GreenbergTraurig

Alert | Corporate

November 2018

Defining the True Holder of Unclaimed Property Among a Family of Affiliated Companies: A Case for Consolidated Reporting Under State Unclaimed Property Laws

Achieving and maintaining compliance with abandoned or unclaimed property laws can be a frustrating and tedious process for holders. Abandoned or unclaimed property is regulated at the state level, and the lack of uniformity among state laws can make the reporting process burdensome for businesses with operations in multiple states.

Most states have adopted the practice of accepting consolidated unclaimed property reports from groups of affiliated companies, with the parent entity filing a consolidated report on behalf of itself and its subsidiaries. However, not all states accept consolidated reports. The State of Nevada, for example, has taken the position that filing consolidated reports on behalf of multiple entities with different federal employer identification numbers is not permitted, unless extenuating circumstances exist. In the case of a family of affiliated companies, there is a strong argument that the parent entity is the true holder for purposes of unclaimed property reporting, especially when the affiliated entities' financial and accounting systems and processes are maintained on a consolidated basis.

Overview of Abandoned or Unclaimed Property

Abandoned or unclaimed property consists of a wide range of both tangible and intangible property in the possession of a "holder," which property is due or owing to another person. State unclaimed property laws generally define "holder" as any person in possession of property that is subject to the state's unclaimed property laws and belonging to another person. Examples of the types of property subject to state unclaimed property laws include uncashed money orders and travelers checks, uncashed rebate checks, customer credits, unclaimed royalty payments, unused gift certificates and gift cards, uncashed employee payroll checks, vendor checks, dividend checks, amounts due and payable under insurance policies or annuities, unclaimed bank account balances, contents of safe deposit boxes, amounts distributable from employee benefit plans, and certain pre-payments, deposits, and layaway items.

Once a holder has held such property belonging to another for a statutorily mandated holding period – referred to as the dormancy period – without communication with the owner, the property is deemed unclaimed or abandoned, and becomes subject to escheat to the state. General priority rules with respect to escheat of abandoned or unclaimed property require a holder to report and remit the property to the state of the owner's last known address, as shown on the holder's records, or, if the holder does not have a last known address for the owner in its records, then to the state of the holder's domicile or incorporation. This means a business with operations and/or customers located in multiple states will likely be required to file multiple unclaimed property reports in each annual reporting cycle.

Consolidated Holder Reporting – Who is the True Holder in a Family of Affiliated Companies?

Consolidated unclaimed property reporting allows a business composed of a group of affiliated companies to streamline the reporting process by submitting to each applicable state a single report covering all the unclaimed property held by the parent entity and its various subsidiary operating entities. Although not desirable or appropriate in every circumstance, consolidated reporting can be an efficient, simplified way for a business with multiple subsidiaries and operations in numerous states to satisfy its reporting requirements and ensure compliance with various states' unclaimed property laws. Consolidated reporting also benefits the states by reducing the number of reports that are processed, while maintaining the same volume of properties reported and remitted to the states each year. The result is a win-win situation for the holder community and the state agencies tasked with implementing and enforcing state unclaimed property laws.

In contrast, requiring businesses to file separate unclaimed property reports for each of their operating entities results in the preparation and processing of significantly more individual reports, including zero or negative reports in many cases where an operating entity has no property to report in a state requiring such reports. This increases the burden on holders, as well as the states processing reports. For businesses that have tailored their internal accounting and reporting processes in recognition of the widespread adoption and acceptance of consolidated reporting, mandating individual reports for each operating entity would require these businesses to implement a completely different accounting and reporting process for that particular state, creating further burden and frustration.

States requiring individualized reports for each operating entity in a family of affiliated companies are concerned that confusion may arise when an owner searches the state's database and is unable to find and claim property owed to it because the owner does not recognize the entity listed as the holder. This concern is less significant where a parent entity and its subsidiary operating entities share substantially similar names, which is not uncommon in consumer-facing businesses. Moreover, any such concerns regarding potential confusion are arguably outweighed by the benefits of consolidated reporting for both the holder community and the states in terms of efficiency and resource management.

In a family of affiliated entities, the parent entity may, in fact, be the true holder of any unclaimed property belonging to others pursuant to the obligations or business relations of its subsidiary operating entities. This is particularly true in cases where the parent entity exercises control over its subsidiaries' financial accounts and payment processes. For example, if a parent entity collects and holds all payments made to its subsidiaries, and/or issues checks from its own account on behalf of its subsidiaries, there is a strong argument that the parent entity would be the holder of any unclaimed property purportedly owed by its subsidiaries. In these situations, a business composed of a parent entity with multiple subsidiary operating entities would have a strong case that only one unclaimed property report is required for each applicable jurisdiction, even in states like Nevada that require individual reports for each legal entity.

Conclusion

Businesses can take proactive steps to determine their rights, minimize their liabilities, and streamline their accounting and reporting processes with respect to unclaimed property. Counsel can assist in determining your respective rights and potential liabilities, and in navigating the holder reporting requirements and procedures in each state where you maintain business operations or otherwise may be required to report abandoned or unclaimed property.

Authors

This GT Alert was prepared by **Marc J. Musyl** and **Brooke E. Condran**. Questions about this information can be directed to:

- Marc J. Musyl | +1 303.572.6585 | musylm@gtlaw.com
- Brooke E. Condran | +1 916.868.0771 | condranb@gtlaw.com
- Or your Greenberg Traurig attorney