



MAINE OIL DEALERS ASSOCIATION

TECHNICAL BULLETIN #23

MAINE'S ABANDONED PROPERTY LAW

April 20, 1994

INTRODUCTION

Maine's current escheat statute, 33 M.R.S.A. §§1801 et seq. (the "Act"), is based on the 1981 Uniform Unclaimed Property Act and has been in effect since August 4, 1988. It has remained on the books without significant amendment since.

The purpose of the Act is to give the State the authority to hold unclaimed property and funds while efforts are made to locate the owners or claimants. In addition to relieving the holder of such unclaimed property from "the annoyance, expense and potential liability of an unlimited responsibility", the statute also allows the State to use "the considerable sums of money for the benefit of the State's citizens that would otherwise become windfalls to the holders." 33 M.R.S.A. §1801(2).

The current law replaces Maine's enactment of the Uniform Disposition of Unclaimed Property Act, 33 M.R.S.A. §§1301 et seq., that was first effective January 1, 1979. The former act appears generally to cover many of the same types of property as are included in the currently effective Act. The shift from the older Uniform Act to the 1981 version was occasioned by the desire of many states to more aggressively enforce their escheat laws. Under Section 1871(1) of the currently effective Act, the enforcement and penalty provisions under the predecessor statute will continue to apply to any property that should have been reported, paid or delivered under the prior act.

The 1981 Uniform Act has been adopted in 31 states (including significantly New Hampshire, Vermont, Rhode Island and New Jersey) and attempts to create a consistent nation-wide system for addressing the issue of unclaimed property.

The Act is broken into two subchapters. The first provides essential definitions, addresses multi-state jurisdictional issues and fleshes out the critical concept of "presumed abandonment" in various contexts. The second subchapter sets forth the administrative provisions of the Act, including requirements imposed on businesses to report abandoned property to the state at least annually, to turnover abandoned property to the State, to submit to State examinations and to retain relevant records.

SCOPE

The breadth of the Act is best demonstrated by the two key definitions for intangible and tangible property.

"Intangible property" includes:

A. Money, checks, drafts, deposits, interest, dividends and income;

B. Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets and unidentified remittances;

C. Stocks and other intangible ownership interest in business associations;

D. Money deposited to redeem stocks, bonds, coupons and other securities or to make distributions;

E. Amounts due and payable under the terms of insurance policies;

F. Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental and unemployment insurance or similar benefits; and

G. All other property which does not exist physically but has economic value.

33 M.R.S.A. §1802(9).

"Tangible Personal Property" means all personal property which exists physically and has inherent economic value.

33 M.R.S.A. §1802(14).

It is readily apparent that these definitions are very wide-reaching and are particularly detailed in identifying funds due to customers. As it has traditionally, Maine goes further than the Uniform Act by extending its escheat law to tangible personal property (the Uniform Act only reaches tangibles found in safe deposit boxes). The Maine Legislature also extended the theoretical reach of the Maine Act with respect to intangibles by adding the sweeping catch-all language of Clause G to the definition of intangible property.

Other key terms used in the Act are:

"holder" -- the party that has custody of unclaimed property;

"apparent owner" -- the party, if known, who appears to be the owner of unclaimed property;

"administrator" -- the State Treasurer; and

"business association" -- which includes regular business corporations and other commercial enterprises.

PRESUMPTION OF ABANDONMENT

A substantial portion of the Act is devoted to creating several statutory presumptions by which various kinds of property are rebuttably presumed

abandoned. [These categories and the related "dormancy" periods are conveniently summarized in the instructions to the State's Form AP-I.] Of course, once a presumption of abandonment has been raised pursuant to any one of these, the property is "subject to the custody of" the State of Maine, or perhaps another state depending on the jurisdiction rules described below. 33 M.R.S.A. §1804.

There is one general rule of presumed abandonment that is supplemented by 17 special rules. Under the general rule, the following property is presumed abandoned:

-- All intangible property that is held in the ordinary course of the holder's business and has been unclaimed for more than 5 years after it became payable or distributable.

-- All tangible property that is held in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 5 years after it became returnable.

33 M.R.S.A. §1803(1).

For this purpose, intangible property is payable even if the owner has not made demand or taken any other formal steps to initiate the payment process. 33 M.R.S.A. §1803(2).

When applicable, each of the various special rules modifies the general 5-year presumption (we offer descriptions and comments only on the presumptions that are likely to be relevant to business concerns):

1. Section 1805 -- Traveler's checks and money orders.
2. Section 1806 -- Checks, drafts, etc. issued or certified by financial institutions.
3. Section 1807 -- Bank deposits and funds in financial institutions.
4. Section 1808 -- Funds owed under life insurance policies.
5. Section 1809 -- Deposits held by utilities.

A utility company's deposits are presumed abandoned if they remain unclaimed more than 1 year after the termination of services for which the deposit or advanced payment was made. For this purpose, "utility" is narrowly defined to refer to entities that are engaged in the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas. 33 M.R.S.A. §1802(16).

6. Section 1810 -- Refund~ held by business associations.

Any refund ordered by a court or administrative agency which has not been claimed more than 1 year after it became payable is presumed abandoned.

