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### Don't Cheat; Escheat - What Every Business Lawyer Ought to Know about Tennessee's Abandoned Property Laws

Joan MacLeod Heminway  
*University of Tennessee College of Law*

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# DON'T CHEAT; ESCHEAT!

## WHAT EVERY BUSINESS LAWYER OUGHT TO KNOW ABOUT TENNESSEE'S ABANDONED PROPERTY LAWS

By: Joan MacLeod Heminway<sup>1</sup>

### I. INTRODUCTION

Many business lawyers are unfamiliar with the nature and operation of state unclaimed property (a/k/a "escheat" or "abandoned property") laws.<sup>2</sup> Specifically, many business lawyers may not be aware that their clients are subject to the requirements of applicable state unclaimed property laws, despite the fact that those clients are surely holding abandoned property. Consequently, they may fail to advise their clients to file annual reports and pay or deliver property to the state as required. As a result, their clients may be subject to significant penalties and court proceedings for their failure to comply with applicable unclaimed property laws.

Unclaimed property has recently become a "hot topic" in the State of Tennessee because of an ongoing voluntary compliance plan, the *Tennessee Voluntary Compliance Program for Unclaimed Property* (the "Voluntary Compliance Program"), enacted in May 2001 and effective as of July 1, 2001.<sup>3</sup> The Voluntary Compliance Program may benefit individuals and entities that are not in compliance with the *State of Tennessee Uniform Disposition of Unclaimed Personal Property Act* (the "Unclaimed Property Act").<sup>4</sup> This article (A) summarizes key provisions of the Unclaimed Property Act, (B) illustrates the relevance and importance of the Tennessee abandoned property laws in the business law context, and (C) explains the coverage and operational aspects of the Voluntary Compliance Program. Although compliance programs may not be available to clients with filing and delivery requirements in other jurisdictions, unclaimed property laws are equally important and relevant to business practice in those other jurisdictions.

### II. AN EXAMPLE INVOLVING YOUR CLIENT

Your client, a Tennessee corporation with 1,000 employees, acquired another Tennessee corporation in a cash merger about a year ago. Your client acted as paying agent for the merger, and the client's Chief Financial Officer (the "CFO") has just rendered to the client's management a report on its payment activities. The report shows that five former shareholders of the acquired corporation (all of whom have record addresses in Tennessee) have not yet claimed their merger proceeds.<sup>5</sup>

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<sup>1</sup> Professor Heminway is an Associate Professor of Law, The University of Tennessee College of Law. Prior to joining the faculty of the College of Law in the fall of 2000, Professor Heminway was Counsel (specializing in mergers and acquisitions and securities law) in the Boston office of Skadden, Arps, Slate, Meagher & Flom LLP.

<sup>2</sup> As a technical matter, escheat statutes are more limited in scope than unclaimed property statutes and cover only the "[r]everision of property (esp. real property) to the state upon the death of an owner who has neither a will nor any legal heirs." BLACK'S LAW DICTIONARY 564 (7th ed. 1999). The term "abandoned property" also may be seen to have a more limited meaning than the term "unclaimed property" (implying a voluntary abdication). *Id.* at 1223. In practice, however, unclaimed property statutes are frequently referred to as escheat or abandoned property statutes.

<sup>3</sup> 2001 Tenn. Pub. Acts 231. The Division of Unclaimed Property of the Treasury Department of the State of Tennessee (the "Division") sent written notice of the voluntary compliance program to Tennessee licensed attorneys and certified public accountants by U.S. mail in July 2001.

<sup>4</sup> TENN. CODE ANN. §§ 66-29-101 to -153 (2001).

<sup>5</sup> A shareholder generally would claim merger proceeds by returning to the paying agent a letter of transmittal (distributed to the shareholder by U.S. mail after the effective time of the merger) accompanied by the shareholder's certificate(s) representing shares of the acquired corporation held of record by the shareholder at the effective time of the merger. This article does not cover the way in which paying agent accounts should be established or maintained. Acquirors are well advised to consult with their accountants and counsel on this matter.

