


UNCLAIMED PROPERTY RECOVERY & REPORTING  
**THE CURRENT TRENDS & ISSUES  
 IN UNCLAIMED PROPERTY**

Presented by:

Karen Anderson, Senior Vice President  
 David Cary, Vice President  
 William King, Vice President & Assoc. General Counsel




**DISCLAIMER**

*This presentation is provided for educational purposes only. Unclaimed Property Recovery and Reporting, LLC, is not rendering accounting, business, financial, investment, legal, tax, or other professional advice or services with this presentation. Further, this presentation is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Unclaimed Property Recovery and Reporting, LLC, their affiliates and related entities are not responsible for any loss sustained by any person who relies on this presentation.*

*This presentation is the property of Unclaimed Property Recovery and Reporting, LLC and may not be reprinted, modified, distributed, or copied without express, written consent.*


2



**AGENDA**

- Introductions
  - About Unclaimed Property Recovery & Reporting (UPRR)
- The Fundamentals of Unclaimed Property
- Compliance Basics and Best Practices
- Audit Issues and What To Do
- Current Trends and Issues


3



**ABOUT UPRR:**

- UPRR is the oldest and most experienced full-service unclaimed property company in the industry. UPRR was established in 1996.
- Led by a team of professionals with over 150 combined years experience.
- What do we do? ... **EVERYTHING!**
  - Consulting and guidance
  - Due diligence, Reporting and compliance assistance
  - Audit support and defense
  - Asset recovery for corporations
  - Owner and heir location to reduce escheatment

4



**WHAT WE OFFER TO THE O&G INDUSTRY:**


Compliance, consulting, due diligence, and reporting support services

- Fully customizable software allows us to create custom tailored solutions for our clients.


An owner location solution unlike any other - **ROLS**

- Royalty Owner Location Service (**ROLS**) was developed to help oil and gas companies find missing owners or their heirs in order to clean out suspense and reduce escheatable amounts.
- The most successful, effective, and efficient owner location tool available.
- Clients in UPRR's owner location program have seen escheatment reduced by up to 80%.

5



**FUNDAMENTALS OF UNCLAIMED PROPERTY**



6

## FUNDAMENTALS: UNCLAIMED PROPERTY HISTORY



Origins in Feudal Law (England):

- **Bona Vacantia** - Means vacant goods and is the legal name for ownerless property for which the title passes to the Crown.
- **Escheat** (In Medieval England) - Reversion of property (title) to feudal lord: the reversion to a feudal overlord of the property of a deceased person when there was no legal heir or when a tenant was outlawed.
- Brought to U.S., was a police power reserved to the states.

7

## UNCLAIMED PROPERTY HISTORY (CONTD).



Unclaimed Property Today (United States and certain Territories):

- **Escheat (Today)** - When an entity holds money or other intangible property which appears to be unclaimed due to a lack of activity by the owner and the owner can't be located OR the owner is "lost" the money or property can be revocably transferred to the state as "custodian".
- Generally the state does not take title to the money or property and has it for safekeeping until the owner or heirs claim it.
- **Derivative Rights Doctrine**: The state stands in the shoes of the owner and has no more or less rights than the owner. (S & H Green Stamps case – Originally, Standard Oil v. New Jersey, USSC 1951).
  - Some current trends jeopardize this fundamental.

8

## UNCLAIMED PROPERTY FUNDAMENTALS: KEY TERMS



- **Intangible personal property**: Property held, issued or owing in the ordinary course of business that has remained unclaimed by the apparent owner for a specified period of time after it became payable or distributable is presumed abandoned. Accounting errors are NOT unclaimed property.
- **Holder**: An individual or legal entity (public or private) in possession of property belonging to another.
- **Owner**: An individual or legal entity (public or private), government or governmental subdivision who has a legal or equitable interest in property.

9

## KEY TERMS (CONTD.)



- **End or "As of" Date**: The date through which a Holder must search its records to determine if it is in possession of unclaimed property.
- **Dormancy Period**: The number of years (generally 1, 3, or 5) from the date of last contact with the Owner property must be unclaimed before it is considered abandoned.
- **Reporting Deadline**: Date report and property due to state. A very few states have different dates to report and deliver property.

10

## FUNDAMENTALS: UNCLAIMED PROPERTY DEFINED



Unclaimed Property: Any intangible personal property that is held, issued or owing in the ordinary course of business and has remained unclaimed by the apparent owner for a specified period of time after it became payable or distributable is presumed abandoned.

- Due and Owing / Payable and Distributable
- Fixed and Certain
- No Owner-Generated Act

11

## UNCLAIMED PROPERTY FUNDAMENTALS: OIL AND GAS UNCLAIMED PROPERTY TYPES



- **Royalties**:
  - **ORRI (Overriding Royalties Interest)**: Ownership in a percentage of production or production revenues paid by the lessee, company and/or working interest owner out of revenue from the well.
  - **Shut-In Royalties**: A payment stipulated in the oil and gas lease, which royalty owners receive in lieu of actual production, when a well is shut-in as provided within the shut-in provisions contained in the oil and gas lease.
  - **Minimum Royalties**: A provision included in some royalties contracts that requires fixed payments at a certain level, even if the project is not producing or the project is producing at too low a rate to achieve the minimum.
- **Delay Rentals**: Annual payments made to Lessor to delay drilling.
- **Production Payments**: A portion of proceeds from production, specified by contract and payable to the lessor.
- **Lease Bonus**: An amount paid by a lessee to a lessor as consideration for granting a lease. This payment is in addition to any rental or royalty payments.

12

### UNCLAIMED PROPERTY FUNDAMENTALS: OTHER COMMON UNCLAIMED PROPERTY TYPES

- Uncashed Payroll Checks
- Uncashed Accounts Payable Checks
- Accounts Receivable Credit Balances or Memos
- Gift Cards
- Refunds
- Unapplied Cash
- Worker's Compensation
- Third Party Disbursements
- Debt and Equity Interests in a Corporation

13

### UNCLAIMED PROPERTY FUNDAMENTALS: COMMON UNCLAIMED PROPERTY TYPES CHECKLIST

- Vendor/Claims Items – Accounts Payable**
  - Uncashed vendor checks
  - Uncashed claims checks
  - Royalty, bonus, rental, production payment, etc. disbursements
- Credit Memos/Balances – Accounts Receivable**
  - Credits that occur when:
    - A duplicate payment is received.
    - A credit is issued for a product return or other reasons.
    - A payment is received for which no receivable can be identified (unapplied cash or cash on account).
    - A rebate is issued as a part of a company rebate program.
- Payroll Items**
  - Wages, Salary Payments (often unclaimed property in this area is due to Retired, Terminated and/or Overseas Employees)
  - Employee Expense Payments (Travel, Parking, Home Office, etc.)
  - Employer-Sponsored Benefit Payments (Self-Insured Employer)
- 3<sup>rd</sup> Party Disbursements/Checks (i.e., Payroll, Benefits, Securities, etc.)**

14

### UNCLAIMED PROPERTY FUNDAMENTALS: WHICH STATE LAW APPLIES?

- Texas v. New Jersey (US Supreme Court-1965) was culmination of cases to settle competing claims:  
**Priority rules:**
  1. Last known address of the owner/payee/creditor controls
  2. When no address sufficient for mailing or owner is unknown, the business' state of incorporation controls
  3. If the state does not have a law governing the property, the business' state of incorporation controls
- 1981 Uniform Act (adopted by some states): State of incorporation if address of apparent owner is in a foreign country and if holder is incorporated in the U.S.

