

Business Credit News

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**JUNE 2010 Chairman: Byron Simpson,
Berridge Manufacturing**

“Escheat What?” Part II

Credit professionals also have to know what state has authority over the unclaimed property and who to report customer unclaimed balances to. Do we report to the state where the customer resides or is incorporated? The state where the property is located? The state where the company has their headquarters? The answer to these questions was decided in 1965 by the United States Supreme Court in the seminal case titled *Texas v. New Jersey* which contrary to its title was a dispute between four states, Texas, New Jersey, Pennsylvania and Florida, who each claimed property that had been abandoned by Sun Oil Company. Texas believed they were entitled to the property because the majority of the property was physically located in Texas while New Jersey thought they were entitled to the property because Sun Oil was a New Jersey corporation. Pennsylvania believed they should have the property because Sun was headquartered in their state and Florida believed they had claim to the property because the owner resided in their state. Congress had yet to address the question and the parties wanted one rule to ease the administration of unclaimed property. The Supreme Court thus established the *first priority rule* for determining what state had governing authority over unclaimed property. They opinioned the last known address of the creditor or owner of the property is the state entitled to the property. The opinion went on to say in the event no last address is known than the *secondary rule* is that the holder’s state of incorporation is entitled to the property.

So to clarify their decision, let’s say our firm is a Texas corporation and the holder of unclaimed property. Under the *primary rule* the last known address of our customer is in California so the state of California would be who we would file our report with. Continuing under the *primary rule* if we did not know the last address of our customer but their bank held a security interest in their assets and the banks last address was in Oregon then the state of Oregon would be where we would file our report. And lastly, under the *secondary rule*, if we could not locate an address for our customer and we could not find any secured creditor with an interest in the unclaimed property than we would file our report with the state of Texas where we, the holder, are incorporated. Two later Supreme Court cases; *Pennsylvania v. New York* heard in 1972 and *Delaware v. New York* heard in 1993, failed to change the 1965 established priority rule.

Many states distinguish how one reports unclaimed property by setting an amount at which the reporting entity may report the property in the aggregate. The aggregate amount sets a minimum dollar amount at which the reporting entity must provide detailed information regarding the owner of the property to the state. If the unclaimed property has a value less than the aggregate amount, then each account may be reported together as one total amount. For example; let’s assume the aggregate amount is \$100 and we have 10 accounts with credit balances of \$50.00 each. We are allowed to report \$500 in the aggregate and transfer the cash value of the credit balance to the state without having to provide detailed information for every account under the aggregate.

The holder of unclaimed property is required to submit an annual report to the state entitled to the unclaimed property. There are some states that require negative filing, stating the holder is not in possession of any unclaimed property. The holder should file the report using the forms provided by the individual states as forms are not required to be uniform. Most annual reporting requires the following information: The name & address of the property owner, social security or federal tax ID number, and a description of the property and the date of the last transaction with the property owner.

Before actually turning the property over to the state, many states require what is deemed a final notice period. The holder of the unclaimed property is required to provide notice to the owner that the property is subject to escheatment. This notice is usually required 60 to 120 days prior to escheatment.

The majority of states enforce their escheatment laws through audits. Audits are usually performed by either the state's treasurer or controller's office; however some states have begun to outsource the audits to private firms who receive a percentage of state fines assessed for non-compliance. The scope of the audit usually goes back several years and the auditors review the following company documents: chart of accounts; general ledger and trial balances; journal entries; bank reconciliations; account receivable ageing and trial balances; annual reports; and accounting policies.

In an effort to avoid turning over property to the state, some businesses have included provisions in their contracts that cause the loss of the owners property to revert to the business similar to old English law where the property would revert back to the Crown. This form of "private escheatment" has been ruled by several state courts as a fraudulent attempt to avoid compliance with state unclaimed property laws. In addition some businesses have argued that credit balances and memos resulting from business to business transactions should not be subject to escheatment. So far only nine states have exempted businesses from filing annual reports; they are Illinois , Iowa , Kansas , Maryland , Massachusetts , North Carolina , Ohio , Virginia , and Wisconsin . However, application of the exception has proven to be a problem under the ruling of *Texas v. New Jersey* , in that should one state not require unclaimed property be reported or transferred but another state does require reporting and transfer, then the state requiring reporting and property turnover would prevail. Therefore, only those cases where both states do not require turnover is the credit professional free not to escheat. For example, the customers' last address is in Maryland and the holder is an Ohio corporation.

Generally, compliance with a state's unclaimed property law is mandatory. There are significant civil penalties for failing to comply with reporting and transfer requirements. The penalties range from simple interest to the full value of the unclaimed property. In addition, some states impose daily penalties up to \$1,000 a day and if a business is found to willfully fail to or fraudulently file a report then the daily penalties can exceed \$1,000. Regardless of whether we believe it is right or just, our state legislature, the Congress of the United States and the U. S. Supreme Court have all held that dormant accounts and unclaimed property belongs to someone other than the holder and is to be held in trust by the state until its rightful owner makes claim. Compliance should be an ongoing process that requires conscious efforts to implement procedures and comply with state laws. The states have several methods to enforce their unclaimed property laws. It is necessary that our firm and we, as credit professionals, comply with these laws and file annual reports and escheat the unclaimed property to the states when due.

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***** **JUNE 2010** *****

Day	Date	Group	Location	Time
Wed	2	SW Electrical Group	Onion Creek Club, 2510 Onion Creek Pkwy, Austin TX	11:30
Tues	8	Austin Construction	Texas Land & Cattle, 6007 N IH 35 & Hwy 290, Austin TX	11:30
Tues	8	Coastal Bend	Holt Cat, 1325 South Padre Island Dr., Corpus Christi TX	11:30
Tues	8	SW Food Credit Group	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:30
Wed	9	Rio Grande Valley	The Western Palm Air, Weslaco TX	11:30
Wed	16	Fuel & Lube/Heavy Eq.	Conference Call 1-800-791-2345	2:00
Wed	16	Victoria Credit Group	Sky Restaurant, 236 Foster Field, Victoria TX	11:30
Thurs	17	HVAC	Texas Air Products, 11122 Gordon Rd, San Antonio TX	11:30
Thurs	17	Austin Ad Media Group	Santa Rita Tex Mex, 1206 W38th St. Austin TX	11:30
Fri	18	SA Ad Media	Conference Call 1-800-791-2345	10:00
Tues	22	Austin Construction	Texas Land & Cattle, 6007 N IH 35 & Hwy 290, Austin, TX	11:30
Tues	22	SA Construction	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:30
Wed	23	Laredo Credit Group	Laredo Country Club, 1415 Country Dr., Laredo TX	11:30
Thurs	24	Credit & Collections Seminar – The Petroleum Club, San Antonio TX		9:00

EASY ACCESS TO LEGAL INFORMATION

Did you know you could go on-line to get the legal list bulletin? You can download legal information (mechanic liens, state, and federal liens, suits, bankruptcies, abstract of judgments, etc) on any of the following counties: Travis, Williamson, Hays, Cameron, Hidalgo, and Bexar. To access go to our web site at www.nacmtx.com . All you have to do is go to NACM Online, enter your membership information and make selection under Legal Bulletin. It will bring you to the legal information you need. Select the county, type of legal information and the time period requested. Type in the word **all** at the search information box. Also, you can type in the business name to receive all legal information on that specific company. For help on how to use the legal bulletin on-line give us a call at (210)225-7106.