Moreover, the CFO reports to you that your client (the same one) routinely receives back, by return mail, uncashed dividend checks (as well as other corporate mail) marked "undeliverable."<sup>6</sup> Some of the intended recipients have record addresses in Tennessee; some have record addresses in other U.S. states (specifically, Florida, North Carolina, Rhode Island, and Virginia). The CFO tells you that the client is in possession of returned checks dated as many as ten years ago. The CFO has good intentions of attempting to find these shareholders, but she has not yet gotten around to it. She also has records that report uncashed dividend checks for other shareholders, with respect to whom or which the client has received no mail returned as undeliverable, for the same ten-year period.

In light of the foregoing, the CFO comes to you with the following questions:

A. *Is it unlawful for the client to continue to hold, in its own account and on an indefinite basis, the unclaimed merger proceeds and the cash underlying the returned and uncashed dividend checks?*

B. *If so, what must the client do with the unclaimed merger proceeds and the cash underlying the returned and uncashed dividend checks to bring them into compliance with applicable unclaimed property laws?*

C. *Regardless of whether it may continue to hold the money in its own account, what obligations does the client have with respect to the unclaimed merger proceeds and the cash underlying the returned and uncashed dividend checks?*

What should your advice be for the CFO? Can a corporation continue to hold unclaimed cash or other property to which a shareholder or other creditor is entitled? To answer these questions, you must know the basic elements of the Unclaimed Property Act<sup>7</sup> and the related regulations.<sup>8</sup>

### III. BASIC ELEMENTS OF THE UNCLAIMED PROPERTY ACT

Each business association, as well as other individuals and entities,<sup>9</sup> must file with the Treasurer of the State of Tennessee (the "State Treasurer") an annual report of all abandoned property held by it and, in most cases, simultaneously must pay or deliver to the State Treasurer all unclaimed funds and intangible property set forth in the report.<sup>10</sup> The report must be filed each year before May 1 with respect to property held as of December 31 of the previous year.<sup>11</sup> Prior to submitting the report, the abandoned property holder is required to send written notice to

<sup>6</sup> This frequently occurs when the recipient shareholder has died (in the case of an individual), liquidated (in the case of an entity), or changed his, her, or its mailing address and has neither filed a forwarding order with the U.S. Postal Service nor filed a change of address with the client. Forced address changes, including those prompted by 911 address change ordinances, also contribute to this problem.

<sup>7</sup> TENN. CODE ANN. §§ 66-29-101 to -153.

<sup>8</sup> TENN. COMP. R. & REGS. 1700-2-1-.01 to -.37 (2001).

<sup>9</sup> The reporting and delivery requirements of the Unclaimed Property Act apply to any "person," defined to include "any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity, whether such person is acting in such person's own right or in a representative or fiduciary capacity." TENN. CODE ANN. § 66-29-102(8) (2001). For purposes of the Unclaimed Property Act, a "business association" is a "corporation (other than a public corporation), joint stock company, business trust, partnership cooperative, or any association for business purposes of two or more individuals." *Id.* § 66-29-102(2). The rules promulgated under the Unclaimed Property Act set forth a nonexclusive list of reporting persons, which includes "businesses, corporations, partnerships, associations and other business organizations and firms employing twenty-five (25) or more persons." TENN. COMP. R. & REGS. R. 1700-2-1-.01(1)(e) (2001). Accordingly, "business organizations and firms" employing less than 25 persons are not required to file abandoned property reports under the Unclaimed Property Act. *Id.*

<sup>10</sup> TENN. CODE ANN. §§ 66-29-113, -115(a) (2001). The property holder also may be required to later deliver tangible property to the State Treasurer. *Id.* § 66-29-115(b). Funds paid or property delivered to the State Treasurer "include[s] all interest, dividends, increments, and accretions due, payable, or distributable . . ." *Id.* § 66-29-115(d).

<sup>11</sup> *Id.* § 66-29-113(d). Certain holders, including banking or financial organizations, life insurance companies, and utility companies, are required to make a filing with the State Treasurer every year, regardless of whether they held reportable abandoned property at the end of the year for which the report is due. TENN. COMP. R. & REGS. 1700-2-1-.07 (2001).

the abandoned property owner, at the owner's last known address, notifying the owner that the holder is in possession of abandoned property under the Unclaimed Property Act.<sup>12</sup>

#### A. Types of Unclaimed Property

Under the Unclaimed Property Act, many types of unclaimed funds and other property held by business associations may be presumed to be abandoned property. Examples of unclaimed property include:

