


Unclaimed Property

**The Impact of Evolving
State Escheatment Laws**

www.KeaneUP.com Keane © 2011



Discussion Topics

- Impact of Economy on Unclaimed Property Audit Activity
- Brief Unclaimed Property Overview
- Unclaimed Property Current Developments
 - Equity
 - Legislative
 - Litigation
- Questions and Answers

www.KeaneUP.com Keane © 2011



Current Economic Environment

- Impact of economic crisis on state budgets.
- Unclaimed property is a tremendous source of revenue to the states (\$35+ billion).
- States are intensifying search for additional revenue without raising taxes.
- Translation = increasing audits.
- States have tapped into unclaimed property funds to meet budget shortfalls.

www.KeaneUP.com

Keane © 2011



Current Economic Environment

- More audits; more aggressive stance during audit
- Lowering dormancy periods
- Looking for new abandoned property types (e.g. digital property; un-invoiced receipts)
- Refusal to waive interest for non-compliance under audit
- Good news – perhaps greater willingness to permit voluntary disclosure to bring in revenue while avoiding costly audits

www.KeaneUP.com

Keane © 2011



Public Policy & Purpose of the Unclaimed Property Laws

- Not a tax
- One place to look for funds – held in custodial capacity
- Reunite lost owners (consumer protection)
- Prevent unjust enrichment
- Benefit all citizens of a particular state:
 - General fund allocations
 - Indemnification to companies for filing

www.KeaneUP.com

Keane © 2011



Unclaimed Property vs. Tax

- Derivative rights doctrine
- Nexus does not apply
- No statute of limitations
- Few states provide administrative remedies
- Records retention requirements
- Use of Contract Auditors
- Regulatory agencies and reporting deadlines

www.KeaneUP.com

Keane © 2011



Why Should You Care?

- It's the law!
- Generally no statute of limitation
- States estimate 70-90% General Ledger out of compliance
- Increasing audit activity
 - Potential for significant penalties
 - Reputational risk
- Sarbanes-Oxley Section 302 & 404
- FAS 5 implications
 - Material financial statement impact

www.KeaneUP.com

Keane © 2011



Traditional Property Types

- | | |
|----------------------------|---------------------------------------|
| ▪ Travelers' checks | ▪ Deposits |
| ▪ Matured bonds/ Interest | ▪ Gift Instruments |
| ▪ Un-exchanged shares | ▪ Un-cashed refund checks |
| ▪ Unpaid dividends | ▪ Unapplied payments |
| ▪ Underlying stock | ▪ Dormant accounts |
| ▪ Tangible property | ▪ Insurance proceeds |
| ▪ Commissions | ▪ Accounts receivable credit balances |
| ▪ Un-cashed payroll checks | ▪ Rebates |
| ▪ Un-cashed vendor checks | |
| ▪ Unidentified cash | |

www.KeaneUP.com

Keane © 2011



Developing Categories of Property

- Unbilled inventory
- Rebates
- Digital and virtual property
- IRAs
- Self-insured plans
- Retirement related property
- Third party administered plans
 - Use of a third party administrator generally does not negate the company's obligations to comply with the states' requirements

www.KeaneUP.com

Keane © 2011



Reporting Rules

- State of the owner's last known address, if known.
- If no last known address is available or a foreign address, the state of legal incorporation of the holder.
- There are 54 reporting jurisdictions excluding foreign requirements.

www.KeaneUP.com

Keane © 2011



Compliance Requirements

- Annual filing obligations
- Dormancy periods
- Negative report
- Due diligence
- Aggregate amounts
- Burden of proof
- Record retention

www.KeaneUP.com

Keane © 2011



Non Compliance Triggers

- Failure to file
- Filing negative or zero reports
- Filing incomplete reports
 - Missing property types specific to industry
- Filing securities-related property through TPA, but not general ledger property (or vice versa)
- Filing to the incorrect state
- Property filed late
- Reports and remittances do not reconcile


www.KeaneUP.com

Keane © 2011



Current Developments

www.KeaneUP.com Keane © 2011



Equity Issues

- States' enforcement measure of the "Return by Post Office" ("RPO") standard appears to be shifting to a standard of "Inactivity":
 - More accounts are deemed eligible for reporting using inactivity as the trigger for reporting
 - RPO reporting significantly reduced as a direct result of the SEC 17AD-17 requirements
- Increased state scrutiny on "due diligence" as a direct result of successful security-related litigation. Holders are required to meet the due diligence requirements in order to gain states indemnification.

