

INTRODUCTION TO UNCLAIMED PROPERTY

Unclaimed property is a liability that remains outstanding beyond a specified period of time. These liabilities may be outstanding because the owner changed address or appears to be unaware of the liability.

State laws require that businesses file an annual report of these outstanding liabilities and ultimately transfer, or escheat, the property to the state for safekeeping until the ultimate owner comes forward.

The purpose of unclaimed property is to protect the property rights of the owner and reunite lost owners with their property. Unclaimed property also relieves holders from the property liability and protects holders from subsequent claims by the owner. The economic benefit goes to the state and its citizens, not the individual holder. Unclaimed property compliance maintains good customer relations, ensures records are current and reduces audit risk.

NEED FOR CLEAR GUIDANCE

In unclaimed property compliance, we in the industry are accustomed to statutory guidance and we appreciate clarity. We have seen firsthand the confusion and frustration that can arise from vague recommendations, especially when they are followed by strict enforcement.

For example, on August 14, 2014 the Department of Labor (DOL) attempted to clarify how the fiduciaries of terminated plans can fulfill their obligations under ERISA to locate missing participants and properly distribute the participants' balances. Included in the bulletin were unclear recommendations to use "free electronic search tools" and to "consider if additional steps are appropriate" under the fiduciary duties of "prudence and loyalty."

These vague recommendations were followed up with strict enforcement by the DOL, as highlighted by a letter released from the American Benefits Council in 2017 explicitly requesting that "the Department engage in a rule making process to issue comprehensive guidance on plan fiduciary responsibilities with respect to unresponsive and missing participants and cease taking ad hoc enforcement positions until the Department provides actual guidance." The below examples from DOL auditors varied actions were cited in the letter:

- Asserted that a plan administrator's failure to locate a missing person was a breach of fiduciary duty, even when the plans procedures were followed
- Threatened to refer plan sponsors to DOL's Office of the Solicitor if plan failed to take action even where, in some instances, the actions suggested were impermissible under other regulatory regimes
- Suggested that plan sponsors must "do whatever it takes" to locate missing participants
- Asserted that a plan should search without limit for missing participants, rather than annually, thus not considering their fiduciary obligation to spend plan resources efficiently

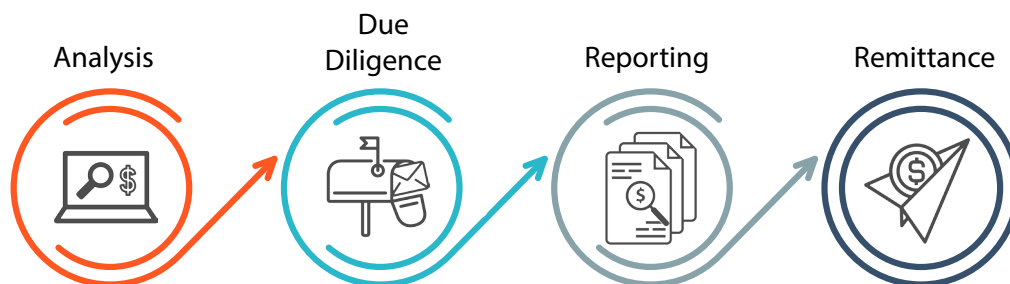
UNCLAIMED PROPERTY IS COMPLICATED!

It will be a challenge to create clear guidance for a specific type of property (e.g. uncashed checks from ERISA plans), but it can certainly be accomplished. To help illustrate the dynamics to consider, we will attempt to highlight some of the complexities around Unclaimed Property and demonstrate some of the operational challenges faced by holders who report unclaimed property,

All states, Washington, DC, Puerto Rico, Guan and the U.S. Virgin Islands have unclaimed property programs. Three Canadian Provinces (Quebec, British Columbia and Alberta) have unclaimed property programs. No two states unclaimed property laws are the same and reporting due dates across jurisdictions vary, depending

on the state. Unclaimed property laws and regulations span across many industries and are different per type of property being reported.

There are four primary steps to unclaimed property reporting and compliance, and there are numerous complexities with each one.



DATA COLLECTION AND ANALYSIS

Quite possibly, the most challenging aspect of unclaimed property reporting is determining exactly what to report, where to report it, and when it should be reported. Identifying outstanding items that are eligible for due diligence and reporting on the upcoming reporting deadlines requires up to date information about state dormancy triggers, dormancy periods, cut-off dates and reporting deadlines and how they are applied.