1. refunds ordered by a court or administrative agency that (a) remain unclaimed by the owner for more than two years or (b) are payable to an owner known to the holder to have died and left no legal heirs (by will or by intestate succession);<sup>13</sup>
2. funds or other property (including, without limitation, securities) "held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative" who or which neither claims against nor corresponds with the business association concerning the funds or other property within five years after the prescribed payment or delivery date of those funds or property;<sup>14</sup>
3. funds or other property described immediately above if payable or distributable to an owner known to the holder to have died and left no legal heirs (by will or by intestate succession);<sup>15</sup>
4. intangible personalty distributable in a business association dissolution or liquidation that remains unclaimed by the owner after the final distribution or liquidation date;<sup>16</sup>
5. "property . . . held in a fiduciary capacity for the benefit of another" if the owner has not, within five years of the date on which the property becomes payable or distributable, (a) increased or decreased principal, (b) accepted a principal or income payment, (c) corresponded in writing about the property, or (d) otherwise indicated an interest in the property (as documented in a memorandum on file with the fiduciary);<sup>17</sup> and
6. other property (not including layaway accounts held by retailers) " . . . held or owing in the ordinary course of the holder's business" that (a) remains unclaimed by the owner for more than five years after it became payable or distributable or (b) is payable or distributable to an owner known to the holder to have died and left no legal heirs (by will or by intestate succession).<sup>18</sup>

#### B. Jurisdictional Basis

In order for abandoned property to be subject to the custody of the State of Tennessee under the Unclaimed Property Act, as opposed to another jurisdiction's abandoned property laws, Tennessee must have a jurisdictional claim to the property. Among the possible statutory bases for such a claim are:

1. the last known address of the owner being in the State of Tennessee;
2. the holder being a domiciliary of the State of Tennessee, when combined with other facts (*e.g.*, (a) the holder has never made a payment or delivery to the owner in the state of the owner's last known

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<sup>12</sup> TENN. CODE ANN. § 66-29-113(e) (2001) (written notice must be sent not more than 120 days or less than 60 days before filing the annual report). Effective as of July 1, 2001, holders of unclaimed property must file with each annual report an affidavit stating that the holder has complied with these requirements. *Id.* § 66-29-113(f). No notice is required (i) for property with a value of less than \$50 and (ii) unless the property holder has a record address for the property owner that the holder's records do not "disclose to be inaccurate." *Id.* See also TENN. COMP. R. & REGS. 1700-2-1-.19 (2001).

<sup>13</sup> TENN. CODE ANN. § 66-29-106(a)(2) (2001).

<sup>14</sup> *Id.* § 66-29-107.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* § 66-29-108.

<sup>17</sup> *Id.* § 66-29-109.

<sup>18</sup> *Id.* § 66-29-112.

address, (b) the last known address of the owner is in a state that has no applicable abandoned property law, or (c) the last known address of the owner is in a foreign nation); and

3. the transaction out of which the property arose occurring in the State of Tennessee, when combined with (a) the fact that the last known address of the owner either is unknown or is in a state that has no applicable abandoned property law and (b) the fact that the holder is a domiciliary of a state that has no applicable abandoned property law.<sup>19</sup>

In addition, Tennessee has reciprocal arrangements with certain other states that allow a holder of unclaimed property to include in its annual Tennessee unclaimed property report all property that is subject to the abandoned property laws of that reciprocal state.<sup>20</sup> Tennessee then forwards the property to the reciprocal state.<sup>21</sup>

Once a holder pays or delivers property to the State Treasurer under the Unclaimed Property Act, the holder no longer is liable for any claim made by the owner in respect to the property, up to the value of the paid or delivered property.<sup>22</sup> Property owners may file claims to recover abandoned property with the State Treasurer.<sup>23</sup> Alternatively, a holder who or which has paid unclaimed funds to the State Treasurer may pay the property owner in settlement of a claim to those funds. If the owner appears to be entitled, the State Treasurer will subsequently reimburse the holder for that payment upon proof of both the payment and the owner's entitlement thereto.<sup>24</sup>