15

### UNCLAIMED PROPERTY FUNDAMENTALS: WHICH STATE LAW APPLIES - EXAMPLE

**Example:** Grandpa Riggs, purchased land in Texas many years ago with the thought of building a home for his family. Instead, he later leases the mineral rights to the land to Drillmore Oil Company in exchange for royalties on its oil production. Grandpa moved to Oklahoma and his address in the Drillmore's records for payment of royalties is in Oklahoma. Drillmore's headquarters is in New Mexico but the company is incorporated in Delaware. Grandpa Riggs forgets to cash a royalty check and the check is outstanding for 3 years.

**Which state's unclaimed property law would apply to the outstanding royalty check?**

**Answer: Oklahoma.** This is the "first rule" of Texas v. New Jersey.

16

### UNCLAIMED PROPERTY FUNDAMENTAL: THE UNIFORM ACTS

- 1954 – Uniform Disposition of Unclaimed Property Act (UDUPA) created by the National Conference of Commissioners on Uniform Laws (NCCUL)
- 1966 – The 1954 UDUPA was amended by the NCCUL
- 1981 – The Uniform Unclaimed Property Act of 1981 was created (many state laws are in substantially modeled upon this act.)
- 1995 – The Uniform Unclaimed Property Act of 1995 was created (about 16 states have adopted this Act in pertinent part)
- Non-Uniform Act states: California, New York, Delaware
- 55 Reporting Jurisdictions throughout the United States and territories. No two jurisdictions have the exactly the same law/requirements.

17

### UNCLAIMED PROPERTY FUNDAMENTALS: 1995 UNIFORM ACT MINERAL INTEREST PROVISIONS

- Mineral Proceeds Defined: Amounts payable for extraction, production, or sale of minerals, or, upon abandonment of those payments, all payments that become payable thereafter. This includes payments related to:
  - Acquisition and retention of a mineral lease (bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals)
  - Extraction, production, or sale of minerals (net revenue interests, royalties, overriding royalties, extraction payments, and production payments)
  - Agreement or option (joint operating agreement, unit agreement, pooling agreement, and farm-out agreement) (1995 UUPA, Section 1 (8))
- Presumption of Abandonment: Not specific...in "catchall" provision. "all other property 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever comes first" (1995 UUPA, Section 2 (15))

18

**UNCLAIMED PROPERTY FUNDAMENTALS:  
UNCLAIMED PROPERTY: A DISGUISED TAX?**

Objective - Consumer Protection or Revenue?

- Initially, in the 1950s, when the 1954 UDUPA was written the new state UP laws were focused on consumer protection:
- Goal was to prevent companies from being unjustly enriched by holding property belonging to others.
- Benefit citizenry of a state in the event unclaimed funds are never claimed.

19

**UNCLAIMED PROPERTY FUNDAMENTALS:  
UNCLAIMED PROPERTY: A DISGUISED TAX?**

Today, its questionable whether the are for consumer protection or an indirect tax source of revenue

- Many states like Arizona, Michigan, and South Dakota reduced dormancy periods in the past few years to balance their state budgets.
- Other Methods - New property types (i.e. HSAs), long audit reachbacks and estimations.
- Impacts of Texas reporting change.
- Delaware UP Revenue: \$631M; up \$200M from last year, 15% of the state budget; up from just 3% in 1990.

20

**UNCLAIMED PROPERTY FUNDAMENTALS:  
UNCLAIMED PROPERTY: STATUTE OF LIMITATIONS???**

If a business has not been in compliance or has not been fully compliant is there any relief from liability and/or penalties and interest? Generally, the answer is "no". Consider the following:

**Statute of limitations:**

- Most states do not provide relief from reach-back based on a "statute of limitations."
- Some states have a statutory "statute of limitations" provision, however, the limitation period is usually longer than that applicable in taxation and normally includes the dormancy period PLUS a period or years.
- Failure to report or the filing of a fraudulent report eliminates reach back relief afforded by statute of limitation provisions.

21

**COMPLIANCE AND BEST PRACTICES**



22

**COMPLIANCE BASICS AND BEST PRACTICES: WHY COMPLY?**


- **Realizing and Managing the Risk:** Prevent Liability, Penalties and Interest, particularly in the event of an audit.
- **SOX Implications:** Must attest that controls exist and certain disclosures are made for financials.
- **Good Customer/Owner Relations:** Claiming royalty amounts back from states can be particularly difficult.
- **Maintaining Positive Reputation and Corporate Image:** Avoiding negative public relations.

23

**COMPLIANCE BASICS AND BEST PRACTICES:  
WHY COMPLY? PENALTIES AND INTEREST**

- Under most state UP laws, penalties and/or interest can be imposed for failure to perform any duties required by law, including failing to report and remit or to do so untimely. (1981 Act includes criminal AND civil penalties)
- 1995 Act Penalties:
  1. **Interest** : 2% above the annual Treasury bill discount rate in effect on the date the property should have been paid or delivered
  2. **Not Willful Failure**: \$200 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to \$5,000.
  3. **Willful Failure**: \$1,000 per day from the report due date up to \$25,000, + 25% of the property value that should have been reported
  4. **Fraud**: \$1,000 per day from the date a report due date up to \$25,000, + 25% of the property value that should have been but was not reported. (#1 plus #2 or #3 or #4 can be applied under 1995 Act)

24




**PENALTIES & INTEREST, CONTD.**

•California Penalties:

- Interest (Not Willful or Willful):** 12% per annum from date holder should have reported, paid or delivered property or 12% up to \$10,000 for filing report and paying on time but report not in compliance with requirements. (12% is in addition to any other applicable penalties)
- Willful Failure:** Failure to report or other duties, includes not using report format = \$100 for each day up to \$10,000. Refusing to pay or delivery property = \$5000 to \$50,000.

25




**COMPLIANCE BASICS AND BEST PRACTICES:  
DORMANCY AND ELIGIBILITY**

**Dormancy:** States have enacted unclaimed property laws to require that such property be turned over to the state after a statutorily prescribed period of time has elapsed, known as the “dormancy” or “abandonment” period.

**Eligibility:** When the applicable dormancy period has run, the property is “eligible” for reporting and remitting. **When an Item Is “eligible” the holders’ obligations of statutory due diligence and reporting are triggered.**

**Escheat:** The process of remitting the property to a state is known as “escheat”.

26




**COMPLIANCE BASICS AND BEST PRACTICES:  
DORMANCY AND ELIGIBILITY**

The applicable state statute will determine the following which are important to determining dormancy and eligibility:

- Dormancy period for the property type
- “As of”, “Cut-off” or “End” date
- Reporting deadline

27




**COMPLIANCE BASICS AND BEST PRACTICES:  
DORMANCY AND ELIGIBILITY**

State	Mineral Interest Dormancy Period	Reporting Deadline	End, As of or Cut-off Date	Due Diligence Period	Current to Pay?	Other
CO	5 Years	11/1	6/30	Not more than 120 days before report deadline.	No	
NM	5 Years	11/1	6/30	60 to 120 days before report deadline.	No	1. No Mineral Interest Aggregate. 2. Negative net due on all leases, then not reportable. 3. If no due diligence, then must pay interest.
OK	5 Years	11/1	6/30	Not more than 120 days before report deadline.	Yes	1. No Mineral Interest Aggregate. 2. Underlying Interest Reportable if proceeds are reportable.
TX	3 years	7/1	3/1	by May 1st	Yes	1. Negative net due on all leases, then not reportable. 2. Total amt due all owners can not be reduced by owners with a negative balance.

Please note this table is representative of a piece of compliance work product that is made available to UPRR clients, which covers all reporting jurisdictions and is updated on an annual basis. This sample should not be relied on pursuant to the disclaimer at the beginning of this presentation.

