State of New Jersey, Department of the Treasury et al. and Bed Bath & Beyond Inc. v. Treasurer, State of New Jersey, Department of the Treasury et al. (September 21, 2017)

The issue:

BBB argued that the property in question represented store-valued cards and not credit memoranda, and therefore should not be presumed abandoned until after five years of inactivity. Furthermore, they argued that the amounts should have been reportable at 60 percent of the full value.

The outcomes:

The court ruled in favor of Bed Bath & Beyond and their subsidiary, BBB Value Services Inc., entitling them to a refund.

As states continue to adopt new laws, reduce dormancy periods and tweak their audit practices, 2018 will prove to be anything but dull for the unclaimed property industry. Financial institutions will need to ensure they have the resources available to identify changes in unclaimed property laws and make system enhancements accordingly.

From owner location services to unclaimed property consulting, Georgeson offers a full suite of services to help financial institutions manage their unclaimed property processes. Keep up to date by signing up for our unclaimed property alerts for timely updates on legislative changes and trends, and sign up to be notified of our upcoming webinars and podcasts.

For questions or more information, visit www.GeorgesonBankingUp.com or contact Brian Permenter at bpermenter@georgeson.com or call 201 805 7188.

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