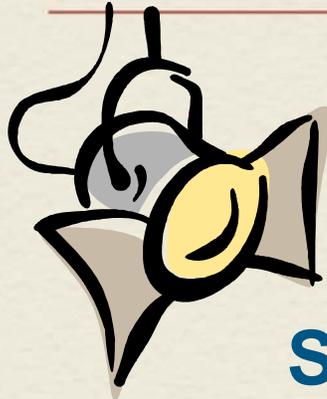


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Spotlight on Unclaimed Property: It's What You Don't Know That Can Hurt You

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Agenda

Why Unclaimed Property Matters

- “Who’s” on first?, “What’s” on second?, “I don’t know” is on third: *Developments that are frustrating Corporate America*
- Reducing Your ERA: *Lessons Learned From Recent Developments*
- Scouting Report: *Audit Triggers and Expectations*
- Minimizing Unforced Errors: *Noncompliance vs. Over reporting*
- Best Practices



Why Unclaimed Property Matters

- The **promise**: Unclaimed Property provides states with the unique opportunity to reduce budget deficits without “increasing taxes” on corporations or individuals. All with the promise of “reuniting property” with their true owners.
- The **reality**: Over **\$86 billion** has been collected in unclaimed property and less than 2 percent, or **\$1.5 billion**, has been re- united with property owners.
- The **result**: Even the most sophisticated company is exposed to under/over reporting of unclaimed property.
 - During 2010 alone:
 - **Sprint Inc.** settled an Unclaimed Property Dispute with 33 states for \$22 million
 - **CA, Inc.** (Computer Associates) resolved a 6-year dispute for \$17 million
 - **Staples** initiated suit against Delaware regarding a \$10 million pending dispute

“Who’s” On First?

Unclaimed Property has grown in the past decade as a major revenue source for the states as the result of increased enforcement efforts:

- Use of 3rd party contract “contingent fee” auditors, currently over 45 states engage the services of these firms;
- Multistate audits conducted on behalf of up to 40+ states can take 2-10+ years to resolve;
- Outreach programs exist to contact corporate holders that have a history of under or non-reporting;
- Voluntary compliance programs offered in exchange for waiver of interest and penalties and reduction in years subject to review;
 - After program ends, interest & penalties will be assessed
- Widespread effort by states to accelerate collections, by reduction in dormancy periods (period of inactivity), after which property is required to be remitted to the states.

“What’s” On Second?

- New property types identified never previously considered, including:
 - Uncashed rebate checks processed by third parties
 - Unredeemed gift card/stored value cards
 - Customer credit balances, unapplied cash balances
 - States using estimation and extrapolation techniques to determine liabilities for years in which detailed records no longer exist by sampling data in more current periods.
 - Absence of statute of limitations can result in liabilities being projected over 10-25 year period.
 - Insignificant items (less than \$1,000) when extrapolated can result in millions of liability.
 - Systems conversions create a huge void of available data for earlier years.
 - **Unreasonable challenge:** Companies are faced with the requirement of proving the negative: confirming that accounting entries created over 5-10 years ago were satisfactorily resolved with creditors or payees.
-

“I Don’t Know” is on Third

Controversy: Stems from rules governing unclaimed property:

- State claiming first priority (“1st priority rule”) over unclaimed property is state in which owner resides
- If last known address is not available, then state of incorporation of entity in possession of the property (“holder”) has right to take custody of the unclaimed or inactive property (2nd priority rule).

Consequence: *Delaware*, state in which 875,000 corporations call their legal home has declared war on corporations that are not reporting: estimated to be over 95 percent non compliance rate.

Representative Legislative Developments

New Jersey – July, 2010

– **Stored Value (Gift Cards)**

- Previously exempt, now 2 year dormancy
- Term “stored value card” defined very broadly
- Purchaser name and address information must be retained
- If name and address information is not retained then address used is where card was purchased or issued

– **Travelers Checks and Money Orders**

- Dormancy periods for travelers checks reduced from 15 to 3 years and for money orders from 7 to 3 years
- Dormancy fees may not exceed \$2 per month and may not be imposed within the first 12 months from the date of sale
- No dormancy fees may be imposed for credit balances, overpayments, deposits and stored value cards

Legislative Changes (continued)

