

ULC Drafting of Revised Uniform Unclaimed Property Act – Issues and Benefits

National Conference of State Legislatures

Executive Committee Task Force On State and Local Taxation

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- A new uniform unclaimed property law is being drafted and will likely be presented to state legislators starting in the fall of 2016;
- Unclaimed property is a highly polarizing issue –pitting state unclaimed property administrators, state tax commissioners, and/or state treasurers against businesses;
- Litigation over the issues is increasing
- Significant lobbying efforts have already begun

What is Unclaimed Property and Why Should Legislators Care

- Every State has unclaimed property laws on the books and an active audit program to enforce compliance
- Unclaimed property is intangible property held by one entity but owned by another which the holder has been unable to return to that owner for a certain period of time.
- Unclaimed property can include customer credit balances, uncashed payroll checks, stock, unclaimed dividends, etc.
- Once the period of time (fixed by statute) has elapsed without the owner claiming the property, the holder must remit the property to the state.
- For 20 years – unclaimed property has been a growing revenue source for some states.
- Holders believe that (1) expansive definitions of what is “unclaimed” or “property”; (2) illegitimate audit techniques; and (3) perceived conflict of interest issues for auditors have turned a public benefit resource into a improper extraction of business property.

What is the Uniform Law Commission

- ULC is currently drafting a Revised Uniform Unclaimed Property Act that substantially revised the 1995 Act (which revised the 1981 Act). Most states have adopted, at least in part, one of these uniform acts.
- “The Uniform Law Commission provides states with non-partisan, well conceived, and well drafted legislation that brings clarity and stability to critical areas of state statutory law.”
- Formerly called National Conference of Commissioners on Uniform State Laws (NCCUSL)
- Members must be lawyers and are appointed by state governments
- See <http://www.uniformlaws.org/Commissioners.aspx> for list of Commissioners by state
- One of the duties of a Commissioner is “to seek introduction and enactment of Uniform Acts promulgated by the Conference that are appropriate for their State”

- Statute of limitations;
- Exemption for gift cards;
- Exemption for items related to Business-to-Business transactions;
- Application of Derivative Rights Doctrine;
- Dormancy Triggers;
- Limitations on contingency fees to compensate private auditors