KILPATRICK TOWNSEND

5 KEY TAKEAWAYS

Unclaimed Property – Escheatment by Any Other Name

Kilpatrick Townsend partner David Posner recently hosted a webinar addressing recent developments in the growing area of unclaimed property concepts and state requirements. Mr. Posner focuses his practice on bankruptcy and insolvency matters and represents companies, creditors' committees, chapter 11 trustees, acquirers, financial institutions and other significant parties-in-interest in complex reorganizations and financially distressed situations as well as debtor/creditor rights and commercial litigation.

Here are 5 key takeaways from his presentation:

1

Unclaimed property is a potential multi-billion dollar revenue source for states.

Unclaimed property laws protect consumers ensuring that money owed to them is returned rather than remaining with financial institutions or the companies. The National Association of Unclaimed Property Administrators found in FY 2015, ≈ $3.23 billion was returned to owners by state unclaimed property agencies from the ≈ $7.76 billion collected. That left ≈ $4.5 billion for the states.

2

Any commercial entity has unclaimed property on its balance sheet.

Unclaimed property takes many forms including unused gift card balances ("breakage"), customer loyalty program balances, mobile wallet credits, credit memos and balances, unapplied cash, over or duplicate payments, rebates, refunds, vendor checks and credit balances, and payroll items.

3

There are no unified standards of legal requirements for handling unclaimed property. There is a model law — Uniform Unclaimed Property Act (1981 and 1995).

There are 55 reporting jurisdictions. No two jurisdictions are identical but the 1981 Uniform Act is the basis for 20 of the states' laws and ≈ 14 states have adopted all or parts of the 1995 Uniform Act. The first priority rule of which states law applies is the last known address of the owner/creditor/payee controls. If you have no address sufficient for mailing (after diligence) or the owner is unknown (gift cards typically apply here) the business' state of domicile controls.

4

There are four basics to Unclaimed Property Compliance.

Records Review – Annually review records to determine if you hold reportable property.

Due Diligence – You must make a final effort to notify owners of property you are holding by sending a letter to the last known address.

Reporting and Remitting – All states require this on or before a specific deadline. November 1 is the most common deadline.

Record Retention – A holder that files a report must maintain records containing the information required to be included in the report as well as the report for 10 years after the report is filed and the property is reported, remitted, or otherwise reportable.

5

Tips for minimizing liability.

Have clearly written policies/procedures for addressing unclaimed property. Use state prescribed cover sheets and numbers for reports. Ensure report and remittance amounts match. File for all reportable property types. Outsourced disbursements such as payroll, rebate programs and self-insurance can create liability. Have accountability and indemnification provisions in agreements with third party administrators such as payroll and other services.

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