### C. The State Treasurer's Rulemaking Power

The State Treasurer has a number of enforcement powers under the Unclaimed Property Act. For example, the State Treasurer may audit an individual's or entity's records, at reasonable times and after reasonable notice, if the State Treasurer has reason to believe the individual or entity has not complied with the Unclaimed Property Act's reporting requirements.<sup>25</sup> In addition, the State Treasurer may bring a court action to compel delivery of abandoned property that a holder refuses to deliver to the State Treasurer as required under the Unclaimed Property Act.<sup>26</sup> The State Treasurer also has the power and authority to assess civil penalties against holders who or which fail to comply with the Unclaimed Property Act's filing or delivery requirements.<sup>27</sup>

In addition to the State Treasurer's enforcement powers, the State Treasurer is authorized by statute "to make necessary rules and regulations to carry out the provisions of [the Unclaimed Property Act]."<sup>28</sup> The State Treasurer has used this authority to adopt rules that, among other things:

<sup>19</sup> TENN. CODE ANN. § 66-29-103 (2001).

<sup>20</sup> State of Tennessee, *2001 Uniform Disposition of Unclaimed Property Act Reporting Package at 4 instruction III.D.* (visited October 22, 2001), available at <http://www.treasury.state.tn.us/unclaim>.

<sup>21</sup> *Id.* Currently, the Reporting Package indicates reciprocity arrangements with Arkansas, Florida, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Rhode Island, Virginia, and Washington. *Id.*

<sup>22</sup> TENN. CODE ANN. § 66-29-116 (2001). *Cf.* TENN. COMP. R. & REGS. 1700-2-1-.19 (2001).

<sup>23</sup> TENN. CODE ANN. § 66-29-123 (2001).

<sup>24</sup> *Id.* § 66-29-116.

<sup>25</sup> *Id.* § 66-29-127(a).

<sup>26</sup> *Id.* § 66-29-128. Subject to certain exceptions (including, without limitation, fraud), the action may not be brought more than 10 years after the holder of the abandoned property files a report for the period in which the property is reportable or gives notice to the State Treasurer of a dispute regarding the property. *Id.* § 66-29-118(b).

<sup>27</sup> The State Treasurer may assess a fine of \$25 per day (up to a maximum of \$1,000) for each annual failure (after notice) to report any unclaimed property or perform other duties under the Unclaimed Property Act. TENN. CODE ANN. § 66-29-129(a) (2001). The State Treasurer is statutorily obligated (except in the case of a *de minimis* lapse—a failure to pay or deliver property with a value of less than 10% of reportable property—in a particular year) to assess an annual penalty of 10% of the value of any abandoned property not paid or delivered to the State Treasurer as required, with the aggregate penalty amount not to exceed the lesser of 25% of the value of the property or \$50,000. *Id.* § 66-29-129(b)(1). Penalties may exceed these caps in circumstances where the state has paid a fee for identifying or collecting the unpaid or undelivered property that exceeds the statutory cap.

<sup>28</sup> TENN. CODE ANN. § 66-29-130 (2001).

1. provide more details on reporting entities, individuals, and procedures;<sup>29</sup>
2. clarify when certain property is considered to be abandoned;<sup>30</sup>
3. identify the "owner" of particular property;<sup>31</sup>
4. define in greater detail the pre-filing "due diligence" duties of holders of abandoned property;<sup>32</sup> and
5. describe with greater specificity the obligation of the holder to deliver unclaimed property to the State Treasurer.<sup>33</sup>

#### IV. YOUR CLIENT'S UNCLAIMED MERGER CONSIDERATION AND DIVIDEND FUNDS

With this knowledge (and a small amount of additional information that you can obtain from the client), you should be able to answer the questions posed to you by your client's CFO.

A. *Is it unlawful for the client to continue to hold, in its own account and on an indefinite basis, the unclaimed merger proceeds and the cash underlying the returned and uncashed dividend checks?*

Yes, it is unlawful for the client to continue to hold, in its own account and on an indefinite basis, the unclaimed merger proceeds and the cash underlying the returned and uncashed dividend checks. Under the Unclaimed Property Act, if there has been no contact with the apparent recipient of merger proceeds or dividends for five years<sup>34</sup> and the recipient cannot be located after the exercise of due diligence,<sup>35</sup> the unclaimed funds are presumed abandoned. Under these circumstances, the client (a business association which has in excess of 25 employees) would be required to report the unclaimed funds<sup>36</sup> and pay those funds to the State Treasurer.<sup>37</sup> This does not appear to be an issue with respect to the merger proceeds

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<sup>29</sup> TENN. COMP. R. & REGS. 1700-2-1-.01 to -.08, 1700-2-1-.16 to -.18, and 1700-2-1-.37(1) (2001).