7. Section 1811 -- Stock and other intangible interests in business associations~.

Stock issued by a corporation and dividends on that stock that are shown on records available to the corporation are presumed abandoned if unclaimed by the stockholder for 5 years but only if the stockholder has not been in communication with the corporation. There are special rules concerning the frequency of dividends paid during the 5-year presumptive period in order for the stock itself to be subject to the abandonment presumption.

8. Section 1811-A -- Unclaimed property where the last address of the owner is unknown.

Intangible property is presumed to be abandoned 3 years after the date on which payment or delivery was required if:

-- The last address of the owner is unknown;

-- The issuer or originator of the intangible personal property is a business association organized or located in Maine; and

-- The owner has neither made a claim nor corresponded in writing with the holder during the 3-year period.

9. Section 1812 -- Property held in the course of dissolving a business associations.

Tangible and intangible property distributed in the course of dissolving business associations and several other types of entities are presumed abandoned if not claimed on the date of final dissolution.

10. Section 1813 -- Property held by agents and fiduciaries.

11. Section 1814 -- Property held by courts and public agencies.

12. Section 1815 -- Gift certificates and credit memos.

Gift certificates and credit memos are presumed abandoned if they have been issued in the ordinary course of business and have not been claimed more than 5 years after they became payable. The amount involved in a case of a gift certificate is the price that the purchaser of the gift certificate paid. A credit memo should be carried in the amount that was credited to the recipient of the memo. As a back stop to this presumption, the Act includes an affirmative requirement that issuers of gift certificates or credit memos must obtain and keep on file the name and address of the Purchaser of any gift certificates of more than \$25.

13. Section 1816 -- Wages.

Unpaid wages (which the statute defines as including un-presented payroll checks) owing in the ordinary course of the holder's business are presumed abandoned if they are unclaimed for more than 1 year after becoming payable.

14. Section 1817 -- Contents of safe deposit box or other safe keeping repository.

15. Section 1818 -- Tangible property held by landlords.

16. Section 1819 -- Property held by state institutions.

17. Section 1820 -- Property held by public administrators.

WHICH STATE WINS?

It is important to note the multi-state aspects of the law because unclaimed property held in Maine may well have to be turned over to another state. This depends on what is known about the last known residence of the apparent owner of that property and the escheat laws of the other state in which the owner's last address is located.

Under the Uniform Act at least, a particular item of intangible property that has been abandoned is allocated among the various possible claimant states under the following rules:

(1) to the state in which the apparent owner had its last known address (but only if that state's escheat laws assert a claim against such property)

(2) if (1) does not apply, to the state in which the holder is a domiciliary (but only if that state's escheat laws assert a claim against such property)

(3) if (1) and (2) do not apply, to the state in which the transaction out of which the property arose occurred.

33 M.R.S.A. §1804.

In addition, the Maine Act provides that tangible personal property located in Maine belongs to the State of Maine.

Obviously, credits or other amounts due to parties whose addresses are outside the State of Maine need to be handled carefully. We imagine the State of Maine Treasurer's office can be helpful in advising what the requirements of other states might be in any given situation. Should the State of Maine come into possession of property that properly belongs to another state, Section 1859 of the Maine Act provides a process by which that other state can recover the property or its value. By turning property over to the State of Maine "in a reasonable attempt to comply with this Act", the holder may have claim of immunity and the right to require the Maine administrator to defend and indemnify the holder against claims made by any person claiming the property or any other state claiming the property under its escheat laws. 33 M.R.S.A. §§1854(1) and (5). Of course, the phrase "this Act" probably refers to compliance under Maine's enactment of the Uniform Unclaimed Property Act. A holder who turns over property to the State of Maine that the holder has a reasonable basis to believe belongs to another state might not acquire the Section 1854 immunity.

ANNUAL REPORT

As noted above, property that is presumed to be abandoned under any of the foregoing rules is subject to custody as unclaimed property and the holder must submit a verified report to the administrator on, or in accordance with, the State's Form AP-I. 33 M.R.S.A. §1851. This report must include, to the extent the holder knows, the name and last known address of each owner as shown on the

records of the holder, the date that the property became "payable, demandable or returnable" and the date of last contact with the owner. The report must indicate any predecessor holders of the property if known. Generally the report is due before November 1st of each year with respect to the status of affairs in effect on the preceding June 30th. 33 M.R.S.A. §1851(4). The statute gives the administrator the discretion to postpone the reporting date "upon written request of any person required to file a report." Id. No earlier than 120 days before filing the report, the holder must send written notice to the apparent owner, at the owner's last known address, of each item of property that has a value of \$50 or more. 33 M.R.S.A. § 1851(5). After receiving the report, the administrator is required to publish notice in two papers of general circulation in the State and send mail notice to each person shown on the report who appears to be entitled to property worth \$50 or more. 33 M.R.S.A. §1852(1) and (4).