www.KeaneUP.com Keane © 2011



New Federal Requirement

- Dodd Frank Wall Street Reform and Consumer Protection Act
 - SEC Rule 17Ad-17 is to be extended to apply to brokers and dealers
 - SEC has until 7/21/2011 to enact regulations
 - Paying agent required to send notice to each “missing security holder” when a check over \$25 due to that security holder goes un cashed for over six months

www.KeaneUP.com

Keane © 2011



Amnesty

- Currently no formal amnesty programs in place
- IN and PA's programs ended November 1, 2010
- Informal amnesty or voluntary compliance opportunities exist (e.g. IL, FL, NY, TN, OH)

www.KeaneUP.com

Keane © 2011



Dormancy Periods

- AZ SB 1003 reduced dormancy for all property by one year
 - Travelers checks 15 to 3 years; money orders 7 to 3
 - Stock, principal on debt, dividends and IRAs 2 years
 - Deposits, credits, checks, “all other property” 3 years
- AZ HB 2111 travelers checks back to 15 years
- AZ HB 2453 security and bond property back to a 3 year dormancy

www.KeaneUP.com

Keane © 2011



Dormancy Periods

- IN HB 1083 reduced 5 to 3 years
 - Demand, savings, or matured time deposit
 - Property related to a demutualization, rehabilitation, or related reorganization of a mutual insurance company
 - All other property not otherwise specified under the act (catch-all provision)

www.KeaneUP.com

Keane © 2011



Dormancy Periods

- NY SB 6610 reduced money orders from 7-5 years (effective August 10, 2010)
- NY S 2811 (effective March 31, 2011) reduced dormancy from 5-3 years on escrow accounts, savings and loan and credit union deposits, bond interest

www.KeaneUP.com

Keane © 2011



Dormancy Periods

- MI HB 6421 (effective October 2010) reduced dormancy from 5 to 3 years for General property, checks, bank accounts, life insurance, gift certificates
- MI also changed report deadline to July 1, 2011; thus holders who filed a report Nov 1, 2010 will have to file a second report for property due from July 1, 2010 through March 31, 2011

www.KeaneUP.com

Keane © 2011



Reporting

- ID HB 385 passed in 2010 requires reports of more than ten properties to be filed electronically
- ID HB 174 changes the trigger for reporting securities and dividend reinvestment accounts to a combination of inactivity and RPO
- NY 2811 changes to publication requirements, owner details in report and cut off date for reporting for banking organizations

www.KeaneUP.com

Keane © 2011



Reporting

- NV made extensive changes to its reporting regulations in August 2010 that provide specific guidance on reporting unclaimed property
- TX Regulations TAC 55.142 outline Child Support Division policy for reporting of child support payments by state or local agencies

www.KeaneUP.com

Keane © 2011



Other Changes -- NJ A3002

- Travelers checks from 15 years to 3 years; money orders from 7 years to 3 years
- Precludes the imposition of dormancy fees on stored value cards, credit balances, overpayments, security deposits, unused tickets, refunds, credit memoranda and similar instruments
- **Two-year** trigger for abandonment of stored value cards

www.KeaneUP.com

Keane © 2011



Other Changes -- NJ A3002

- Issuers of stored value cards required to obtain name and address of purchasers
- Card issuer to maintain, at a minimum, a record of the zip code of the purchaser
- If no address obtained and card purchased in NJ, address of purchaser is assumed to be NJ for escheat purposes
- Bill designed to “enhance New Jersey’s capacity to protect its residents’ stored value cards from being subject to other state’s escheatment processes”

www.KeaneUP.com

Keane © 2011



Retailers' Response

- Introduced NJ A3250; essentially proposing to reverse A3002
- Would eliminate obligation to obtain GC purchaser name and address
- Restore dormancy for travelers checks and MO's to 15 and 7 years
- Eliminate state's claim on unused stored value cards
- Restores statutory standard for imposing fees

www.KeaneUP.com

Keane © 2011



Retailers Response (cont.)