<sup>30</sup> *Id.* 1700-2-1-.11 (covering the abandonment of rollover certificates of deposit).

<sup>31</sup> *Id.* 1700-2-1-.12 (covering ownership of cashier's checks).

<sup>32</sup> *Id.* 1700-2-1-.19.

<sup>33</sup> *Id.* 1700-2-1-.20, -.37(2).

<sup>34</sup> See TENN. CODE ANN. § 66-29-112 (2001) (regarding merger proceeds); *Id.* § 66-29-107 (regarding dividends); TENN. COMP. R. & REGS. 1700-2-1-.18 (2001) (regarding merger proceeds). Cash merger proceeds are best reported using NAUPA property type code SC07 or SC13; cash dividends are reported using NAUPA property type code SC01.

<sup>35</sup> Before filing its annual report of abandoned property, the holder must exercise due diligence to locate the owner. TENN. COMP. R. & REGS. 1700-2-1-.19 (2001). "Due diligence" is defined in the regulations as "the degree of care which a reasonably prudent man would exercise in the normal course of business operations." *Id.* 1700-2-1-.19(1). Under the Unclaimed Property Act, no more than 120 days and no less than 60 days before the filing of its annual report of abandoned property, each holder of abandoned property is required to send written notice to the apparent owner of any abandoned property with a value of \$50 or more at the owner's last known address (if the holder has a record address for the owner) informing the owner that the holder is in possession of property that is subject to the Unclaimed Property Act. TENN. CODE ANN. § 66-29-113(e) (2001). (Effective as of July 1, 2001, holders of unclaimed property must file with each annual report an affidavit stating that the holder has complied with these requirements. *Id.* § 66-29-113(f).) Return of a first-class or superior mailing sent to the owner's last known address constitutes evidence that the location of the holder is unascertainable. TENN. COMP. R. & REGS. 1700-2-1-.19(1)(a) (2001). Ordinary business communications sent by first-class or superior mailings that are not returned as undeliverable constitute contact with the owner, and abandonment of the property therefore is not presumed. *Id.* 1700-2-1-.19(1)(b).

<sup>36</sup> TENN. CODE ANN. § 66-29-113 (2001); TENN. COMP. R. & REGS. 1700-2-1-.01(1)(e) (2001) (clarifying that businesses, including corporations and partnerships employing 25 or more people are required to report abandoned property to the State Treasurer).

<sup>37</sup> TENN. CODE ANN. § 66-29-115(a) (2001).



(unless shareholders of the target corporation entitled to those proceeds already have been out of contact with the target corporation for five years, a fact that can be ascertained during acquisition due diligence<sup>38</sup>) since the merger took place about a year ago. Accordingly, the client may continue to hold these funds in its account until they are paid out to the recipients or presumed abandoned. The client should, however, check its contact information with respect to the dividend checks and take any required actions (as described below) with respect to amounts that are presumed abandoned. Like the merger proceeds, unclaimed dividends that are not presumed abandoned may be retained by the client in its own account until they are claimed or become subject to the Unclaimed Property Act.

B. *If so, what must the client do with the unclaimed merger proceeds and the cash underlying the returned and uncashed dividend checks to bring them into compliance with applicable unclaimed property laws?*

To the extent that any of the uncashed dividend checks are presumed to be abandoned (because there has been no contact with the recipient for five years and the recipient cannot be located after the exercise of due diligence)<sup>39</sup> as of December 31, 2001, the client must file an abandoned property report with the State Treasurer before May 1, 2002 reporting the unclaimed dividends (as well as all other property presumed abandoned under the Unclaimed Property Act) held as of December 31, 2001.<sup>40</sup> That report may include any abandoned dividends owed to recipients with last addresses in Florida, North Carolina, Virginia, and Rhode Island, as well as recipients with last addresses in Tennessee.<sup>41</sup> At the same time, the client must pay the State Treasurer the aggregate amount of those unclaimed dividends.<sup>42</sup> Once the State Treasurer assumes custody of the unclaimed dividends, the client is relieved of its liability to pay the dividends to the recipients.<sup>43</sup> If the client pays to any recipient unclaimed dividends earlier paid to the State Treasurer under the Unclaimed Property Act, the State Treasurer is required to refund the client upon proof of payment and entitlement.<sup>44</sup> Otherwise, the recipient may file a claim to the unpaid dividends with the State Treasurer.<sup>45</sup>