Maintaining current state administrative guidance, statutory directives, and rules and regulations can be a formidable task. However, for uncashed checks, the eligibility analysis entails an easy calculation of check issue date plus the state prescribed dormancy period.

If using unclaimed property software or a third-party provider to perform escheat reporting, confirm with your provider that any rules engines that perform an eligibility analysis can appropriately handle the multiple dormancy calculations that may be necessary to accurately report certain property types.


DUE DILIGENCE

In general, states require a notice to be sent to the last known address of the owner of the funds as indicated in the holder's records. The purpose of the requirement is to give the owner one last opportunity to claim their funds or reactivate their account before it is turned over to the state. Over the years, states have placed greater emphasis on due diligence, with new or enhanced requirements on qualifications for due diligence, timing of the mailing, letter content, method of delivery and even attestations of mailing.

In evaluating whether or not due diligence is required, there are several factors that must be considered, including: property type, state of the owner's last known address, value of the account, and possibly, whether or not the address is a known "bad" address. There are a few states that exempt the due diligence requirement if the address of record is known to be a "bad" address, meaning that mail has been returned as undeliverable to that address.

Mailing within 60 to 120 days prior to the reporting deadline is the most common time frame either mandated or recommended by the states. States began to impose timeframes for sending due diligence to discourage holders from mailing letters too close to the reporting deadline. Instead, the states wanted to allow the owner at least thirty days to respond to the letter, and acknowledge his or her ownership interest in the property held by the holder, prior to escheatment.

Like all aspects of unclaimed property regulation, there are states that vary from the norm. Some, like California, require letters to be mailed within 180 to 365 days prior to the property becoming reportable.



Michigan requires letters to be mailed within 60 to 365 days prior to the report deadline, and New York requires first class letters to be mailed 90 days prior to the deadline and a certified mailing to take place (on accounts valued over \$1,000) 60 days prior to the deadline. Mailing letters to owners in foreign countries is also required. Keep in mind that additional time may be needed for the mail to reach the owner and for the owner to respond. While most states do not mandate how much response time should be given to the owner, the standard recommendation is 30 to 45 days.

State requirements on letter content vary. Most states require:

- Nature and identifying number and/or description
- A statement relaying that the property must be validated by the owner otherwise the property will be transferred to the state
- Information on the steps required to claim the property
- The date the property will be reported to the state, id proof of claim is not satisfied
- Contact information for your company

First class mail is generally the mandated method of delivery but there are a few states that require a notice to be sent via Certified Mail. Some states even require different mailing type based on the value of the unclaimed property. State auditors will ask for proof of due diligence compliance. Therefore, it is recommended that a holder retain documentation showing that statutory due diligence was performed including copied of the letters that were reported.

REPORTING

Unfortunately, like the state due diligence specifications, state requirements for reporting and remitting are anything but uniform. State reporting deadlines are at different times throughout the year and some states even require reports to be filed on different dates based on the type of property.

The widely accepted electronic format for unclaimed property reports is called the “NAUPA II Standard Electronic File Format.” The National Association of Unclaimed Property Administrators (NAUPA) devised this format which every state unclaimed property program now requires for reports. Generally, states will no longer accept reports in an Excel format.

In addition, most states require the use of “property type” and “relationship” codes when reporting property. The NAUPA II file format has corresponding standard property type and relationship codes that are accepted by almost all states. The property type code designates the category of property and the relationship code provides information as to the connection between owners when more than one owner is associated with the property. Each property type is represented by two letters and two numbers, i.e., CK13 = vendor check. The relationship is represented by a code comprised of two letters, i.e., JT = joint tenants.