- Three plaintiffs filed suit against NJ Treasurer to enjoin enforcement of stored value provisions of A3002
- NJ District Ct enjoined the place of purchase provision as contrary to Supreme Ct rules of priority
- Third Cir Ct of Appeals granted temporary injunction on 1/31/11 of zip code collection requirement
- Retailers' position is that law would be impossible to follow from a practical business perspective
- Retailers consider ceasing sales of stored value cards in NJ locations

www.KeaneUP.com

Keane © 2011



DE Senate Bill 272

- Passed July 23, 2010
- New Audit Review/Appeal Process
- Exemption of uninvoiced payables between merchants (not a B to B exemption)
- Use of estimation during audits specifically accepted
- New filing and reporting provisions for banking organizations (now due Nov. 10 from Aug. 1)

www.KeaneUP.com

Keane © 2011



Audit Developments

- Kelmar Assoc/DE now bifurcating ROE's
- Previously conducted audit of all property types then issued ROE
- In the past year or so, they began issuing ROE as they close exam by property types
- E.g. disbursements ROE and Demand for Payment issued while audit of other property types continue
- Does this compromise holder if ROE challenged—DE/auditor may retaliate against holder in ongoing exam? (see Staples litigation)

www.KeaneUP.com

Keane © 2011



Unclaimed property. Uncompromising performance.

Staples, Inc. v. Thomas Cook **DE Court of Chancery filed 4/30/10**

- DE audit demand that Staples pay \$3.962 million plus interest of \$807,208 on 3/31/2010
- Staples had filed a DE VDA in October 2000, reporting \$137,412
- DE waived its statutory right to challenge VDA if not done so w/in 3 years of filing; did not challenge
- Staples received audit notice in 2005

www.KeaneUP.com

Keane © 2011



Unclaimed property. Uncompromising performance.

Staples Issues

- Audit covered years that were closed as part of the VDA
- Right of auditor to estimate liability based on non DE address property
- By delaying audit notice Staples was prejudiced due to its record retention policy
- Lack of records made it impossible for Staples to refute claim of abandonment

www.KeaneUP.com

Keane © 2011



Staples Issues

- Standard of proof required on documentation was “beyond a reasonable doubt” rather than “a preponderance of the evidence”
- The bifurcated demand for payment placed Staples in a compromising position
- If Staples challenges the Demand, the auditor/DE is in a position to retaliate against Staples in the remainder of the exam

www.KeaneUP.com

Keane © 2011



Costco v. Washington State Dept. of Revenue Superior Court Kings County

- Washington State DOR demanded Costco escheat \$3.2 million of uncashed customer rebate checks
- Demand based on records obtained in audit of third party rebate firm who disbursed the checks for Costco
- Costco funded checks when cut and retained no cash for outstanding
- Costco paid, then sued on 3/4/2011 claiming it was not “holder” of property liable to report or remit
- Costco objected to the 30 day period for payment, threat of fines and prison and lack of an appeal process

www.KeaneUP.com

Keane © 2011



Federal Law

- FRB Credit Card Act of 2009
- Effective August 22, 2010 no fees on branded and retailer GC's unless:
 - consumer has not used for one year
 - clear disclosure of the fees on the card
 - only one fee is charged per month (but no \$ limit is specified)
- Cards cannot expire before 5 years

www.KeaneUP.com

Keane © 2011



Keane can help

Comprehensive Services & Solutions

Risk Assessment
Audit Assistance
Government Relations
Systems Analysis & Process Improvement
Compliance Reporting & Due Diligence
Regulatory Compliance Tracking
Search & Location
Corporate Asset Recovery

www.KeaneUP.com

Keane © 2011



**Questions?
Thank you!**

Laura A. Lane

Keane

Unclaimed Property

Consulting and Advisory Services

llane@KeaneUP.com

800.848.8896 ext. 3143

www.KeaneUP.com

Keane © 2011