28



**COMPLIANCE BASICS AND BEST PRACTICES:  
DORMANCY AND ELIGIBILITY**


John Bizi received a bonus payment from Oilarus Company in a check dated Feb. 14, 2008. Bizi’s address in Oilarus’ records is in Oklahoma (MI06 bonuses = a 5-year dormancy period).

**Would the value of the check be reportable on the 11/1/13 T Oklahoma reporting deadline?**

**Answer: Yes – Do the Math!**

- OK 2013 End Date = 6/30/2013
- LAD or Issue Date = 2/14/2008
- Dormancy Time = **5 yrs, 4 mos, 16 days**
- OK Dormancy Period (MI06) = **5 yrs**

29



**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER’S OBLIGATIONS**

The basic holder compliance obligations are:

- Record Review / Internal Due Diligence**
- Due Diligence/Owner Contact**
- Reporting and Remitting**
- Record Retention**

\*All of the above must be done within the time frames and in the formats required by the various applicable state laws.\*

30

**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/RECORD REVIEW**



Record Review – Use it to your advantage!  
**This is your opportunity to minimize liability.**

Common Items to review:

- Disbursements (i.e., royalties)
- Vendor Checks
- Payroll Checks
- Credit Memos / Balances
- Outstanding check/payment lists (including payments made by 3<sup>rd</sup> parties)
- Industry specific items (checking and savings accounts, insurance claims payments, etc.)

Timing:

- Records should be reviewed at least once a year but preferably every 60 - 90 days to stay current

Materiality Limit:

- Set a materiality limit for your review.



31

**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/RECORD REVIEW**



1. Review Items for Common Accounting Errors:

- Check reissued but original not properly voided
- Duplicate payment
- Wrong payee
- Items issued to subsidiaries or other units of your business (inter-company payments)
- Credits used but not properly recorded
- Credits for which there is a valid offset

Remember: Properly reverse identified accounting errors, take appropriate offsets and keep evidence and documentation of same.

32

**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/RECORD REVIEW**



2. Identify a Better Address for Payee and Contact Payee:

- Review Other In-House Records for Address Updates.
- Use Free Internet Sources (i.e. anywho.com, free-people-search-engines.com, switchboard.com).
- If practical, use government or commercial database searches (i.e., credit bureaus, Social Security Administration Death Index, etc.) or other services designed to locate the customer/owner or next of kin.

33

**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/RECORD REVIEW**



3. Consider whether the property **exempt** from reporting.

- Business to Business Exemption (**tricky**-generally, for MS09 Credit Memos, some CK13 vendor checks) AZ, IL, IN, IA, KS, MD, MA, MI, NC, NY?-administrative, OH, TN, VA, WI (WY - only for gift certificate merchandise credits)
- Colorado – 2% of property remitted or \$25 exemption
- Florida - \$10 exemption for credit balances, customer overpayments, security deposits and refunds
- Kentucky, Michigan, Ohio – Wages less than \$50
- Gift Certificate / Card Exemptions (**tricky**)

34

**COMPLIANCE BASICS AND BEST PRACTICES:  
THIRD PARTY ADMINISTRATORS**



**Third Party Administrators (TPAs) and the Unclaimed Property Obligations:**

- **Types** of outsourced disbursements that can create reportable unclaimed property are:
  - Payroll
  - Self-insurance payments
  - Rebate payments
  - Shareholder or bondholder payments (dividends/interest)
  - Other disbursements
- **Liability:** Most state unclaimed property administrators believe that as the obligation to pay was created by the client business, the client business is responsible for unclaimed property compliance.
- **TPA Assumes Unclaimed Property By Contract:** Even if a client business and the TPA have a contract that requires the TPA to comply with the state unclaimed property laws by performing timely and accurate due diligence and reporting, the client business could be penalized by the state if the TPA did not perform or did not accurately and timely comply.

35

**COMPLIANCE BASICS AND BEST PRACTICES:  
THIRD PARTY ADMINISTRATORS (CONTD.)**



**To Minimize Liability for escheatable items held by TPAs:**

- Work with your legal advisor to add accountability measures into TPA contracts.
- Require TPA to provide a listing of items that are escheatable on the next state reporting deadlines.
- Require the TPA to provide copies of state reports and/or due diligence letters.
- Add escheatment process review to the list of items for which the client business may audit a TPA.
- Insert an indemnification clause into the TPA contract to cause the TPA to reimburse the client business for any loss suffered if the TPA fails to perform as required by state unclaimed property laws.
- Make escheatment process inquiries a part of any requests for proposal (RFPs) for TPA service

36


**COMPLIANCE BASICS AND SUGGESTED PRACTICES:** UPRR  
**A HOLDER'S OBLIGATIONS/RECORD REVIEW**

1. Review research outstanding items on a regular basis (60 - 90 days) for accounting errors, familiar payee names, offsets, or exemptions. Set a materiality limit.
2. Review supplemental information that may lead to the address of item owner
3. Establish contact with the owner through correspondence and telephone calls. Implement owner location measures as appropriate.
4. **Retain documentation (including journal entries, etc.) of reversals due to research or contact.**
5. Maintain written procedures for review and compliance. Make them a part of your company's policy or manual.
6. Assign one person to be responsible for escheat compliance, and insert this in their job description to insure continuity.

37

**COMPLIANCE BASICS AND SUGGESTED PRACTICES:** UPRR  
**A HOLDER'S OBLIGATIONS/DUE DILIGENCE**

- Methods - First Class Mail, Certified Mail or Publication
- Letter Content
- Timing - 60 to 120 days? 6 months?
- Limitations/Exceptions - DE letter requirement only for securities, PA no letter requirement
- Due Diligence Minimums
- Special Requirements (i.e., OH-return envelope)
- Allowable Deductions



38

**COMPLIANCE BASICS AND BEST PRACTICES:** UPRR  
**A HOLDER'S OBLIGATIONS/DUE DILIGENCE**

1. Methods:
  - a. Generally - A letter to the owner at the last known address in the records of the holder
  - b. Delaware and New York require publication in newspapers for certain industries and under certain conditions
2. Letter Content:
  - a. Generally -
    1. 1995 Uniform Act (Section 7e):
      - a. Must state that the holder is in possession of the property subject to the unclaimed property law
      - b. Must state that the claim of the owner is not barred by the statute of limitations
      - c. That the value of the property is greater than \$50.

39

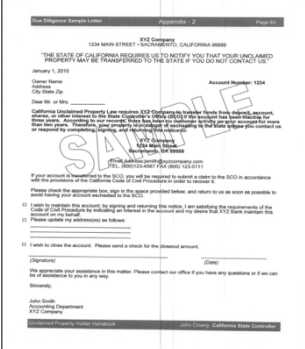
**COMPLIANCE BASICS AND BEST PRACTICES:** UPRR  
**A HOLDER'S OBLIGATIONS/DUE DILIGENCE**

2. Letter Content (continued):
  - b. California - For accounts valued at over \$50, notice must be sent not more than 6 to 12 months prior to reporting deadline and the following information must be included in the notice and must be in bold type or type 2 points larger than the rest of the notice:
    1. the time when the property will escheat to state and effect of a escheat; and
    2. statement that since the date of last activity there has been no customer, client, payee activity; and
    3. identification of the deposit, account, shares, etc. by number or identifier; and
    4. statement that the item in "in danger" of escheatment to the state. Also, a form for confirming the owner's current address must be included for response.

