

National Trends in Unclaimed Property

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2:00 PM- 2:30 PM

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National Trends in Unclaimed Property

Newest Trends In Unclaimed Property

Gift Cards and Stored Value Cards

- The face of the Industry is Changing
- The Federal CARD Act, in limiting card expiration and fees, reduces issuer income ("breakage or un-presented Gift Cards") opportunities.
- Gift cards are no longer "unusual"-consumers know the rules and do use the cards expeditiously
- There is a shift away from closed loop (retailer specific) to open loop (bank issued) cards
- Economy has prompted less "card waste" by consumers.
- Breakage rates for major retailers (Wal-Mart, Target, etc.) are much lower than original projections

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Trends in State Regulations of Gift Cards

- Many states exempt gift cards/certificates from being reported
- Some states exempt gift cards based upon a certain dollar value (ex \$5)
- Gift Cards issued by restaurants are sometimes exempted
- States also may prohibit expiration dates on gift cards
- Some states with the 1995 Uniform Act require that only a certain percentage of the face value be reported to the states as unclaimed property

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Trends in State Regulations of Gift Cards

➤ In 2010, MI changed their gift card law by lowering the dormancy period on bank issued cards from 5 years to 3 years, Stored valued cards were exempted.

Pending Gift Card Litigation

New Jersey Retail Merchants Association (NJRMA) versus Sidamon-Eristoff

➤ This case has the potential of creating a fourth priority rule for unclaimed property reporting as established by the U.S. Supreme Court.

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Pending Gift Card Litigation

- A NJ Law effective in 2011, required that if a holder did not have a name and address on a gift card, then it was to be reported to the state where the gift card was purchased
- The NJRMA sued NJ in U.S. District Court indicating that the NJ Unclaimed Property statute was preempted by the Federal CARD Act which regulates federal consumer protection relating to gift cards
- The District Court ruled that because the NJ law offered consumers greater consumer protection than the Federal CARD Act, it was not preempted by the federal statute

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Pending Gift Card Litigation

- The District Court also ruled that the NJ transaction rule or the “place of presumption” rule violated the priority rules and was unconstitutional
- NJ was enjoined from administering the law pending review by the appellate court.
- There are several other issues to be addressed relating to retroactivity and collection of zip code data. The matter is currently being reviewed by the Third Circuit Court of Appeals in Philadelphia
- The state of ME has similar provisions relating to the NJ statute

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Life Insurance-Retained Asset Accounts (RAA)

- A life insurance company method to settle a death claim when the insured party has died
- Alternative to a lump-sum payment, the beneficiary of a life insurance policy receives the benefit proceeds in the form of an “account” that the life insurer provides. The monies are deposited into a transaction account and are retained by the insurer
- The beneficiary can access the monies in the account by using drafts—a negotiable instrument similar to a check—that the insurer provides. The beneficiary can withdraw the proceeds at any time, in whole or in part

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Life Insurance-Retained Asset Accounts (RAA)

- Life insurance companies have largely overlooked reporting and remitting abandoned retained asset account balances
- The crux of the problem is this: many life insurance companies do not believe that dormant retained asset accounts represent unclaimed property.
- Certain companies currently under audit are becoming entrenched in their positions, partly because the industry is being criticized for their handling of retained asset accounts (independent of unclaimed property considerations) and there are potentially hundreds of millions of dollars that may be reportable, industry-wide.

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Third Party Administrators or Agents(TPAs)

Third Party Administrators (TPAs)- Many companies utilize TPAs to outsource disbursement functions within the companies' various departments or functions. TPAs can provide outsourced disbursement service for benefit and non benefit functions

Benefit Functions

- Claims processing for self insured health or dental plans
- Pension Plans
- 401K Plans
- Flex Benefits
- Bonus Plans

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Third Party Administrators or Agents(TPAs)

- Disability Payments
- Vision Plans
- Executive Compensation
- Deferred Compensation
- ESOP
- Prescription Drug Plans

Many of the benefit programs are covered by ERISA-ERISA provisions may dictate that uncashed checks are to be deposited back into the plan

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Third Party Administrators or Agents(TPAs)

Non Benefit TPA Functions

- Payroll
- Workmen's' Compensation
- Agent's Commissions
- Customer Rebates
- Customer Refunds
- Accounts Receivable Refunds
- Stock Transfer
- Dividend Disbursement Agent

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Third Party Administrators or Agents(TPAs)

Non Benefit TPA Functions

- Paying and Co Paying Agent(Bonds)
- Exchange Agent
- Retained Asset Account Administrator
- Disability payments as TPA for other insurance companies

States' Position on Reporting Obligation is that the party has “made a promise to pay” (i.e., “the obligor”) is ultimately responsible for reporting any uncashed checks as unclaimed property

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Third Party Administrators or Agents(TPAs)

- Holders must review service agreements with TPAs in order to determine if the agreement dictates who will be reporting unclaimed property to the states
- If a TPA reports property to the states, the reports should be in the name of the issuer of the check
- In some cases, the agreements may dictate that the TPA return to the issuer, the funds related to the outstanding checks after 120-180 days.



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