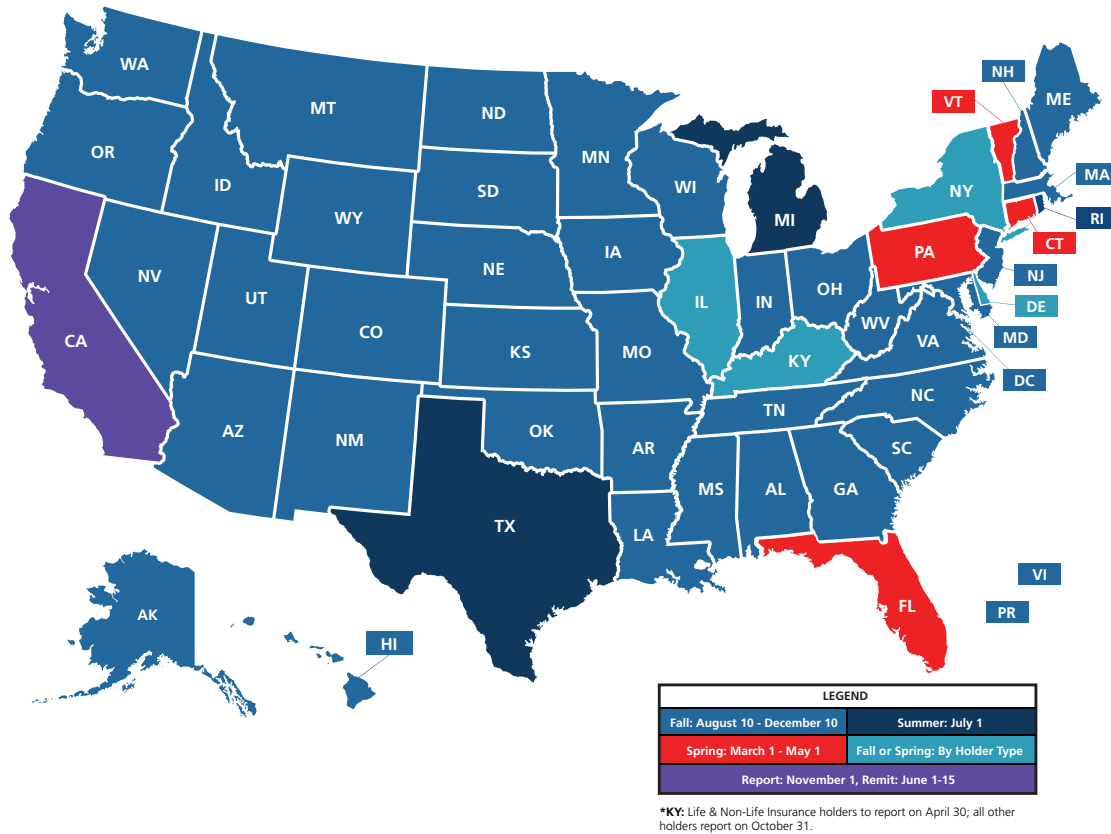
It is important to note that states frequently modify some of the NAUPA relationship and property type codes, customize the codes by changing the transactions included under particular codes, add new codes to the NAUPA set, or do not use or accept particular codes in the NAUPA set. For this reason, the practitioner should retrieve and use the code listings for the states to which reports will be filed. These listings are often included in reporting manuals or guides that state officials publish on their unclaimed property websites.

REMITTANCE

Typically, most businesses report cash as unclaimed property and the remittance that accompanies the unclaimed property would be a check or electronic funds transfer (EFT). Instructions are usually provided with state report forms and/or in state reporting manuals or guides published on state websites. Due to technological advancements, some states now require EFT, Fed Wire or ACH transfer. Reports must be delivered