**Plus, California requires specific language to be printed on the top of the letter.**

40

**COMPLIANCE BASICS AND BEST PRACTICES:** UPRR  
**A HOLDER'S OBLIGATIONS/DUE DILIGENCE**



[http://www.sco.ca.gov/Files-UPD/guide\\_rptg\\_holderhandbook.pdf](http://www.sco.ca.gov/Files-UPD/guide_rptg_holderhandbook.pdf)  
 pg 80

41

**COMPLIANCE BASICS AND BEST PRACTICES:** UPRR  
**A HOLDER'S OBLIGATIONS/DUE DILIGENCE**

2. Letter Content (continued):
  - c. Important inclusions -
    1. A statement that the property will be delivered to the state if no action is taken.
    2. A statement that the state is the custodian and the owner does not lose his/her rights to the property.
    3. **A date by which the owner must respond and/or a direct request for the owner to respond.**
    4. Instructions for responding (i.e., how to contact the holder, the methods for responding and/or receiving the property, how to effect an address update, etc.).

42

### COMPLIANCE BASICS AND BEST PRACTICES: A HOLDER'S OBLIGATIONS/DUE DILIGENCE



#### 3. Timing:

- a. **Generally** – Not more than 120 days nor less than 60 days prior to the reporting deadline. (1995 Uniform Act, Section 7(e)); AR, DC, FL, GA, IL, IN, KS, KY, LA, ME, MT, NE, NV, NH, NJ, NM, NC, TN, UT, VT, WV, WI
  - b. Within 120 days prior to filing report: AK, CO, ID, MN, ND, OK, RI, SC, VI, WY
  - c. At least 30 days prior to filing report: OH
  - d. At least 60 days prior to filing report: AL, MA, VA
  - e. At least 90 days prior to filing report: OR
  - f. At least 120 days prior to filing report: AZ
  - g. Within 30 to 120 days prior to filing the report: MD
  - h. Within 60 to 365 days prior to filing the report: MI
  - i. Within 90 days for the first attempt and 2<sup>nd</sup> attempt within 60 days if over \$1000: NY\* (certified mailing required on second attempt)
  - j. Within 180 days prior to filing report: HI, CT\*
  - k. Within 30 to 365 days prior to filing report: MO
  - l. Within 180 to 365 days prior to filing report: CA
  - m. Not required but recommended: DE\*, PA
  - n. Required but no timing specified: IA\*, MS, SD, WA
- \*Please see state statute for more details. Time frames for due diligence may change as new legislation is adopted. Note that DE does require due diligence mailings for securities.

43

### COMPLIANCE BASICS AND BEST PRACTICES: A HOLDER'S OBLIGATIONS/DUE DILIGENCE



#### 4. Form of Delivery:

- a. **Generally** – No specification in the 1995 Uniform Act, Section 7(e), but most states require first class mail: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, IL, ID, IN, KS, KY, LA, ME, MD, MA, MI, MN, MO, MS, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, OK, RI, SC, SD, TN, UT, VT, VI, VA, WA, WV, WI, WY
- b. **Notable exceptions:**
  - Iowa - Requires Banks and Financial Institutions only to send due diligence letters by certified mail. The costs of the certified mailing may be deducted from the account by the Bank or Financial Institution
  - New Jersey – For items that are greater than \$50, the letter must be sent certified mail, return receipt requested.
  - New York - First notice by first class mail within 90 days prior to reporting deadline; second notice by certified mail, return receipt for \$1000+ (cost of certified mail deductible from property reported.)
  - Ohio - Certified mail requirement for items \$1000 & greater; costs deductible up to \$20 maximum

44

### COMPLIANCE BASICS AND BEST PRACTICES: A HOLDER'S OBLIGATIONS/DUE



#### 5. Limitations/Exceptions:

- a. **DUE DILIGENCE MINIMUMS - By Item Amount/Value:**
  - \$10 - IL, \$25 - NE
  - \$50 - AR, AZ, CA, CO, DC, FL, GA, HI, ID, IA, IN, LA, ME, MI, MO, MT, NC, ND, NH, NJ, NM, NV, OH, OK, RI, SC, SD, TN, UT, VI, VT, WI, WV, WY
  - \$75 - WA, \$100 - AK, KS, KY, MA, MD, MN, OR, VA
  - \$250 - TX
  - No minimum - AL, CT, MS, NY, PR
- b. **No Statutory Letter Due Diligence Requirement** - PA
- c. **Self-Addressed Stamped Envelope Requirement** - OH
- d. **Publication requirement**
  1. Delaware - Banks, courts, and life insurance (must publish in newspapers in 3 specified counties)
  2. New York - Banking organizations, insurance companies, and utilities must publish in newspaper in city of residence of owner. Due Diligence mailing still required!
  3. Puerto Rico has an advertising requirement.

45

### COMPLIANCE BASICS AND BEST PRACTICES: A HOLDER'S OBLIGATIONS/DUE DILIGENCE



#### 6. Allowable Deductions:

- CA - Banks and financial organizations may impose a service charge for the notice in an amount not to exceed \$2.00 on items over \$50.
- DE - Expense incurred for advertisement is deducted from remittance due and with securities mailings, the cost of postage and reasonable admin costs, up to \$5 per mailing
- IL - May deduct first class mailing costs (postage, stationary, and envelopes)
- IA - May deduct cost of mailing from amount owed
- NY - May deduct cost of certified mail and return receipt as a service charge. Also, may deduct costs of publication on a pro rata basis (using a specified formula.)
- OH - Deductions are allowed up to \$20.00 for certified mail
- OK - May deduct only the cost of postage.
- PR - May deduct expenses incurred in advertising
- TX - May charge the cost of postage as a service charge against the property.

46

### COMPLIANCE BASICS AND BEST PRACTICES: A HOLDER'S OBLIGATIONS/DUE DILIGENCE



**REPORT COVER SHEET ATTESTATIONS:** Many states now require holders to file a cover sheet with their report that includes an attestation indicating that they have performed due diligence in accordance with the state's unclaimed property law. Examples:

**North Dakota:** "I, being duly sworn on oath, depose and say that I am the holder or authorized to make this report for the holder.....**and that the holder sent written notice to the owner of the presumed property as required by ...**"

**Texas:** "The foregoing report contains a full and complete list of all property held by the undersigned.....**the existence and location of the listed owners are unknown; and the listed owners have not asserted an act of ownership with respect to the reported property.**"

**West Virginia:** "I hereby declare, under penalty of perjury, .....In accordance with WV Code Section 36-8-7(e), **written notice has been sent to the apparent owner of property over \$50.00.**"

47

### COMPLIANCE BASICS AND BEST PRACTICES: A HOLDER'S OBLIGATIONS/DUE DILIGENCE




Why is statutory due diligence important for holders?

- Uphold Reputation and Maintain Accounts: One more chance to reconnect with owner or heirs and keep the account active
- Avoid DD penalties: Some states have these (ex. Illinois regs)
- Secure Indemnification under Unclaimed Property Statutes:
  - California: Azure v. I-Flow (CA Sup Ct. 7-2009) then:
  - California UP Law Change (CA SB 1291 enacted 10-11-2009 which amended Section 1560 (a) of the UP Law): If have an address in holder's records not known to be inaccurate and make reasonable efforts to notify owner by mail or electronically (if have owner's prior consent to be so notified) and then remit property to CA, the holder is relieved of liability up to the value of the property remitted.

48






**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/REPORTING & REMITTING**

**Important Considerations:**

1. Type of Report
2. Report Format
3. Negative Reporting
4. Report Aggregate Limits
5. Form of Remittance
6. Report & Remittance Delivery
7. Filing Extensions

49



**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/REPORTING & REMITTING**

**The Report**

1. Type - Paper, Diskette, CD, or Internet
  - a. Most states require electronic (diskette or CD) reporting if there are more than 10 items to report. Some states no longer accept paper reports at all.
  - b. Note that some states that require electronic reporting also require that a hard copy of the report accompany the electronic report.