C. *Regardless of whether it may continue to hold the money in its own account, what obligations does the client have with respect to the unclaimed merger proceeds and the cash underlying the returned and uncashed dividend checks?*

As to any unclaimed dividends presumed abandoned as of December 31, 2001, the client should send written notice, on or after January 1, 2002, and no later than March 1, 2002, to each dividend recipient with reportable unclaimed dividends of \$50 or more, informing the recipient that the client is in possession of unclaimed dividends that are subject to the Unclaimed Property Act.<sup>46</sup> As to all unclaimed funds, including the merger proceeds and any unclaimed dividends not yet presumed abandoned, it is important that the client keep detailed records of the following (at a minimum):

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<sup>38</sup> See also *infra* note 51, regarding acquisition due diligence. This article assumes that none of the recipients of unclaimed merger proceeds have been out of contact with the target corporation.

<sup>39</sup> See *supra* notes 34 and 35.

<sup>40</sup> TENN. CODE ANN. § 66-29-113(d) (2001). Early reporting is permitted. TENN. COMP. R. & REGS. 1700-2-1-.08 (2001).

<sup>41</sup> Tennessee has a reciprocal arrangement under which Tennessee has agreed to forward property to each of these states. State of Tennessee, *2001 Uniform Disposition of Unclaimed Property Act Reporting Package* at p. 4 instruction III.D. (visited October 22, 2001), available at <http://www.treasury.state.tn.us/unclaim>.

<sup>42</sup> TENN. CODE ANN. § 66-29-115(a) (2001). The State Treasurer has statutory authority to bring a court action to compel the required payment if payment is not made as required. *Id.* § 66-29-128.

<sup>43</sup> TENN. CODE ANN. § 66-29-116 (2001).

<sup>44</sup> *Id.* Cf. TENN. COMP. R. & REGS. 1700-2-1-.23 (2001) (a holder is to be reimbursed for payment made “upon receipt of a photocopy, front and back, of the cancelled check issued to the recipient along with information identifying the type of property and the date it was delivered to the Treasurer”). Because the State Treasurer is only required to reimburse holders for property not previously returned to the owner by the State Treasurer, holders are best advised to ensure that the State Treasurer has not already paid the claiming owner before payment is made directly by the holder to the owner. *Id.*

<sup>45</sup> *Id.* § 66-29-123.

<sup>46</sup> *Id.* § 66-29-113(e). See *supra* note 35 for procedural details.

1. the name and last known address of each person who appears, from the client's records, to be the apparent recipient of the unclaimed funds;<sup>47</sup>
2. the amount and nature of, and any identifying number associated with, the unclaimed funds;<sup>48</sup> and
3. the date when the unclaimed funds became payable and the date of the last transaction with the apparent recipient with respect to the unclaimed funds.<sup>49</sup>

These records will enable the client to know when to report unclaimed funds to the State Treasurer, to know what to report when it is holding funds that are presumed abandoned, and to respond to an audit of its records by the State Treasurer, if necessary.<sup>50</sup>

V. CURRENT NONCOMPLIANCE IS NOT A CAUSE FOR ALARM IF APPROPRIATE ACTION IS TAKEN SOON

Perhaps, before reading this article, you were unfamiliar with abandoned property laws in general, or the Unclaimed Property Act in particular, and have not provided your clients with correct and appropriate legal advice. Do not despair; do not panic. Regardless of whether your client has previously filed any reports with the State Treasurer under the Unclaimed Property Act, your client can still avail itself of a waiver of civil penalties if the client takes *all* of the actions set forth below on or before May 1, 2002.<sup>51</sup>

- A. Obtain and review the State Treasurer's official reporting package and follow the included instructions;<sup>52</sup>
- B. Comply with all statutory and regulatory due diligence requirements within the statutory period;<sup>53</sup> and
- C. Report and pay or deliver to the State Treasurer all unclaimed property required to be reported or delivered in the State of Tennessee.<sup>54</sup>