TURNOVER OF UNCLAIMED PROPERTY

The holder must turn over the presumptively abandoned property (together with appropriate evidence of ownership in the possession of the holder) to the administrator as follows:

- At the time of filing the report:
- if the name of the apparent owner is not known; or
- the value is less than \$25.00;

-- In all other cases within 85 days after the publication of notice by the administrator [the State's Form AP-1 states the State will send notice in advance of the actual due date for remittance].

33 M.R.S.A. §1853 (1) .

Of course, if the owner establishes its right to the presumptively abandoned property or there is any other indication that the property in fact is not abandoned, the holder is relieved of its turn-over obligation. 33 M.R.S.A. §1854 (2) . The exercise of this right by any holder must be accompanied by a verified written explanation filed with the unclaimed property administrator. Id.

The administrator has the right to refuse to accept tangible personal property in his discretion. 33 M.R.S.A. §1853 (4) .

Once the presumptively abandoned property is paid or delivered to the administrator, "the State assumes custody and responsibility for safekeeping of the property. " 33 M.R.S.A. §1854 (1) . As a result, the former holder, as long as it has acted in good faith, has no further liability (to the extent of the value of the property so paid or delivered) with respect to present or future claims that are made by the owner against the holder for the property and, in such event, the holder would also be entitled to indemnity as indicated above. 33 M.R.S.A. §1854 (1) and (5) . "Good faith" for these purposes can be defeated by a showing that the records of the holder do not meet reasonable commercial standards of practice in the holder's industry. 33 M.R.S.A. §1854 (6)

Even though a former holder is so absolved, Subsection 1854 (2) allows a holder who has already effected turnover to the State to pay an owner's claim and then seek reimbursement from the State. Should the holder exercise this option, it may be wise to consult with the administrator before making a payment to the owner in order to determine the proper calculation of interest accruals and the conditions or requirements for State reimbursement.

Filing of a report begins the running of a 10-year statute of limitation after which no action can be maintained by the State against a holder with respect to the property included in that report. 33 M.R.S.A. §1863 (2) . This approach represents a significant departure from the Uniform Act and raises the anomalous question of whether the statute of limitations ever runs if a report is not filed. The reasoning contained in the Official Comments to the Uniform Act suggests an indeterminate period of limitations may result if no report has been filed. 8B Uniform Laws Annotated 664. Therefore, the more cautious interpretation of the Maine Act is that a holder who fails to file a report is always subject to an enforcement action and an audit.

Further, while the statute does not prescribe the length of the audit period, the State Treasurer has established the following policy:

from February 1, 1994 to January 1, 1995, the "look back period" for purposes of an audit is limited to 1980;

after January 1, 1995, the "look back period" is 12 years from the date of the audit.

Except for bank charges for inactive accounts and utility deductions authorized by law, a holder's claims for costs are allowed only for (1) the "actual cost" of opening a safety deposit box or "other safekeeping repository " and (2) "any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges." 33 M.R.S.A. §§1807, 1809 and 1854(7).

Property that has been turned over to the administrator generally must be sold at a public auction within 3 years after it has been received by the administrator. Any property so sold will be transferred to the purchaser at auction free of all claims of the owner and any holder. Proceeds of these dispositions and collections from holders are deposited into the State's Abandoned Property Fund. Any fund balance in excess of \$150,000 at the end of a given year is transferred to the General Fund. 33 M.R.S.A. 1857.

RECORDS AND EXAMINATIONS

Any holder who is required to file a report as to which it has the last known address of the owner is also required to keep a record of the name and address

of the apparent owner for 10 years after the property in question becomes reportable. 33 M.R.S.A. §1851(1).

Section 1864(1) of the Act empowers the administrator to require a written report from any person who has not filed a report confirming that the person has no unclaimed property that is reportable or deliverable under the Act. The administrator is authorized to examine books and records of any person to verify compliance with the Act "at reasonable times and upon reasonable notice." 33 M.R.S.A. §1864(2).

If a holder fails to maintain records reflecting the name and address of the owner, the date the property was payable or returnable and any other information required by regulations of the administrator (none currently exist) and, as a result, the holder's records "are insufficient to permit the preparation of the required annual report, the administrator may require the holder to report and pay such amounts as may be reasonably estimated from any available records." 33 M.R.S.A. §1864(5).

SANCTIONS

A willful failure to render any report or perform other duties under the Act is subject to a civil penalty of \$100 per day of non-compliance up to a maximum of \$5,000. 33 M.R.S.A. §1868(2).

Failure to pay or deliver property within the time provided can result in (1) an assessment of interest at an annual rate equal to the greater of 18% or 10% above the annual discount rate for 52-week T-Bills, to accrue beginning 30 days after the date the administrator determines the property should have been paid or delivered; and (2) if willful, liability for a civil penalty equal to 25% of the value of such property. 33 M.R.S.A. §1868(2) and (3).

Willful refusal to pay or deliver property after written demand is a Class E crime. 33 M.R.S.A. §1868(4).

ATTACHMENTS

Attached to this Technical Bulletin are three additional pieces of important information, as follows:

1. Instructions on how to file abandoned property reports

with the Office of the State Treasurer;

2. Reporting Form, Abandoned Property, Office of the

State Treasurer;

3. Press Release, 2/1/94, Committee on Business Legislation