50




**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/REPORTING & REMITTING**

Type - Internet! Some states have "on-line" reporting through their websites but it varies from an upload of your report to data entry of the report /upload, etc.:

- **Florida (need FL Holder # and to register to file this way):** <https://www.fltreasurehunt.org/jst/online-reporting/unclaimedPropertyTab/ReportUnclaimedPropertyTab.jsf>
- **Idaho (must create a log-in):** <https://sto.idaho.gov/UnclaimedProperty/Holder/Login.aspx>
- **Maine: Via Email to:** [up.holderinquiry@maine.gov](mailto:up.holderinquiry@maine.gov)
- **Maryland (Need MD Holder and FEIN # and to register first):** [https://interactive.marylandtaxes.com/business/Compliance/UnclaimedPR/User/luu\\_Home\\_f.asp](https://interactive.marylandtaxes.com/business/Compliance/UnclaimedPR/User/luu_Home_f.asp)
- **Oklahoma (Need to register first):** [https://ostdnet.ost.state.ok.us/Hldr\\_UserAcct.asp?NewUser=True](https://ostdnet.ost.state.ok.us/Hldr_UserAcct.asp?NewUser=True)
- **Texas (Need to register first):** <https://mycpa.cpa.state.tx.us/securitymp1portal/displayCreateAccountPart1.do> or <https://txcpa.cpa.state.tx.us/unclpropholder/welcomeAction.do?action=Holder> (Also has downloadable software to create report to directly upload.)
- **Virginia: (Need to register first and can upload your report):** <https://www.trsvirginia.gov/HoldersUpload/login.asp>

51




**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/REPORTING & REMITTING**

2. Format -
  - a. All states accept the NAUPA II Standard Electronic Reporting Format: <http://www.unclaimed.org/uploads/resources/104/naupa-ii-standard-revised-12-08-2010.pdf>  
Standard relationship and property type codes listed as well.
  - b. Report Formatting - State Endorsed On-line Cloud Formatting Software: - UPEXchange (Cloud Based) <http://www.unclaimed.org/reporting/>  
Other Formatting Software: <http://wagers.net/hrs/index.php>
  - c. Mineral Interest Property Type Codes:
 

MI01 - Net Revenues/Interest	MI06 - Bonuses
MI02 - Royalties	MI07 - Delay Rentals
MI03 - Overriding Royalties	MI08 - Shut-In Royalties
MI04 - Production Payments	MI09 - Minimum Royalties
MI05 - Working/Royalty Interest	


52



**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/REPORTING & REMITTING**

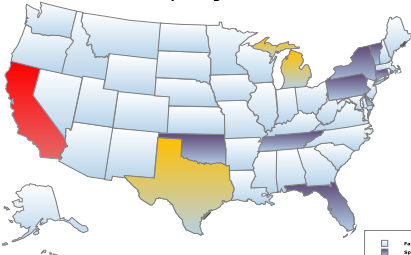
3. **Negative Reporting -**
  - Required by 30 states: AL, AZ, CT, DC, FL, ID, IL, IN, KY, LA, MD, MA, MI, MN, MS, ND, NJ, NM, NY, NV, OH, PR, RI, SC, TN, VA, VI, WA, WV (ME - only companies headquartered in ME).
  - Some states permit both regular and negative reporting on-line:
    - **Indiana/Negative Reports:** <https://indianaunclaimed.gov/apps/ag/ucp/reportingHolder.html>
    - **Ohio/Negative Reports:** <http://www.business.ohio.gov/>
4. **Aggregate limits** - Most states have a limit under which the property does NOT have to be reported with name and address detail. These items are lumped together by property type and reported as an aggregate lump sum.
  - \$25, \$50, & \$100 are usual limits but this varies by state.
  - Most states do not permit reporting of dividends or mineral interests in the aggregate.

53



**Reporting Date Breakdown:  
Non-Insurance Corporations**

**Reporting Deadlines**



**LEGEND**  
 Feb - Aug 15 - Dec 15  
 Mar - Dec 1 - Mar 1  
 Report No Property Due 1 - Updated with Property Due 1 - June 15  
 July 1

54

**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/REPORTING & REMITTING**

And then there is California.....Taylor v. Westly (federal court decisions in 2007 and CA SB 86 of 2007)

The Dual Reporting Scheme:

1. All Entities Except Life Insurance
  - a. Notice Report Due – before 11/1
  - b. Remittance and Report Due – between 6/1 & 6/15
  - c. Claims paid between Notice and Remittance Report
2. Life Insurance Companies
  - a. Notice Report Due – before 5/1
  - b. Remittance and Report Due – between 12/1 & 12/15
  - c. Claims paid between Notice and Remittance Report

55

**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/REPORTING & REMITTING**

5. The Remittance – Form

a. Cash - (uncashed vendor, royalty, bonus, dividend and payroll checks, credits, refunds) Usually by check written to the appropriate state official or agency. Examples:

CO - Colorado Department of Treasury

NM – New Mexico Taxation and Revenue Department, Unclaimed Property

OK – Oklahoma State Treasurer, Unclaimed Property Division

TX - Texas Comptroller of Public Accounts – Unclaimed Property

VA - Treasurer of Virginia

56

**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/REPORTING & REMITTING**

Exception: Some states do not permit checks to be used for the remittance if the total amount is greater than a specified sum. Examples:

1. **CA** requires that if the sum (including interest penalty amounts) is greater than **\$20,000** it must be delivered by electronic funds transfer in the specific manner designated in CCP Section 1532 See [www.sco.ca.gov](http://www.sco.ca.gov)
2. **MA** requires the if the sum is **\$10,000** or greater it must be delivered by electronic funds transfer. To do so, the holder must complete and file (annually) with the MA Abandoned Property Division an "Authorization to Agreement for EFT" and it must be approved by the MA APD.
3. **NJ** requires Fed wire transfers for remittances of **\$50,000** or more.
4. **TX** law requires holders who paid **\$100,000** or more during the previous state fiscal year to make subsequent payments by electronic fund transfer. The preferred method is through TEXNET.

**COMPLIANCE BASICS AND BEST PRACTICES:  
A HOLDER'S OBLIGATIONS/REPORTING & REMITTING**

5. The Remittance -

b. Form – Certificate or Confirmation (stock, mutual funds, book entry shares, etc.) While some states want shares to be liquidated prior to remittance, most want certificated or book entry confirmation shares registered in the name of the appropriate state official or agency or nominee and want them delivered to a specific address(es).

6. Report and Remittance Delivery -

- a. Timing - on or before the deadline specified.  
(Fall – By Nov. 1<sup>st</sup>, Spring – varies by state, Summer – July 1<sup>st</sup> MI & TX)
- b. Verifiable delivery is very important.

7. Filing Extensions -

- a. Notification of state administrator with a good reason  
Letter? Form? On-line (Ohio!)
- b. Estimated, timely payment required? (i.e. NJ, TX)

58

**COMPLIANCE BASICS AND BEST PRACTICES:  
REPORTING RED FLAGS**

Tips - Preventing Reporting Red Flags by:

- Making sure your reports/cover sheets are completed and signed (and notarized if required)
- Making sure the report reflects the same dollar amount that is reflected by your remittance
- Filing negative reports if required (one exception)
- Requesting filing extensions as soon as possible prior to the filing deadline
- Using the state prescribed cover sheets and/or holder numbers when filing reports
- Filing all property types: securities and general ledger-related and filing them accurately (not disproportionately)

59

**COMPLIANCE BASICS AND BEST PRACTICES:  
RECORD RETENTION**

1. Retention Time Period

- 1995 Uniform Act (Section 21) – a holder required to file a report must maintain the records containing the information required to be included in the report for 10 years after the report is filed. (Drafter's notes to the Act state that records are to be kept for 10 year from the date the property "was first reportable". )
- CA Admin Code Title 2, Subchapter 8, Article 1, Section 1175 – Holders must maintain records "pertaining to" property reported for 7 years from the date it is or should have been reported.
- TX Statutes Title 6, Section 74.103 - Holders must maintain records for 10 years after the property was reportable.

