

## **Reporting Canadian Unclaimed Property**

*By Karen Anderson*

By now, most accounts payable professionals know that uncashed checks have the potential to become unclaimed property. They also know that the applicable state unclaimed property law is that of the state of the payee's last known address in the business' records. This is due to the 1965 United States Supreme Court decision, *Texas v. New Jersey*.<sup>1</sup>

What the accounts payable department may not know is how to handle uncashed checks issued to payees with Canadian addresses. Further, departments may have questions about what to do when the business issuing the check is a Canadian company and the check is issued from a Canadian bank to a Canadian address. The answers to these questions are not always clear and with the imposition of unclaimed property requirements by some Canadian provinces, the issue has become more complicated.

### **Canadian Unclaimed Property Laws**

In order to analyze the anomalous situations described above, it's important to have at least a summary understanding of Canadian unclaimed property laws. There are three Canadian Provinces that have unclaimed property requirements: Alberta, British Columbia, and Quebec. These unclaimed property laws differ significantly in the types of property they address and the required business obligations.

#### **Alberta**

On September 1, 2008, Alberta's "Unclaimed Personal Property and Vested Property Act" took effect. It is the provincial law most similar to U.S. unclaimed property laws in terms of business compliance requirements. The Alberta law requires the reporting and remitting of uncashed checks (including payroll checks) and accounts receivable credits, among other things, that are valued at \$250 or greater. Retail business credits and gift certificates and cards are excluded from coverage.

Under the Alberta law, the dormancy period for most uncashed checks is "5 years after the earlier of: (i) the date on which the apparent owner's right to demand the personal property arises, and (ii) the date on which the obligation to pay or distribute the personal property arises"<sup>2</sup>. For wages and other compensation for personal services, the dormancy period is one year.<sup>3</sup>

Similar to many state unclaimed property laws, Alberta requires that the owner/payee of presumably abandoned property be given notice prior to transferring it to the designated governmental entity. The notice must be sent to the owner/payee within three to eight months before reporting and remitting it to the Alberta Tax and Revenue Administration (TRA). The cut-off date for calculating dormancy is Dec. 31. Reports and remittances must be filed with the TRA within 120 days of December 31st.

For more information:

[http://www.finance.alberta.ca/publications/unclaimed\\_property/up2.html](http://www.finance.alberta.ca/publications/unclaimed_property/up2.html).

## **British Columbia**

The British Columbia unclaimed property provisions are very different from those in most U.S. states. First, note that uncashed vendor checks are not covered by British Columbia's Unclaimed Property Act ("BC Act"). However, unclaimed amounts of \$200 or greater which are due and payable by an insurer under the terms of a life insurance policy, such as premium refunds, and are not due to an annuity, an endowment policy or a variable insurance contract are covered under the BC Act and carry a three-year dormancy period.

Amounts due under an insurance policy which are due to an annuity, an endowment policy or a variable insurance contract and which are \$1,000 or greater are covered by the BC Act and similarly have a three-year dormancy period. In addition, money deposits of \$200 or greater are covered property, but only if there is a right to receive a cash refund of the deposit. Such deposits carry a three-year dormancy period.

The BC Act covers other types of property as well, i.e., money orders, securities, trust distributions, retirement plans, etc. Wages and compensation are not covered under the BC Act but are covered under BC's Employment Standards Act, which requires businesses to remit such property to the Director of the Employment Standards Branch after a specified period of time if they cannot locate the employee.

Businesses that hold covered property are required to make reasonable efforts to locate the owner and to notify them of the property within 6 months of the end of the dormancy period. If the owner cannot be located and notified within 12 months of the dormancy period, the property is considered unclaimed.

Once property is considered unclaimed, a business must consider whether reporting and remitting it to the British Columbia Society (BCS) is mandatory or voluntary and, if it is voluntary, what its obligations are if it does not report and remit. Under the BC Act, the following businesses must report and remit property that is deemed unclaimed: credit unions, debt collection agencies, real estate agencies, and companies in liquidation. Other businesses may report and remit unclaimed property to the BCS; however, if they choose not to report and remit, they are required to publish designated information about the property and owner in a

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publicly-accessible database as specified in the BC Act. For more information:  
<http://www.unclaimedpropertybc.ca/index.php>

## Quebec

Quebec's unclaimed property requirements pertain mostly to financial institutions and insurance companies and to specific types of property related to insurance contracts, debt and equity securities, retirement plans, and deposits. However, the Revenu Quebec's website (the department that administers Quebec's unclaimed property law) states that other businesses may hold the noted types of property, i.e., trust corporations, securities brokers and advisors, mutual funds, real estate brokers and agents, travel agencies, etc.<sup>4</sup>

The dormancy period is generally three years and businesses holding unclaimed property are required to send a notice to owners prior to reporting and remitting to Revenu Quebec. Businesses holding unclaimed property must report and remit it to Revenu Quebec once a year. For more information:  
<http://www.revenu.gouv.qc.ca/en/bnr/pfnr/instit.aspx>

## Handling Canadian Unclaimed Property

If your business holds uncashed checks or credits that were issued to payees or creditors with addresses in Canadian provinces, the facts to consider in determining the appropriate treatment of that property are:

1. Where your company or subsidiary issuing the check or credit is organized to do business
2. Which Canadian Province(s) the owners' addresses are located in

If the company is located and organized to do business in Canada and the owner's address in the business' records is Canadian, then the law of the province would control. On the other hand, if the business is organized to do business under state law and the owner's address is in a Canadian province, determining how to treat the property is more complex. Some state unclaimed property laws include provisions that indicate that this foreign property must be reported to the state of domicile/incorporation of the business holding the property. For example, Georgia's Disposition of Unclaimed Property Act includes that one of the conditions that triggers the state to take custody of intangible property is:

"The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state"<sup>4</sup>

It should be noted that not all state unclaimed property laws include a provision like Georgia's and the threshold case mentioned above, *Texas v. New Jersey*, does not address this issue. However, many businesses that are domiciled in the United States have made it a practice to report unclaimed property due to an owner in a foreign country, including Canada, to the business' state of domicile/incorporation.

PRACTICE TIP: A business domiciled in the United States that holds unclaimed property with an owner address located in a foreign country, including Canada, is best advised to seek the opinion of legal counsel to determine the appropriate practice for compliance with unclaimed property requirements.

**Note:** <sup>1</sup> *Texas v. New Jersey*, 379 U.S. 674 (1965)

<sup>2</sup> *Alberta Unclaimed Personal Property and Vested Property Act Regulations, Section 6 (2)(q)*

<sup>3</sup> *Alberta Unclaimed Personal Property and Vested Property Act Regulations, Section 6(m)*

<sup>4</sup> <http://www.revenu.gouv.qc.ca/en/bnr/types.aspx>

<sup>5</sup> *Georgia Disposition of Unclaimed Property Act, Art. 5, Section 44-12-194(5)*

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