

The Pluses and Minuses of Negative Reporting

By Karen Anderson, Abandoned Property Services, LLC

As many accounts payable practitioners know, generally when checks are uncashed and outstanding for a state-specified period of time, they must be reported and remitted to the state of the address of the payee. However, the practitioner may be unaware of the “requirement” of many states that their company file a report annually even if the company has no unclaimed property of any type to report. This requirement is called “nil” or “negative” reporting.

The Negative Reporting Requirement

In Spring 2009, the National Association of Unclaimed Property Administrators (NAUPA), completed a survey of its state regulator members. The survey polled the unclaimed property officials of each state with questions about whether the state required negative reporting and if so, what media was acceptable or required for filing such a report. Some state officials also provided comments about exceptions or qualifications to their requirement. The survey results were posted on the NAUPA website.¹

In the survey, about twenty-five (25) states indicated that they required negative reports, at least under certain circumstances and/or for businesses in certain industries. Another six (6) states indicated that negative reporting was not required but was “encouraged”. Several of the states that indicated that negative reporting was required also indicated that they had a state form that should be used to report negatively.

It is interesting to note that some states stated in the NAUPA survey that negative reports are required only when requested by the state (i.e., Tennessee, Utah). Further, consider that in the survey results, New York indicated that the negative reporting requirement applied only to banks, insurance companies, utilities and broker/dealers and Maryland indicated that negative reports were required only from insurance, utility and financial corporations. Delaware indicated that negative reports were required only from financial corporations and Maine noted that such reports were required only for holders incorporated in Maine.

¹ <http://www.unclaimed.org/reporting/free-compliance-tools/>

Most state negative reporting requirements are not specifically stated in the unclaimed property statute. However, it should be noted that many state unclaimed property laws include language that specifically indicates that the state has the right to request a negative report from holders. For example, the Georgia Disposition of Unclaimed Property Act includes the following:

“(a) The commissioner may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this article.” [O.C.G.A. § 44-12-229 \(a\)](#)

The states of Illinois and Ohio include the negative reporting requirements in their administrative rules/regulations. The pertinent Illinois administrative rule states:

“Holders, except as provided in Section 760.21, having no property to report shall so report to the State Treasurer on such forms provided by the Director at the reporting time designated in Section 11(d) of the Act.” Section 760.20, Illinois Administrative Rules.

The Illinois administrative rules in Section 760.21 sets forth exceptions to the negative report filing requirement for businesses that meet certain workforce, asset size, ownership, etc., criteria.

Ohio’s negative reporting mandate is as follows:

“(B) If there are no unclaimed funds to report for the current period, the holder is required to file with the director a negative report, which must be certified by the holder, or an officer or agent of the holder organization.” Ohio Administrative Code 1301:10-3-03(B)

According to the survey, filing a negative report can be as simple as submitting a letter on company letterhead or as complex as completing a state-provided form which requests information about company assets, workforce, etc. States that permit a “letter” negative report usually require that the letter be signed by an officer of the company and may require that the signature be notarized. Negative reporting “forms” required by states can require detailed information. For example, the Georgia form requires:

1. Date of Incorporation
2. State of incorporation
3. Primary Business Activity
4. Number of Employees
5. Annual Sales/Premiums
6. Premiums Written in Georgia
7. Total Assets

In addition, the Georgia negative report form requires a signature of a “responsible officer” who thereby attests that he or she has “caused to be prepared” and has “examined this report” and “believe(s) said report to be true, correct and complete as of said date to the best of my knowledge”.²

The Pros and Cons of Filing Negative Reports

There is some debate about the appropriate strategy relating to negative reports. The first question is: Are these reports really required? The second question is: If they are required, should a company that believes it has nothing to report, file such a report under any circumstances? There seems to be two schools of thought in the unclaimed property industry regarding the second question.

With regard to the first question, it is apparent that there are state officials that “require” negative reports even though their state statutes or regulations don’t specifically include such requirement. It may be argued that even though these states’ statutes do not specifically require the filing of these reports, the statutes include other provisions permitting the state officials to insure compliance with the statute or that the statute permits them to request such reports and that adding a negative report requirement statement on their website or within their holder reporting guides or manuals is a sufficient request. For this reason, and in answer to the second question above, some industry advocates urge that negative reports be filed in order to meet the states’ requests/requirements.

Other industry experts argue that negative reports should be filed only if a state official or state statute/regulation requires it AND if the company previously has filed “positive” reports with the state in question. Their reasoning is that if a company files negative reports and later, in an unclaimed property audit it is determined that the company actually had unclaimed property to report for the years it filed negative reports, the company may be charged a penalty for willful or intentional noncompliance. On the other hand, if the company had never filed negative reports and had never filed ‘positive” reports and remitted property, most likely there would be little evidence to support a state claim for “willful or intentional noncompliance” if past due unclaimed property liability is discovered in an audit. (Note that most state unclaimed property laws include stiff penalties for willful or intentional noncompliance.)

Practice Note

Considering the debate regarding negative reporting, a business is advised to seek the assistance of legal counsel and unclaimed property experts in determining the appropriate course of action. Factors to consider in making this decision should include, but not be limited to: the company’s past reporting

² <https://etax.dor.ga.gov/ptd/ucp/forms.aspx>

history, past and recent acquisitions, the comprehensive nature of controls, policies and procedures relating to outstanding items such as checks, credits and third party disbursements, etc.

Addressing the negative reporting “requirement” is an important strategic component of a well-devised unclaimed property compliance plan and strategy.

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.