- **Delaware Response to New Jersey Statute**
 - Delaware, not in direct response to New Jersey but presumably because of the law, sent a statement that Delaware expects holders to report based on the US Supreme Court jurisdictional priority rules
 - **Priority Rules**
 - New Jersey's statute is essentially trying to create a 3rd priority rule (reporting based on state in which transaction occurred) that was introduced in the 1995 Uniform Unclaimed Property Act but struck down subsequently in further Supreme Court cases
 - **Implications of New Jersey Legislation**
 - Companies will now be required to report unredeemed gift cards sold in New Jersey to **ALL** states
 - ALL unredeemed gift cards sold in New Jersey are reportable, not just those issued after effective date (Constitutional Issue)
 - Other states are looking to follow suit: Connecticut, California, Massachusetts
-

Legislative Changes (continued)

- **New York HB 11586 – Still pending in committee**
 - Reductions in dormancy periods from 5 years to 3 years for all banking property and escrow property
- **New York AB 11007 – Enacted 8/4/2010**
 - Increases disclosure for rebates
 - Holders must disclose the type of rebate being offered, all additional fees and remittance of the rebate to customers
- **Delaware SB 272 – Enacted 7/23/2010**
 - Administrative review process at the conclusion of an unclaimed property examination
 - Created a limited exception from unclaimed property for goods received but not invoiced (GR/IR)
 - Delaware may employ estimation techniques in order to determine a holder's liability for prior periods

Next Generation of Unclaimed Property Types

- Loyalty rewards / points programs
- Money back rewards programs
- Unredeemed bottle deposits
- Unredeemed long distance calling cards
 - *District of Columbia v. AT&T Corp*

Recent Judicial Developments

- **CA, Inc. (formerly Computer Associates)**
 - Initiated a Voluntary Disclosure Agreement (VDA) with Delaware presenting an initial self assessment of \$684K
 - Initial assessment rejected by Delaware; CA resubmitted a liability of \$3.5 million
 - Delaware rejected that assessment as well, requested \$7.6 million and terminated the VDA
 - Formal examination resulted in a 2010 settlement of \$17.2 million
 - **Staples**
 - Entered into a VDA with Delaware in 2005 covering all prior years and submitted \$137K to the state
 - Delaware initiated an audit using a 3rd party contract audit firm
 - Final assessment in 2010 assessed at \$3.1 million plus \$800K interest
-

Lessons Learned From Legislative and Judicial Developments

- Constant tracking of owner information needed since rules can change at any moment
- Attorney/client privilege is important in protecting preliminary liability computations
- Items you do NOT report are just as, if not, more important than items you report to the states
- Burden of proof falls to the holders; proper documentation is crucial to unclaimed property reporting
- Gift card company planning is not always 'bullet proof'
 - Holders need to ensure that proper documentation is being collected and tracked throughout the process