60

## COMPLIANCE BASICS AND BEST PRACTICES: RECORD RETENTION

### 2. Which Records?

- 1995 Uniform Act (Section 21) – Silent on this issue.
- CA - Holders must maintain records “pertaining to” property reported or that should have been reported
- TX – Statute is specific that records maintained must include:
  - “(1) the name, the social security number, if known, and the last known address of each person who, from the records of the holder of the property, appears to be the owner of the property;
  - (2) a brief description of the property, including the identification number, if any; and
  - (3) the balance of each account, if appropriate”

61

## COMPLIANCE BASICS AND BEST PRACTICES: RECORD RETENTION

### Practical Considerations: Audit Protection

- Verification of reversals
  - accounting and data errors
  - offsets
- Evidence of reporting and timely reporting
- Evidence of due diligence including certified mailing if it was required.

(Note: OH law specifically requires retention of proof of certified mailing, or proof of valid exemption of certified mailing, for at least 5 years from the report filing date or completion of a state compliance audit, whichever is earlier.)

62

## COMPLIANCE BASICS AND BEST PRACTICES: MANAGING THE RISK

### Evaluating Current Compliance and Insuring Future Compliance:

1. Create a Compliance Team – A/P, A/R, Payroll, DOA leads, legal counsel, etc.
2. Consider Organizational Structure and Disbursement Accounts
3. Review Merger and Acquisition History
4. Identify Areas of Potential Non-Compliance and Possible Liability
5. Consider Methods for Remediation and Resolution of Liability (owner location, error research, VDAs, etc. )
6. Enhance Policies and Procedures to Prevent Future Liability

63

## COMPLIANCE BASICS AND BEST PRACTICES: MANAGING THE RISK

### Your Policies and Procedures Should Include:

- Periodic Generation of Reports of Outstanding Items
- Research Methods to Identify Potentially Unclaimed Items
- A Description of the Measures for Resolving Items
  - Notification of Owners/Vendors re Outstanding Items (Sample Letter in Procedures?)
- The Procedure for Reporting & Remitting property to the Appropriate State(s) and for Recording same
- Record Maintenance Standards and Steps/Procedures
- **A Method for Maintaining and Updating Compliance Requirements**
- A Time Table for All of the Above
- Appropriate Separation of Tasks and Task Assignments

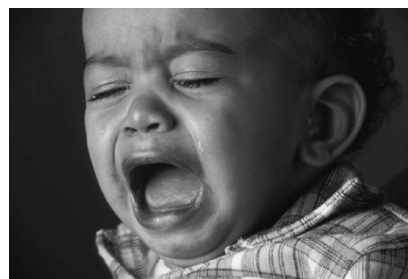
64

## COMPLIANCE BASICS AND BEST PRACTICES: MANAGING THE RISK

- Management Buy-In
- Task Assignment: Centralized or Decentralized
  - Some benefits of centralization
    - Uniformity of procedures
    - Submitting consolidated returns
    - One voice to state UP offices
    - Greater efficiency in customer research and due diligence
  - Challenges of a centralized process:
    - Ensuring that you have full support of the various internal business partners
    - Keeping track of new product offerings
    - Tracking regulatory changes and reporting requirements for a variety of product/item types

65

## AUDITS



66

**AUDIT ISSUES AND WHAT TO DO:  
AUDIT TRIGGERS**



- **Location / Incorporation:** Holder has presence in or is incorporated in state
- **Size / Revenue:** Holder is big enough to warrant scrutiny
- **Publicity / Holder Name Recognition**
- **Merger/Acquisition/Reorganization Activity**
- **Industry:** States target particular industries, i.e., Oil & Gas, Life Insurance
- **Inadequate or Incomplete Reporting:** Amounts reported appear too small for size of the holder, unlawful deductions, large aggregates, no reach back on initial reporting

67

**AUDIT ISSUES AND WHAT TO DO:  
MORE AUDIT TRIGGERS**



- Gaps in reporting history
- Inadequate due diligence (e.g., high rate of claims from state)
- Actions of other state agencies
- A specific period of time has passed since a previous audit
- **High volume of financial transactions** (e.g., Retailers or Distributors)
- **Unique property types** (e.g., IRAs, Gift Cards)
- Reporting some property types but not all that are common to your industry

68

**AUDIT ISSUES AND WHAT TO DO:  
THE CHRONOLOGY OF AN AUDIT**



1. Notice
2. Schedule
3. Document Requests
4. Sampling and Extrapolation
5. Initial Findings Report
6. Negotiation
7. Final Report
8. Appeal?

69

**AUDIT ISSUES AND WHAT TO DO:  
THE AUDIT NOTICE: CONSIDERATIONS**



Considerations if your company receives an audit notice:

1. Which entities are covered in the audit?
2. Who is performing the audit?
  - State or third party auditors?
  - Which states are involved?
  - State of incorporation?
3. **What is the time period covered ("scope") of the audit? REACH BACK PERIOD?**
4. What audit procedures will be used? (What extrapolation procedures will be used when records are incomplete or nonexistent?)

70

**AUDIT ISSUES AND WHAT TO DO:  
THE AUDIT NOTICE: MORE CONSIDERATIONS**



5. Will the state(s) or their agent sign a confidentiality and scope limitation agreement?
6. Consider your company's prior compliance history
  - Prior Audits / VDAs
  - Corporate Activity: Mergers, Acquisitions, etc.
  - Preemptions / Exemptions
7. Should legal counsel and outside expertise be obtained to handle audit issues in a privileged context?

71

**AUDIT ISSUES AND WHAT TO DO:  
THE AUDIT NOTICE: FOOD FOR THOUGHT**



"The initial scope of a Delaware audit is... massive...Due to the aggressive nature of the contingent fee auditor and the State, it is necessary to retain outside counsel and outside advisors to assist. To date, our company has spent in excess of \$800,000 in fees to defend the audit and there is still substantial work left to do."

72

**AUDIT ISSUES AND WHAT TO DO:  
RESPONDING TO THE NOTICE: AUDIT PREP**

1. Assembling the Internal Team:

- Management Rep
- A/P
- A/R
- Internal IT
- Tax/Compliance
- Treasury?
- Legal (Internal and/or External)
- Audit Defense Experts?



73

**AUDIT ISSUES AND WHAT TO DO:  
RESPONDING TO THE NOTICE: AUDIT PREP**

2. Next Step – Requests to the Auditor

- Ask for Hiring Letter From State
  - Overlap?
- Provide Confidentiality and Non-Disclosure Agreement
  - For multi-state audits - limit state “creep” by adding language to the agreement that restricts adding additional states to the audit
- Review state rules/guidelines for auditor conduct
  - Ex. California: [http://www.sco.ca.gov/Files-UPD/guide\\_upd\\_thirdpartyaudit.pdf](http://www.sco.ca.gov/Files-UPD/guide_upd_thirdpartyaudit.pdf)



74

**AUDIT ISSUES AND WHAT TO DO:  
RESPONDING TO THE NOTICE: AUDIT PREP**

3. Pre-Audit Internal Review

- Review Compliance History
- Review Pertinent Policies and Procedures
- Understand Transaction Flow
- Document Internal Controls
- Research Record Availability
- Estimate Ball Park Liability
- Identify Opportunities for Remediation
- Compile Supporting Documentation

4. Implement Remediation Efforts



75

**AUDIT ISSUES AND WHAT TO DO:  
DURING THE AUDIT: IN THE BEGINNING**

- Establish the point/contact persons with the state and/or auditor and your company/your audit advocate
- Arrange for appropriate work space for auditors
- Request the audit schedule and timeline including the document production schedule.
- Ask for a “ball park” date for the auditors to provide their preliminary findings/analysis.



