

South Carolina



Unclaimed Property Program Holder Reporting Overview

November 2015



Overview

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 - History of Unclaimed Property Law
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What is Unclaimed Property?



- Intangible property, such as:
 - Cash
 - General Ledger Items
 - Securities
- No owner-initiated activity for a specified period of time

Definitions

- Intangible Property
 - Property that has no intrinsic value but is merely representative of value
- Holder
 - Entity in possession of property belonging to another, or is indebted to another on an obligation
- Owner
 - Person or entity having a legal right to or equitable interest in unclaimed property

Definitions



- Dormancy Period (Abandonment Period)
 - Period of time during which an owner of property does not take action regarding the property
 - Period ranges from 1 to 15 years depending on the type of property

Definitions



- Due Diligence
 - Must use prudent and reasonable methods to locate owners of unclaimed property
 - Must distribute written notice to owner's last known address

History of Unclaimed Property

- Originated from British Common Law
 - Land was returned to the local Lord if a tenant died without heirs
 - Personal property was subject to claim by the crown under the bona vacantia (“ownerless goods”) doctrine
 - Basis for today’s unclaimed property laws

History of Unclaimed Property

- Every state has an unclaimed property law
- Uniform Law Commission enacted a series of Unclaimed Property Acts to promote uniformity among the states (1954, 1966, 1981, 1995)
- While some things are uniform, it is important to review each state's laws governing unclaimed property

South Carolina's Law

- First unclaimed property statute passed in 1971
- Current law is a version of the 1981 Uniform Unclaimed Property Act.
- Program began as a part of the Department of Revenue and was transferred to the State Treasurer's Office in 1996

Purpose of the Law

- Purpose is consumer protection
- South Carolina has a custodial escheat law with a derivative rights doctrine. What does that mean?
 - The State serves as a custodian of funds for the owner
 - We “stand in the shoes of the owner” and hold property until the owner (or his heirs) comes forward to claim it
 - Until the owner claims the property, the State may use **it** for the benefit of all South Carolinians

Benefits of the Law

- For the Holder:
 - Creates a system in which an obligation due an owner may be permanently removed from the holder's books and records
 - Transfers custody and liability to the State
- For the Owner:
 - Protects the property owner's interests
 - Provides a more efficient way to search for State-wide unclaimed property

Results



- Last year, we returned over \$18 million to its rightful owners
 - Unclaimed life insurance proceeds
 - Dormant or forgotten bank account assets
 - Commission checks that had gone uncashed
 - Stock proceeds from abandoned accounts
 - Payments to heirs

Holder Obligations Under the Unclaimed Property Law

Holder Obligations

- At least annually, review your records to identify unclaimed property
- Perform due diligence to locate property owners
- Every year, report and remit all unclaimed property to the State before November 1.
- Maintain sufficient records
 - SC Unclaimed Property Law requires a holder to maintain records for 10 years after the property is reportable

Holder Obligations



- Common Property Types
 - Wages
 - Outstanding Checks
 - Customer Credit Balances
 - Bank Accounts
 - Utility Deposits
 - Stocks & Dividends
 - Bonds
 - Insurance Proceeds & Annuities
 - Money Orders
 - Traveler's Checks

Holder Obligations

- Unclaimed property law applies to all categories of intangible property unless specifically exempt or excluded by the State Treasurer's Office
- Examples of property excluded:
 - Gift Certificates
 - Capital Credits issued by SC Telephone & Electric Cooperatives
 - Safe Deposit Box Contents (except US Savings Bonds)

Holder Obligations

- How to determine if property is abandoned:
 - Aging (Dormancy Period)
 - Property is aged from the original date it was payable to the owner. Reissuing a check does not restart dormancy period.
 - Different property types have different dormancy periods.
 - Activity
 - There has been no owner-initiated activity or written communication for the duration of the dormancy period.
 - The owner has not communicated an interest in the property.

Dormancy Periods

One Year

Wages
Utility Deposits

Three Years

Stocks
Securities
CDs

Five Years

Outstanding Checks
Bank Accounts
Insurance Proceeds
Annuities
Credit Balances

Seven Years

Money Orders

Fifteen Years

Traveler's Checks

Due Dates

- Based on the later of:
 - The date the property was originally payable to the owner
 - The date of the last owner-initiated activity
- Reporting deadlines are calculated using the State's fiscal year (July 1 – June 30)
- Holders must report unclaimed property every year
- List of due dates is available on our website

Example: Unclaimed Wages

- Bobby's paycheck is issued on November 5, 2014.
- In July 2015, you review your records and see Bobby's check was never cashed.
- For your 2015 holder report, you should include wages issued between July 1, 2013 and June 30, 2014. Since Bobby's check was issued after that period, it should not be included in your 2015 report.
- Bobby's check should be included in your 2016 holder report if it remains uncashed.