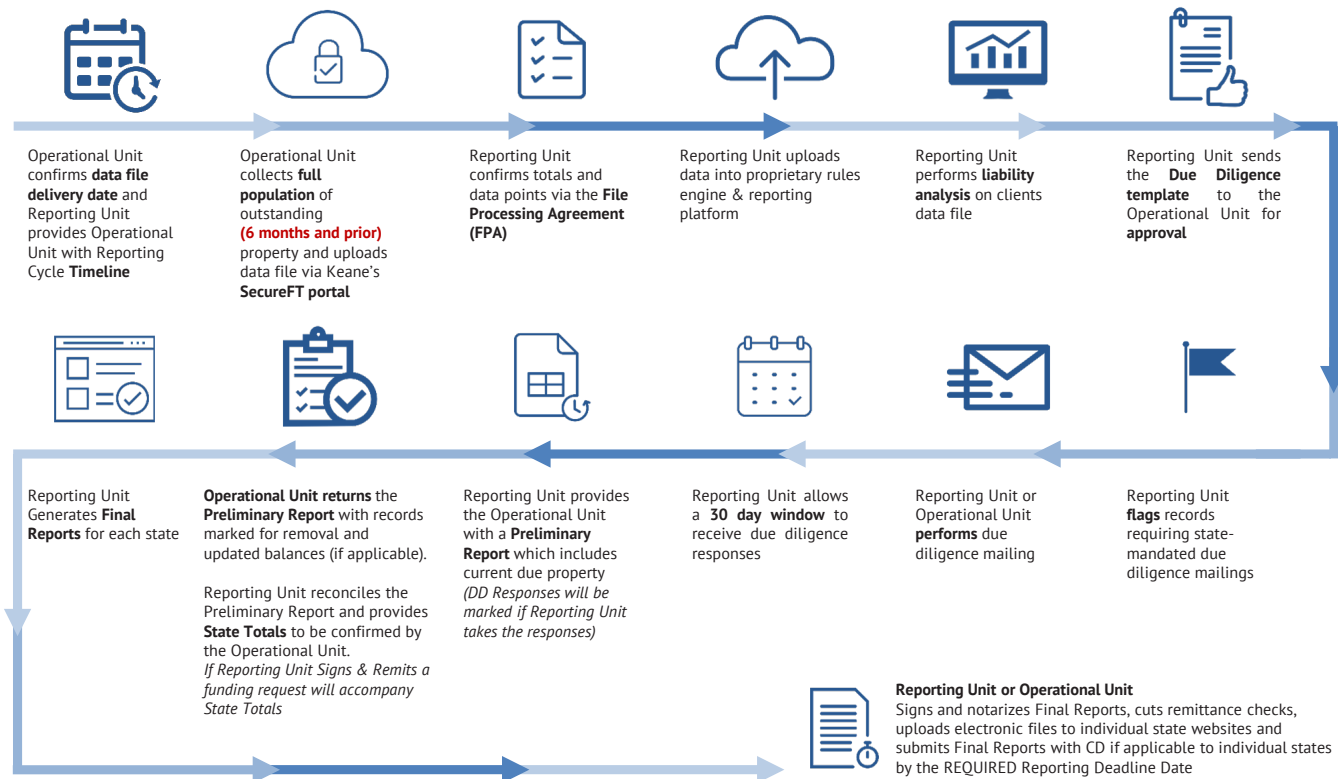
to the state by the appropriate reporting deadline.

Reporting deadlines vary by industry and sometimes by property type, depending on the state:



Identifying the media through which the state accepts reports is essential in developing compliant reports and avoiding state scrutiny. Most states no longer accept paper reports. Instead, they require that reports be submitted on CD, diskette, or electronically via Internet upload if the number of items to be reported is greater than a specified threshold. There are some states, like Iowa, Michigan and Tennessee, that require all reports to be filed in this manner regardless of the number of items reported. In addition to the reports, states often require a specific state-created cover sheet be completed and filed. In some instances, states provide this cover sheet as a part of the online upload process or they publish the cover sheet on their websites and/or as part of their holder reporting manuals or guides. States that permit reports to be submitted on CD typically require a particular cover sheet to be included with the physical report delivery. Usually, an appropriate office of the business must sign the cover sheet and in many cases the signature must be notarized.

In some years, a holder may not have any unclaimed property to report to a particular state. Unfortunately, some unclaimed property laws or regulations require that the holder file a “negative” report if the holder has no unclaimed property eligible for reporting in a particular report year. States like California and Texas do not require a negative report and other states, such as Maine, require negative reporting only if the business is located or incorporated in Maine and have never filed an unclaimed property report before or have filed a positive report within the last three years.



OTHER CONSIDERATIONS

For the permissive transfer of uncashed checks from ERISA plans into State Unclaimed Property funds, on a voluntary basis, these additional details should be considered:

- Definition of an uncashed check – how long must it be outstanding before it can be voluntarily escheated? Would it be a different timeframe for someone with a “bad” mailing address? What if they are deceased?
- States affected – would a plan fiduciary have the option of only escheating uncashed checks to certain states?
- Check Amounts – would there be a dollar threshold for reporting? Would plan fiduciaries be required to report property under a certain amount “in aggregate” based on that state’s requirement? Could a plan voluntarily report certain amounts to a state, but not others?
- Frequency – once a plan voluntarily reports property, would there be an expectation to report the same type of property in subsequent years?
- Due Diligence – is the plan prepared to handle the increased owner communications and check reissuance requests that will result from the required “due diligence” notice mailings?
- What legislation has passed that has altered state reporting requirements?