76

**AUDIT ISSUES AND WHAT TO DO:  
DURING THE AUDIT: DOCUMENT REQUESTS**

- Document Request Lists (DLRs)
  - Broad and Burdensome:
  - Usually include:
    - All Disbursement Accounts
    - Uncashed Check information
    - Stops and Voids
    - UP Compliance Information
    - Bank Recs
    - Accounts Receivable details
    - Bad Debt Write-offs
    - Suspense Account Details



77

**AUDIT ISSUES AND WHAT TO DO:  
DURING THE AUDIT: ISSUES AND TIPS (1)**

Issue: Holder forced to rebut auditor presumptions and to prove negatives

TIP:

- Stay in communication with the auditors during the audit process.
  - This may permit you to provide additional info to rebut initial auditor assumptions and prevent liability.
- Remember: No statute of limitations.



78

**AUDIT ISSUES AND WHAT TO DO:  
DURING THE AUDIT: ISSUES AND TIPS (2)**

Issue: Auditors expect expedient replies to requests, even when the information requested may be burdensome to retrieve and compile

**TIP:**

- Avoid unnecessary delay – this sets the stage for penalties and interest
- Anticipate requests and be ready...however, limit the info provided to auditor to what is relevant to the audit period and the states participating in the audit.



79

**AUDIT ISSUES AND WHAT TO DO:  
DURING THE AUDIT: ISSUES AND TIPS (3)**

Issue: Auditors seem to ask for information more than once or don't seem to factor in particular information provided to them.

**TIP:**

- Document delivery of information provided to auditors
- Record and copy all records that the auditors maintain for work papers
- Request interim meetings to discuss progress



80

**AUDIT ISSUES AND WHAT TO DO:  
DURING THE AUDIT: ISSUES AND TIPS (4)**

Issue: We don't have records for the entire scope period of the audit.

**TIP:**

- Get agreement with auditor about any sampling technique and extrapolation procedure to be used, if applicable (your own statistician?)
- Compare your business operations today (or in the test period being reviewed by the auditor) to that within the audit period (or extrapolation period):
  - Have the holder's lines of business changed over time?
  - Have the number of holder locations changed over time?
  - Have there been any other changes that would impact the number of disbursements or credits issued?



81

**AUDIT ISSUES AND WHAT TO DO:  
DURING THE AUDIT: ISSUES AND TIPS (5)**

Issue: The depth and scope of the audit is much greater than we could have anticipated. It is overwhelming.

"The standard of proof that Delaware has required (the holder) to provide is akin to the criminal standard of 'beyond a reasonable doubt' This is a much higher than the preponderance of the evidence standards that would apply to any litigated dispute."

**TIP:**

- Consider accessing specialized unclaimed property audit defense advocates / accountants / consultants. These are not tax audits and UP is a small world. You need someone with the specialized knowledge of the auditor and targeted techniques.



82

**AUDIT ISSUES AND WHAT TO DO:  
AFTER THE AUDIT: PRELIMINARY FINDINGS (1)**

Preliminary Findings / Post - Assessment Conferences / Letters

- Restrict disbursements to states until release is signed
- Review scope of items examined
  - If records provided for one type of property, make sure it is included in the release
- Go over factual allegations / legal conclusions
  - If your team has facts or legal authority to contradict or modify the info or findings in the auditor's report, provide this information to the auditor and request the appropriate modifications.
  - Document that this information was provided to the auditor.
  - Be prepared to disagree with the auditor, if necessary, and move the discussion of the open audit issues to the auditor's supervisor or the state unclaimed property administrator.
- States and contract auditors prefer agreed audits to litigation.



83

**AUDIT ISSUES AND WHAT TO DO:  
AFTER THE AUDIT: PRELIMINARY FINDINGS (2)**

- Ensure management understands findings / potential ramifications:
  - Who in the holder organization must review and approve the audit findings and any final settlement?
  - What is the holder's liability tolerance?
    - For which issues or exposure levels will the holder seek an appeal?
- If a settlement is reached:
  - Identify in the holder's senior management must sign the agreement
  - Designate the source of funds the business will pay as required in the settlement



84

**AUDIT ISSUES AND WHAT TO DO:  
AFTER THE AUDIT: FINDINGS AND CLOSING LETTER**

Considerations:

- Which of the holder's entities will be bound by any proposed settlement agreement or closing letter?
- Will all states involved provide a release of liability for the audit period?
- What are the holder's obligations going forward?

85

**AUDIT ISSUES AND WHAT TO DO:  
AFTER THE AUDIT: ALTERNATIVES TO SETTLEMENT**

1. Formal Appeals Process
  - Unavailable in most states
  - Not in Model Acts
  - DE recently enacted
2. Informal Appeals Process
  - Approach state officials
  - Negotiation
3. Litigation
  - Discovery downside
  - Can be lengthy and expensive process
  - Examples: Staples Case, Biogen Case

86

**CURRENT TRENDS AND ISSUES**



87

**CURRENT TRENDS AND ISSUE:  
CONTACT STANDARDS THAT TRIGGER DORMANCY**

1. **Trend:** States are "re-thinking" the standards for particular property types:
  - Inactivity v. Lost: Dividend Reinvestment Plans?
  - DE Letter re Deliverable 1099 as proof of activity (May 10, 2012 DE Escheator letter to the Securities Transfer Association)
    - But not all accounts generate 1099's

**Impact on unused Royalty Checks:** Activity is cashing the check or ACH payments so shift from "lost" to "inactivity" is not as significant.

- However, date of last contact is often difficult to find in the O & G industry – can be a very manual process
- Tip: Develop a mechanism to record date of last contact on accounts in suspense (as opposed to just the production date). Using date of last contact v. production date could prevent "over-escheating".
- Idea: If your company has web portals permitting **verifiable** owner access to their accounts, this could be used to track "date of last contact"

88

**CURRENT TRENDS AND ISSUE:  
STATE VOLUNTARY DISCLOSURE PROGRAMS**

2. **Trend:** States that had no or informal voluntary disclosure programs are creating formal programs and states that have had formal programs are modifying them.

- Examples: Minnesota and West Virginia programs
- New VDA programs require more review and formal work papers
- Some have eliminated favorable reachback periods in VDAs (i.e., Florida)
- No more "amnesty" programs

**Impact on Oil and Gas Industry:** As there is a movement by states to perform more third party, multi-state audits of this industry, undergoing a VDA process, particularly with the state of incorporation of the company, may help to reduce liability, avoid penalties and interest, and minimize the risk of audit. However, all factors, including the availability of records and compliance history, should be considered in determining whether or not to undergo state VDA processes.

89

**CURRENT TRENDS AND ISSUE:  
THE NEW AND TIME LIMITED DE VDA PROGRAM**

3. **Trend:** In Summer, 2012 The DE Governor and Legislature passed a law creating a new VDA program in the DE Secretary of State's office. The parameters are:

- Shorter look back period than in DE audit:
  - To 1996 transaction year if commit to VDA with VDA-1 form submission by June 30, 2013
  - To 1996 transaction year if commit to VDA with VDA-1 form submission after June 30, 2013 but prior to June 30, 2014
- Businesses not currently under or notified of audit or that have property types not covered in a prior DE audit or VDA are eligible
- Abbreviated process and steps anticipate to take 9 months to 1 year.
- If process successful in reaching DE SOS acceptance, indemnification and relief from audit for the scope period and years prior for property types covered in the audit.
- Program sunsets June 30, 2015

**Impact on the Oil and Gas Industry:** May be an important tool to manage risk particularly for companies incorporated in Delaware or that may have a significant risk there.