A holder of abandoned property is best advised to file an accurate and complete report and pay or deliver the reported cash and intangibles as soon as practicable after completing the statutorily required due diligence in order to trigger commencement of a recently adopted 10-year statute of repose.<sup>55</sup> Also, it is important to note that, absent separate action taken by states having reciprocal arrangements with

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<sup>47</sup> See TENN. CODE ANN. § 66-29-113(b)(1) (2001) (requiring this information to be reported to the State Treasurer for all property presumed abandoned and having a value of at least \$50). A holder may voluntarily submit this information to the State Treasurer for amounts under \$50, thereby likely limiting its record keeping responsibilities to 10 years after the property becomes reportable. *Cf. id.* § 66-29-113(h) (requiring a 10-year holding period for property-owner names and last known addresses where reports are required to be filed).

<sup>48</sup> See *id.* § 66-29-113(b)(3) (requiring this information to be reported to the State Treasurer for all property presumed abandoned and having a value of at least \$50).

<sup>49</sup> See *id.* § 66-29-113(b)(4) (requiring this information to be reported to the State Treasurer for all property presumed abandoned and having a value of at least \$50).

<sup>50</sup> See *id.* § 66-29-127 (permitting the State Treasurer to examine records at reasonable times and upon reasonable notice).

<sup>51</sup> TENN. CODE ANN. § 66-29-129(c) (2001). The State Treasurer has the ability to extend the voluntary compliance period to May 1, 2003. *Id.* It is important to note that a number of acquirors of businesses have become savvy about abandoned property laws. In many cases, significant noncompliance with abandoned property laws, once discovered in due diligence, delays execution of an acquisition agreement or consummation of the transaction. Attuned acquirors do not want to acquire massive liability for abandoned property fines and penalties and, accordingly, often will insist that the target entity settle its abandoned property matters with the relevant state unclaimed property authorities *before* agreeing to acquire, or completing an acquisition of, the target entity.

<sup>52</sup> The 2001 reporting package is available in html format through the Web site for the Unclaimed Property Division of the Treasury Department of the State of Tennessee at <http://www.treasury.state.tn.us/unclaim>. The package for 2002 is expected to be available in or before December 2001.

<sup>53</sup> See *supra* note 35.

<sup>54</sup> See *supra* notes 13-18.

<sup>55</sup> TENN. CODE ANN. § 66-29-118(b) (2001).

Tennessee, the penalty waiver is not available for property voluntarily surrendered to Tennessee for those reciprocal states.<sup>56</sup>

## VI. ADDITIONAL INFORMATION

Frequently, it is difficult to make determinations as to (A) whether particular funds, other intangibles (including securities), or tangible property are presumed abandoned under the Unclaimed Property Act, (B) whether a particular business or organization is subject to the requirements of the Unclaimed Property Act (and, if so, to which requirements of the Unclaimed Property Act it is subject), and (C) how to comply with the procedural requirements for due diligence, filings, and deliveries under the Unclaimed Property Act. Moreover, the Voluntary Compliance Program is newly minted and substantially untested. This article merely touches on a few key points of the law and regulations in these areas.

Fortunately, additional information regarding the Unclaimed Property Act and the Voluntary Compliance Program is available through the Division. The Division has a comprehensive web site at <http://www.treasury.state.tn.us/unclaim>. When last visited, the front page of the site included links to the most current reporting package, frequently asked questions, applicable laws and regulations (including new legislation) and information regarding the recovery of abandoned property by property owners. In addition, holders of abandoned property can reach the Division by telephone at 615-253-5362 or by U.S. mail at Unclaimed Property Division, P.O. Box 198649, Nashville, Tennessee 37219-8649. These resources will better inform you in handling specific facts regarding your client's retention, reporting, and delivery of unclaimed property.

<sup>56</sup> See *id.* § 66-29-129(c) (indicating that penalty waiver is available for failures "to render any report or perform other duties required under [the Unclaimed Property Act]"). Tennessee's reciprocity arrangements, which consist of contracts between the State of Tennessee and the reciprocal states, permit holders to comply with certain of their unclaimed property duties and obligations under the laws of the reciprocal states by making filings and deliveries in the State of Tennessee.

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