

Due Diligence Minimums and Aggregate Limits: Boon or Boondoggle?

By Karen Anderson

Complying with state unclaimed property requirements can seem overwhelming considering that no two state laws are exactly alike and that due diligence and reporting specifications can be time-consuming and complex. For individuals who manage annual compliance, due diligence minimums and aggregate reporting limits may appear at first glance to give some relief. However, relying on due diligence minimums and reporting in the aggregate may cause the practitioner to negatively change their compliance practices.

Due Diligence Minimums

Many states have a specified due diligence minimum amount, typically \$25, \$50, or \$100. If an item of reportable property (like an uncashed accounts payable check that has met the specific state's dormancy period) is valued at under the due diligence minimum, the holder of the item does not have to perform the state-required due diligence. For example, in Ohio the due diligence minimum is \$50, according to Ohio Revised Code Section 169.03 (D). This means that for any reportable item valued at \$49 or less, Ohio due diligence requirements do not have to be followed prior to reporting the item as unclaimed to the Ohio Division of Unclaimed Funds.

It might appear then that due diligence minimums would be a "boon" as they save property holders time and money that would normally be spent creating, sending and tracking the state due diligence letters. In reality, not performing due diligence may be more time consuming in the long run and may negatively impact your relationships with your vendors.

To explain, consider that the items under the limit, even though no due diligence has been performed, must still be reported to the state on or prior to the applicable reporting and remitting deadline. By skipping the due diligence step and if no prior attempts were made to contact the owner, then the holder may report and remit an item that easily could have been resolved without involving the state, saving a great deal of time.

Further, resolving an item through due diligence or direct contact before going to the state could go a long way in maintaining vendor or customer goodwill. Note that some states, like Ohio and Texas, charge a claim fee. So, if a vendor or customer discovers an uncashed check that was reported and remitted to the state, they

could be charged a fee to claim it and may be bitter that they were not contacted by the holder before reporting to the state.

It should be noted that even though an item might be valued under the state due diligence minimums, it may be subject to other laws or regulations that require due diligence. For example, the Securities and Exchange Commission (through regulation 17Ad17) requires that transfer agents conduct an initial database search for a new shareholder address between three and 12 months after the first correspondence is returned. If the lost shareholder is not found, the transfer agent must conduct a second search between six and 12 months after the initial search. The second search is intended to take advantage of address changes that may have been added to the database after the initial search.

Practice Tip:

Considering the issues surrounding due diligence minimums and required due diligence, it may be advisable for accounts payable to incorporate a practice of contacting the payee of any uncashed check within a particular period after it has become uncashed or staledated. Some businesses use 60, 90 or 120 days after the check is uncashed. The contact may be via telephone, United States postal mail or email.

It is important to carefully document any contact attempt and any resolution that results, including the reissuance of a check, the date and time of the contact, the name of the payee employee that responded and the substance of the contact. Having positive contact with the payee will either resolve the item or cause the dormancy period clock to be reset. In either case, it prevents the item from having to be reported and remitted to the state when the initial dormancy period expires.

Aggregate Limits

Similar to due diligence minimums, many states have aggregate reporting limits. The aggregate limit is the dollar amount threshold for items that the holder is not required to provide the owner's name and address in the unclaimed property report. However, the funds must still be remitted. The aggregate items must be reported by property type in one lump sum.

For example, if the holder held uncashed vendor checks of \$10, \$15, and \$20 respectively for vendors whose last known addresses were in Oregon, the holder could choose to report the items to Oregon in the aggregate under the NAUPA code CK13 (vendor checks) in the lump sum of \$45., i.e., CK13 Aggregate – \$45.00. Again, the property must still be remitted to the state with the report even though the business reports items in the aggregate. Note that certain states do not permit items such as uncashed dividend checks and mineral rights proceeds to be reported in the aggregate.

Like due diligence minimums, many states set aggregate reporting limits at \$25, \$50 or \$100. In some states that aggregate limit amount is the same as the due

diligence limit. For example, Ohio's aggregate limit, like its due diligence minimum, is amounts less than \$50. Ohio Revised Code Section 189.03 (A)(3). However, Oregon's unclaimed property statute and administrative rules set the due diligence minimum at \$100 or more and the aggregate limit at \$50 or more. Oregon Revised Statutes, Section 98.352 (5) (due diligence) and Section 98.352 (2)(a) & (c) (aggregate limit), Oregon Administrative Rules Section 141-045-0061(1).

Aggregate reporting would seem to save the property holder time. Actually, many state unclaimed property administrators would rather the items be reported separately with the owner name and address detail so that the owners have a better chance of being notified and the property being returned. Unclaimed property officials in states like California, Florida, New Jersey and Wyoming that allow aggregate reporting have requested that businesses file the owner's name and address for each item they report.

Further, if an owner attempts to claim an item that is reported in the aggregate, the state holding the reported item will most likely contact the business that reported the item and request verification of the owner name and address detail. If so contacted, the holder may have to locate archived information in order to provide details to the claimant and the state because the unclaimed property report does not have that information.

Practice Tip:

A holder that has the name and address for reportable unclaimed property should consider incorporating a practice of reporting all items with the name and address detail even if they could validly be reported aggregately. If the holder already has the information and is reporting it for items that are valued at greater than the aggregate limit, the effort to report such information for aggregate-qualified items is minimal. Reporting such information will save time and effort later if the state contacts the business soon after reporting for a listing or if the state contacts the business to retrieve owner information needed for a claim.

Summary

Finding ways to make unclaimed property compliance less time consuming and costly should be an objective of every practitioner who has unclaimed property compliance responsibility. However, using state due diligence minimums and reporting aggregate limits as methods for streamlining due diligence and reporting may have consequences that are more costly and burdensome. For this reason, holders are urged to think strategically about the use of due diligence minimums and reporting aggregate limits and to make a reasoned business decision.

Next Article: Reciprocity: Panacea or Pandora's Box?

Note: *Karen Anderson is Senior Compliance Advisor with [Abandoned Property Services, LLC \(APS\)](#), which serves the unclaimed property compliance needs of all types of businesses. APS provides policy/procedure and liability prevention*

consulting, audit defense and compliance maintenance via its annual reporting and due diligence services. Annual reporting and due diligence services are facilitated by APS's specially devised and perpetually updated in-house systems.