

Out of Control: Taming Your Company's

Unclaimed Property Risk!

(The Second Article in a Series)

II. Identifying the "True Liability": Liability Mitigation

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Those charged with the responsibility for their company's unclaimed property compliance are usually eager to consider methods for reducing gross liability figures and to "mitigate" potential unclaimed property liability and the state penalty and interest charges that may attach to that liability. In the first article of this series, corporate buy-in to the review and remediation process plus the steps for initial assessment to determine the "gross liability" were discussed and outlined. This article focuses on minimizing exposure through methods that identify the "true liability" and further the practitioner's effort to "tame" the risk, regain control and work toward a well-managed escheatment compliance program.

The List Rules

From the initial assessment, particular disbursement accounts were identified, account research depth considered, and state reach back periods accommodated via record identification and/or extrapolation for items for the length of the appropriate periods. The result is a defined list of items which may include uncashed checks, credits and other potential unclaimed property. The list must include dates of issue of checks and credits and/or dates of last activity for certain types of items (i.e., such as consumer bank accounts or securities accounts, etc.), a description of the property type, the payee or "owner" of the item and the payee or "owner" mailing address. The list also will indicate the amounts for any state for which liability was extrapolated.

a. Trolling for Accounting Errors

The next step is to review the list and select items for "potential" error research. Some businesses hire experts to assist in this process. The objective is to research source documentation in order to determine if items may appear to be "outstanding" but in reality are the result of an accounting error. To enhance review efficiency, only items which meet a

particular materiality limit (i.e., \$1000 and above) and which have greater potential for error should be selected for research. For example, an outstanding check for \$1200 with an electrical utility as the payee which was written in payment for facility electrical services may meet the set materiality limit AND is more likely to be a “duplicate payment”. Note that utility invoices are sometimes sent more than once for the same service periods if the check payment for the first invoice is sent close to the end of the invoice payment deadline. The business receiving the invoice may write a check for the second invoice then discover it already has made payment and fail to void the second check. Some typical accounting errors pertaining to accounts payable checks include:

- Re-issues without voiding original
- Duplicate items on Vendor Master
- Duplicate payments
- Wrong payee
- Inter-company payments (payments between related party companies).
- Periodic/recurring vendor payments (utilities, landlords, etc.)
- Reconciliation error (i.e., Bank reconciliation statement includes checks with sequential numbers outstanding/bad check run)
- Check represents payment for an invoice for which a credit was issued.

Of course, the types of accounting errors will vary by the type of property being reviewed. Another common type of error is credits that have been taken by a customer but not properly recorded.

Once errors have been identified, reversals can be processed, recorded and removed from potential unclaimed property list (“the list”). It is important to maintain documentation substantiating these reversals as unclaimed property auditors have been known to question them.

b. Applying Exemptions or Exclusions

After the error review is complete, an exemption/exclusion analysis should begin. This analysis should focus on items that may be excluded from state unclaimed property definitions or

exempted from state unclaimed property reporting and remitting requirements. There are four basic types of exempted property:

1. Business to Business (“B2B”)
2. De Minimis
3. Gift Certificate or Card Industry (i.e., Non-profit or Healthcare) or Property Type Specific (i.e., credits for merchandise, etc.)

Only about one-third of the states have a business to business exemption and among those states the application is not uniform due to differences in the statutory or regulatory language. Similarly, states may or may not provide for any of the types of exemptions listed above and if they do, the specifics surrounding the application of the exemptions vary from state to state. For this reason, it is imperative that a business work with legal counsel and possibly with unclaimed property experts in defining and applying exemptions to items on “the list”.

If exemptions are applied to items on the list, then the items can be deleted from the list. However, documentation substantiating application of the exemption should be maintained for the reach back years of your state of incorporation in case the business is audited in the future. In addition, while the item may be exempt from the states abandoned property laws the liability may still remain to the payee / customer.

c. Contacting the Payee/Owner

Depending upon the nature and materiality of the items on the list, it may be appropriate to make initial or subsequent attempts to contact the payee or owner of the items. The contact could be made by letter, email or phone and the owner/payee should be informed about the transaction and requested to confirm or deny that the item is due to them or their business. The result of contact with the owner/payee will either be to confirm that the item is due or to retrieve the owner/payee’s denial of the obligation. If the owner indicates that the item is due, payment arrangements can be made. On the other hand, if the owner indicates that the item is not due to them, the business holding the item may be able to make the appropriate reversal, etc.

The owner/payee's response should be maintained in a signed writing, particularly if the owner/payee indicates that the item is no longer due to them. This written confirmation should be retained to use as supporting documentation in the event of a future unclaimed property audit.

If a letter was previously sent to the owner/payee and the letter was returned by the post office as undeliverable, it may be appropriate to search for a better/new address using free or commercial sources. Usually, if the item is greater than a specified dollar amount and/or pertains to a customer or client account that the business wishes to maintain, a new/better address search is warranted in an effort to prevent escheatment (and possibly interest and penalties if the item is past due).

Free, "on-line" sources for new/better addresses include:

- peoplefind.com
- zabasearch.com
- superpages.com
- switchboard.com
- whitepages.com
- anywho.com

In addition, there are commercial databases, such as those operated by credit bureaus and tracing firms that may provide new/better addresses. Once a new address is discovered, contact can be attempted and hopefully, the item can be resolved.

The True/Net Liability – Finally

After all the mitigation methods have been performed, the appropriate reversals or payments made, and the "the list" correspondingly updated, the business now has a "good faith" true liability figure. The next step is to consider the strategies for negotiating, reporting and remitting the past and currently due property to the pertinent states and creating a compliance plan. Expert assistance as well as the assistance of legal counsel and management review may be necessary in devising and finalizing the plan.

Upcoming Third Article in the Series:

"Out of Control: Taming Your Company's Unclaimed Property Risk Through A Compliance Plan"

Karen Anderson and Bob Griffin are unclaimed property consultants 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 compliance services are facilitated by APS's custom devised and perpetually updated "in-house" software and systems.

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