Audit Landscape

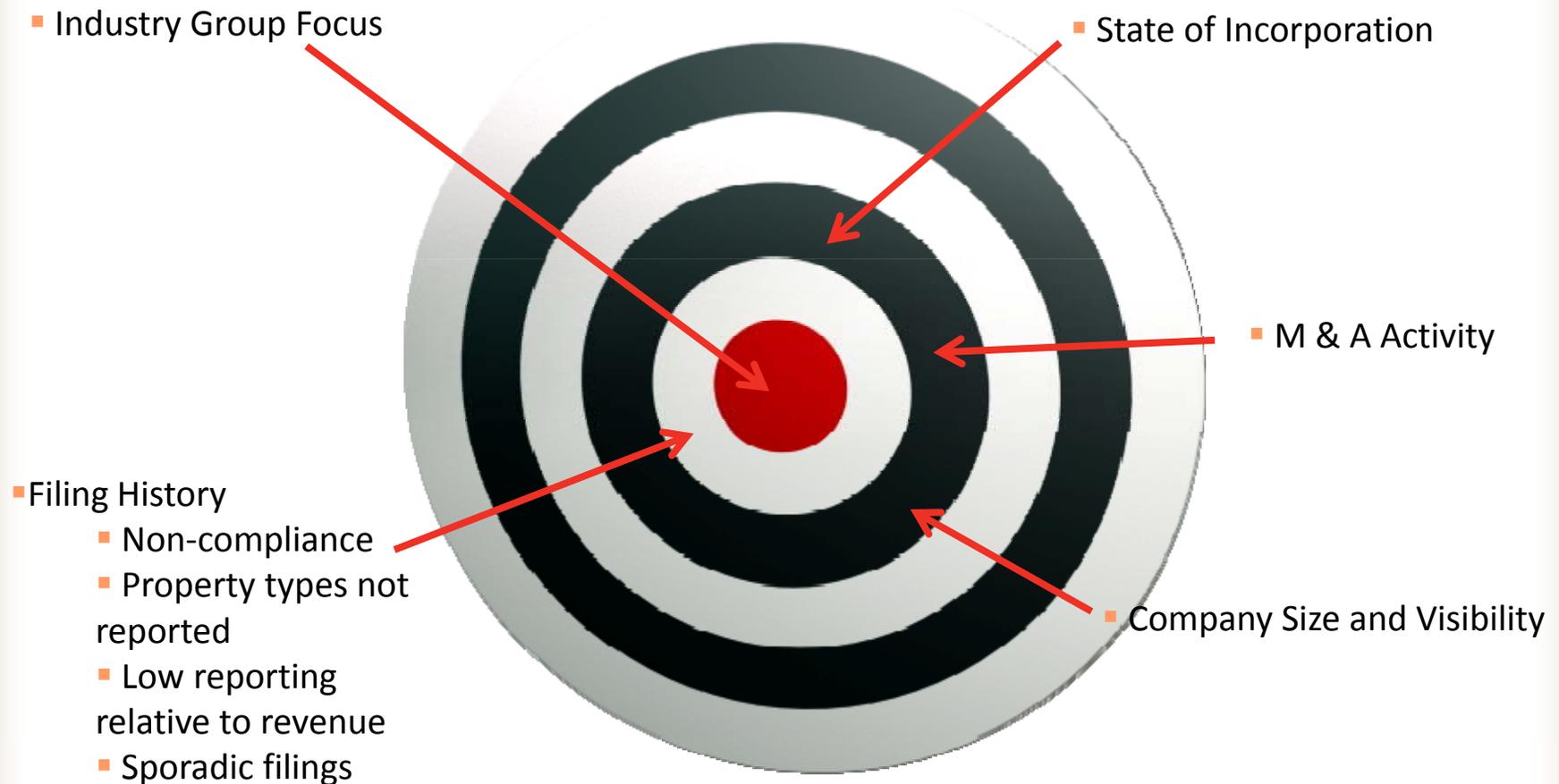
There are three categories of holders:

1. Those who have completed an audit;
2. Those in the midst of an audit; and
3. Those who will be audited

“It is no longer a matter of IF, but WHEN all companies will be forced to come into compliance with the Unclaimed Property rules.”

– Delaware Unclaimed Property State Administrator

Audit Landscape – Audit Triggers



Audit Landscape – Auditors Expectations

- Auditors expect owner confirmations that an item of property is not owed in order for the property to be non reportable
 - A property item on a holder's books and records is prima facie evidence of a property interest
 - Auditors will request significant evidence to show the item is not owing to the customer/owner
 - » For example, if it is a duplicate credit, the holder must be able to provide clear documentation as to why the duplicate credit existed and why this credit is not owing (i.e., a credit in the same amount for the same reason was paid to the owner, etc.)
 - What are your company's systems capabilities for tracking reasons for voids, duplicate credits, etc?
- Auditors expect significant records (i.e. bank reconciliations, A/R aging reports, outstanding check lists)

Holder Best Practices

- **No Prior Reporting History**
 - Perform an initial high level review of all potential unclaimed property
 - Initiate Voluntary Disclosure Agreements in jurisdictions where the potential liability is high to help abate interest and penalties
 - Establish policies and procedures for the compliance function
 - Begin annual compliance reporting
 - **Prior Reporting History**
 - Review all current and prior reports to ensure items were not over reported
 - Build or buy system that enables organization to track property from the time it becomes outstanding until it is remitted to the states, or eliminated as reportable property
 - Establish policies and procedures for the compliance function
 - **Preparing for an Audit**
 - Negotiate confidentiality agreement and establish scope of the audit
 - Establish responsible parties in the company to assist with the audit
 - Perform your own high level review of all potential unclaimed property
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Questions

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For those who are baseball history buffs, the original 1938 Abbott & Costello Comedy Radio Show can found at <http://www.baseball-almanac.com/humor4.shtml>