90

**CURRENT TRENDS AND ISSUE:  
FOREIGN PROPERTY**



**Trend:** More businesses have foreign transactions so questions arise more and more about the unclaimed property implications.

- **1981 and 1995 Uniform Unclaimed Property Acts:**
  - If all the criteria for determining abandonment is met and the owner's address is in a foreign country, the law of the state of the holder's domicile/incorporation controls.
  - The unclaimed property law does not apply to property, "held, due and owing in a foreign country and arising out of a foreign transaction."
  - In their notes, the drafters of this law state that, "wholly foreign transactions are excluded from the coverage of the Act."
    - **"Wholly" means:** Both the owner and holder must be **foreign country nationals.**

91

**CURRENT TRENDS AND ISSUE:  
FOREIGN TRANSACTIONS: WHAT IS MEANS?**



**Owner Address in Foreign Country?**

- owner's last known address is in a foreign country and,
- holder is incorporated or has its principal place of business in a state,
- Result: the state of the holder's incorporation (or principal place of business) generally takes custody of property presumed abandoned/unclaimed.

**Owner Address in United States?**

- owner's address is in the United States and,
- the holder is a foreign country business association
- Result: the state of the last known address of the owner has the right to take custody of the property presumed abandoned/unclaimed. For a state to assert its claim in this situation, the foreign country business association must be amenable to service of process in one of the states of the United States.

**Holder is a Foreign Business?**

- If the holder is a foreign country business association, the laws of the country and locality under which the business is located or organized would apply.
- Example: note that Alberta, Canada has an unclaimed property statute much like those in the United States. A dormant, uncashed check issued by a corporation located in Alberta and organized under Alberta law, to an owner with an Alberta address would most likely be governed by the Alberta unclaimed property law

92

**CURRENT TRENDS AND ISSUE:  
RECENTLY ENACTED LEGISLATION**



Delaware SB 258 and HB 2 – creates a new Voluntary Disclosure Program (VDA) under the DE Secretary of State that includes shorter "look back" periods to 1996 or 1993. Sunsets 6/30/2015.

Idaho SB 1365 – exempts the unclaimed property audit methodology and selection criteria from disclosure under the state's Public Records Act

North Carolina HB 462 – prohibits Treasurer from contracting for UP auditors to perform audits on a contingency fee basis except for certain audits of life insurance companies.

North Carolina SB 810 – decreases record retention period from 10 years to 5 years after the holder files a report.

South Dakota HB 1270 – generally reduces most dormancy periods from 5 to 3 years.

93

**CURRENT TRENDS AND ISSUE:  
RECENTLY ENACTED LI DMF LEGISLATION (1)**



Alabama HB 126 - requires insurers to perform the death master file comparisons every 3 years plus other provisions including remitting unclaimed benefits/retained assets with interest to the State Treasurer. Effective 1/1/14

Kentucky HB 135 - requires life insurers to perform death master file comparisons quarterly on in-force policies & retained asset accounts and if benefits due, locate & notify beneficiaries. Effective 1/1/13

Maryland SB 77 – life insurers must perform death master file comparisons semi-annually on in-force policies & retained asset accounts and if benefits due, locate & notify beneficiaries. Effective 10/1/13

**CURRENT TRENDS AND ISSUE:  
RECENTLY ENACTED LI DMF LEGISLATION (2)**



Montana SB 34 - requires that at least semiannually, a life insurer shall crosscheck its insureds' in-force life insurance policies, annuity contracts and retained-asset accounts against a death master file & if benefits due, locate and notify beneficiaries. Effective 1/1/2014

New Mexico SB 312 – requires that at least twice a year, a life insurer shall crosscheck its insureds' in-force life insurance policies and retained-asset accounts against a death master file & if benefits due, locate and notify beneficiaries. Effective 7/1/2013

New York AB 9845 – requires life insurers to perform quarterly death master file matches against in-force life insurance policies and retained asset accounts and to locate and notify beneficiaries. Requires the Superintendent of Insurance to create a "Lost Policy Finder" program.

**CURRENT TRENDS AND ISSUE:  
RECENTLY ENACTED LEGISLATION**



Michigan HB 4563 – creates an exemption from unclaimed property requirements for credit balances, overpayments, deposits, refunds, discounts, rebates, credit memos or unidentified remittances created on or after April 1, 2009 and issued, held, due or owing in any transactions between 2 or more associations. Exemption does not apply to outstanding checks.

Texas H.B. 257 & S.B. 1A makes numerous changes: effective 1/1/2013, (i) annual report is due July 1, and (ii) owner notification mailings must be sent by May 1. For 2012 reports, dormancy period for utility deposits generally reduced to 1 year; checking/savings accounts, matured CDs and money orders to 3 years.



**CURRENT TRENDS AND ISSUE:  
SIGNIFICANT PENDING LEGISLATION**



California AB 212 - requires due diligence be performed on all items no matter what the value (current threshold: \$50) and will no longer permit items to be reported in the aggregate. The \$2 per item deduction now permitted for sending the notice would extend to all items valued at greater than \$2.

Colorado HB 1102 - creates an exemption from unclaimed property requirements for gift cards issued by businesses with 100 or less employees.

Indiana SB 172 - specifies that the failure of a bank account owner to make a deposit/withdrawal doesn't by itself render the account inactive.

North Dakota SB 2058 - prohibits the UP administrator from contracting for audits in ND unless there is reasonable cause to believe that the business has failed to comply with the ND UP statute.

**CURRENT TRENDS AND ISSUE:  
SIGNIFICANT PENDING LEGISLATION**



Massachusetts HB 20 & Montana SB 34 - require life insurers to perform death master file comparisons semi-annually on in-force policies, annuity contracts, and retained asset accounts & if benefits due, locate and notify beneficiaries.

North Dakota HB 1171 - requires life insurers to perform death master file comparisons within 90 days that the bill is enacted and then, semiannually on in-force policies, annuity contracts, and retained asset accounts & if benefits due, locate and notify beneficiaries.

Vermont HB 95 - requires life insurers to perform death master file comparisons semi-annually on in-force policies, annuity contracts, and retained asset accounts and if benefits due, locate & notify beneficiaries.

**RESOURCES**



1. **Unclaimed Property Professionals Organization (UPPO)**  
[www.uppo.org](http://www.uppo.org) (Holder Seminar: August 14th - 15th, 2013 in Chicago, Illinois)
2. **National Association of Unclaimed Property Administrators (NAUPA)** [www.unclaimed.org](http://www.unclaimed.org)
3. **NAUPA II Standard Reporting Format:**  
<http://www.nast.org/NAUPA/Electronicreportstandard.htm> (click on "new reporting standard")
4. **1995 Uniform Unclaimed Property Act**  
<http://www.uniformlaws.org/shared/docs/unclaimed%20property/uupa95.pdf>

99

**QUESTIONS???**



100

**YOUR PRESENTERS TODAY:**



Karen Anderson, Sr. Vice President  
[kanderson@uprrinc.com](mailto:kanderson@uprrinc.com)  
317-577-9530

David Cary, Vice President (Dallas)  
[dcary@uprrinc.com](mailto:dcary@uprrinc.com)  
214.535.2457

William King, Vice President & Assoc. General Counsel  
[wking@uprrinc.com](mailto:wking@uprrinc.com)  
857-444-6004

101