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UNIFORM LAW UPDATE

After a three-year process, the Uniform Law Commission approved the latest revision of the Uniform Unclaimed Property Act (the “Revised Uniform Unclaimed Property Act (2016)”) in July of 2016.

While the Commissioners unanimously approved this new model legislation, the Revised Act as adopted, will present numerous new challenges to the states and make it more difficult to protect the interests of rightful owners.

Ultimately, if considered by individual states, program administrators and state legislators should be aware of some of the less consumer friendly aspects of the proposed law.



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Revised Uniform Unclaimed Property Act (2016) - Key Areas of Concern

Payroll Cards – treated same as bank accounts (3 year dormancy), even if they are never activated. Payroll dormancy in nearly all states is 1 year. Typically, high “service charges” on payroll cards make it unlikely that any card balance will remain after 36 months.

Securities – date of last contact no longer determined by last activity date, but date of return mail, effectively extending dormancy from 3-5 years. Property no longer subject to report unless correspondence is returned by the Post Office. Similar protocols are included for IRAs and other tax-deferred accounts.

Death Master File – there is nothing in the Revised Act that compels life insurance companies to apply the Death Master File (“DMF”) for purposes of identifying deceased policy holders to determine if policy proceeds would be past or currently due. Inexplicably, an insured’s death as indicated by the DMF must be “validated” through independent means. Limited-scope provisions addressing deceased policyholders would be prospective only.

Examination of Records – the Revised Act does not contain any language that compels holders to release into custody of the states or their agents information necessary to conduct audits. Many holders and their representatives are relying on the absence of this requirement to make conducting audits difficult or impossible. Although not expressly stated in the Revised Act, many holders are now relying on overreaching interpretations of the Health Insurance Portability and Accountability Act (HIPAA) and the Graham-Leach Bliley Act to avoid making records available to confirm compliance.

Estimation – the Revised Act states that holders must agree to the use of estimation under certain circumstances. Regardless of a holder’s prior reporting history or practices, the decision to use estimation should be under the control of the unclaimed property administrator.

Gift Cards – while the section relating to gift cards/certificates in the Revised Act provides for various alternatives, the commentary suggests that most states should actively consider the exemption of this property type. Although it is true that many states have enacted an exemption for unclaimed gift cards/certificates, the exemption of this property type came about in most cases as a result of substantial pressure from industry groups at a point in time when gift card sales were not yet substantial. Moreover, initially gift card issuers did not capture and retain purchaser names and addresses, making this a “state of incorporation matter.” However, increasingly gift card issuers now encourage “registration” of gift cards, resulting in the identification of card owners.

Other Considerations – there are numerous other provisions in the Revised Act that should also warrant close attention, including: burdens of proof, restrictions on contingent fee auditors, treatment of a finder as the owner where a power of attorney has been issued, “automated” payments as constituting contact, exemption of custodians of physical property other than banks from reporting, exemptions of loyalty programs and promotional incentives and failure to extend “beneficiary presumptions” beyond life insurance. Furthermore, the Revised Act contains no supporting analysis relating to potential reductions in reunification and collection rates. States considering the Revised Act will be required to undertake a significant analysis to determine the resulting fiscal impacts.

Concluding Thoughts

Even with the very business friendly provisions contained in the Revised Act, several business trade groups (including the American Bar Association) have publicly stated that the law does not “go far enough”--and that “alternative uniform acts” will be proposed and advocated. A number of states (particularly larger states) have indicated that they have no intention of adopting the Revised Act, and in those states where it has been introduced, numerous and significant amendments have been proposed. Unfortunately, the Revised Act will not likely achieve its stated objective of promoting greater uniformity.