Due Diligence Letters

- Governed by Section 27-18-180 of the South Carolina Code of Laws
- For property valued at \$50 or greater, holder must send written notice to the owner's last known address
- Holder is not required to send written notice if the last known address is confirmed to be a bad address
- Written notice must be sent no more than 120 days prior to the date the report is filed

Helpful Hints



- Allow enough time for owners to respond to the due diligence letter
- Letter should be easy to understand:
 - State the purpose of the letter
 - Include a deadline
 - Indicate when funds will be remitted to the State
 - Provide your contact information
 - Explain that funds may be claimed from the State after January 1 of the following year

Back to Bobby's Paycheck...

- Since you intend to include Bobby's check in your 2016 holder report, which will be remitted on October 15, 2016, you must send the due diligence letter no earlier than June 17, 2016 (120 days before filing).
- We recommend allowing at least 30 days for Bobby to respond to the letter, so send the notice to him no later than September 15, 2016.

Reporting Unclaimed Property



Reporting Unclaimed Property

- Reports and remittances are due each year before November 1 for property that has reached its dormancy period as of the previous June 30.
 - One-year property (wages, utility deposits) issued between July 1, 2013, and June 30, 2014, must be reported by November 1, 2015.
 - Five-year property (vendor checks, credit balances, etc.) issued between July 1, 2009, and June 30, 2010, must be reported by November 1, 2015.

Reporting Unclaimed Property

- Unclaimed property reporting is based on the rules of jurisdiction set by the US Supreme Court in Texas v. New Jersey (1965).
 - State of owner's last known address
 - State of holder's incorporation or domicile if owner's address is not known
 - Further detail available in Section 27-18-40 of SC Code of Laws

Reporting Unclaimed Property

- To ease the reporting burden, some states (including South Carolina) will accept incidental property with a last known address in another state.
 - Incidental property is defined as fewer than 10 properties with values totaling less than \$1,000.
 - State receiving the property will forward the funds to the appropriate state through a reciprocity agreement.
 - Not all states allow reciprocal reporting. Use the Reciprocity Matrix (located on our website) to check the policies of both states involved before reporting.

NAUPA File Format



- NAUPA – National Association of Unclaimed Property Administrators
 - All states are a member of this organization.
 - Developed a standard format for reporting accepted by all states.

Reporting Unclaimed Property

- For security reasons, SC does not accept paper reports or reports mailed to our office on a CD or USB drive.
- Reports must be submitted electronically in the NAUPA-prescribed format. Submit via:
 - UPEXchange or UPEXpress.
 - Email to UPReports@sto.sc.gov.
- Funds may be remitted by check, ACH or bank wire.
- Securities must be delivered to our brokerage account.

Creating the Report

- Several reporting software programs on the market
- Two free versions (UPExchange and HRS Pro)
 - Web-based programs
 - Sign up for a free account
 - Download excel template
 - Create your report
 - Send report to the state:
 - Upload reports directly to the State through UPExchange or UPExpress.
 - Send report as an attachment to an email to UPReports@sto.sc.gov.

Creating the Report

- Provide as much information about the owner as possible in your report.
 - Full name and last known address of owner
 - Use the correct property, owner and relationship codes
 - Pay special attention to properties with multiple owners (“and” vs. “or”)
 - Account number or SSN, if available, will assist us in verifying the identify of the owner when they come forward

Service Fees



- Reported accounts cannot be reduced by fees or service charges except as allowed by the SC Uniform Unclaimed Property Act

Filing the Report



- All properties are reportable, regardless of the amount.
- Properties with a value less than \$50 can be reported in aggregate.
- If your organization does not have any property to report, you do not have to send us a “negative report.”

Can't Make the Deadline?

- Unforeseen circumstances can arise from time to time (turnover of key personnel, etc.), so extensions are available in certain cases.
 - If you are unable to make the November 1 deadline, you may contact our office and request an extension.
 - Extensions must be requested prior to November 1 and only apply to properties reportable for the current reporting year (i.e., not past-due properties).

Past-Due Property

- If your company is holding past-due unclaimed property, we are dedicated to helping you become compliant with the law.
- Contact Matthew Davis at (803) 734-2645 or matt.davis@sto.sc.gov to discuss your situation.
- Our Voluntary Disclosure Program will allow you to report past due property without interest or penalties.

Penalties & Interest*

- Failure to comply with the SC Uniform Unclaimed Property Act may result in interest and penalties.
 - Failure to pay or deliver property by deadline – May owe interest from date property was due, plus a penalty of 25% of the property value
 - Failure to submit the report by deadline – May owe \$100 per day (maximum of \$5,000)
 - Willful refusal to comply with the law – May face a fine of up to \$10,000 or up to one year of imprisonment

* Pursuant to SC Code of Laws 27-18-350

Disclaimer

- This presentation is an overview of the SC Uniform Unclaimed Property Act.
- More information is available on our website at www.treasurer.sc.gov.
- Laws vary from state to state.

Questions?

Contact Information

Dayle DeLong, Senior Assistant State Treasurer
Unclaimed Property Program
SC State Treasurer's Office
PO Box 11778
Columbia, SC 29211
(803) 734-2683
dayle.delong@sto.sc.gov