Unclaimed Property: Holder Beware

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Knowing how to handle unclaimed property (also referred to as abandoned property or escheat) has become increasingly important to companies and the attorneys who advise them because it can involve significant liability. Unclaimed property is typically intangible property that has not been claimed by its rightful owner for a period of time specified by statute (the dormancy period). After the dormancy period has run, this property may need to be turned over to the applicable state under the state's unclaimed property statute. Although the laws of unclaimed property date back to England's feudal lord era, many practitioners, including in-house counsel, have limited or no familiarity with this area of the law.

Many companies, including some of the largest and most sophisticated companies within the US, historically have not reported unclaimed property or have significantly under-reported their unclaimed property liability. With pressing state revenue needs, many states are actively pursuing unclaimed property liability. This means that many companies are being audited for past due unclaimed property liability, which can be a long and costly process. Delaware, in particular, has a robust audit program and a significant interest in unclaimed property because of the number of companies organized in that state.

This Note covers:

- An overview of unclaimed property, including:
  - the most common types of unclaimed property;
  - the appropriate jurisdictions to which to report unclaimed property and applicable laws;
  - unclaimed property audits;
  - defenses that may be asserted during an audit;
  - reporting positions that may be taken for ongoing unclaimed property compliance; and
  - voluntary disclosure programs (VDAs).
- Best practices, with a focus on:
  - the importance of creating and preserving attorney-client privilege when being audited or participating in a VDA program;
  - performing an internal risk assessment with the assistance of counsel and consultants;
  - establishing unclaimed property policies and procedures for applicable business units; and
  - addressing unclaimed property considerations in transaction documents (including stock or asset purchase agreements) and third-party administrator agreements.

OVERVIEW OF UNCLAIMED PROPERTY

TYPES OF UNCLAIMED PROPERTY

Unclaimed property is generally intangible property that has not been claimed by its rightful owner for the duration of the dormancy period. This property includes, without limitation:

- Dormant bank accounts.
- Accounts payable (for example, outstanding vendor checks).
- Accounts receivable credit balances (for example, credits to customers resulting from overpayments or returned goods).
- Unclaimed security deposits.
- Unclaimed insurance proceeds.
- Unclaimed securities (including merger consideration).
- Uncashed payroll and benefits.
- Uncashed dividend checks.
- Unused balances on gift certificates or gift cards.
- Rebates.
- Other types of credits reflected on a company's books and records.

The types of unclaimed property a company may have exposure for varies depending on its industry and business practices. Accounts

receivable credit balances often are the most significant portion of unclaimed property liability of a company, and even companies with established unclaimed property reporting procedures may not historically have reported, or presently be reporting, this category of property.

WHERE TO REPORT UNCLAIMED PROPERTY

The US Supreme Court has established priority rules to determine which state a company (referred to as a holder under unclaimed property laws) must report unclaimed property to (see *Texas v. N.J.*, 379 U.S. 674 (1965)). The Court held that priority is first given to the state of the last known address of the owner of the property as shown on the holder's books and records. If no last known address can be determined or if the owner's last known address is within the borders of a state whose laws do not provide for escheat of the property, then the property can be taken into the custody of the state of the holder's domicile (the state of formation or, in some states, the state where the principal place of business of a non-corporate holder, such as a limited liability company, is located).

These basic priority rules still form the basis by which states select holders to examine their books and records for unclaimed property reporting compliance. Typically, the holder is either organized or located in the audit state, or conducts a substantial amount of business there. In *New Jersey Retail Merchants Association v. Sidamon-Eristoff*, the US Court of Appeals for the Third Circuit found a statutory provision in New Jersey's unclaimed property laws that required holders to remit property to New Jersey if a gift card was purchased in New Jersey invalid because it was inconsistent with the priority rules the US Supreme Court established (669 F.3d 374 (3d Cir. 2012)). However, the Revised Uniform Unclaimed Property Act, adopted by the Uniform Law Commission in 2016 (the "2016 Uniform Act") permits the state of the transaction to take custody of property where the first and second priority states do not provide for the escheat of the property in question, under what is known as the "third priority rule." Several states, including Delaware, have either enacted or have legislation pending that is based upon the 2016 Uniform Act.

UNCLAIMED PROPERTY LAWS

Subject to federal common law and federal preemption issues, unclaimed property is a function of state law. Every state within the US has enacted some form of unclaimed property law. To provide for uniformity across states for treatment and reporting of unclaimed property, most states have adopted all or a substantial part of either:

- The Uniform Unclaimed Property Act of 1981.
- The Uniform Unclaimed Property Act of 1995.
- The 2016 Uniform Act.

In addition, a few states have adopted all or a substantial part of the Uniform Unclaimed Property Act of 1966. In this Note, these acts are referred to generally as a Uniform Act. However, some states have not adopted a Uniform Act and some states that have adopted a Uniform Act, including Delaware, which recently adopted the 2016 Uniform Act, have materially modified it.

The general principles underpinning state unclaimed property laws have largely been upheld by courts in cases challenging their constitutionality. For example, in *Standard Oil Co. v. New Jersey*, a case about unclaimed stock and dividends, the US Supreme Court noted that, "subject to constitutional limitations, [a state] may use its legislative power to dispose of property within its reach, belonging to unknown persons" and that this avoids "seizure by would-be possessors and is used for the general good rather than for the chance enrichment of particular individuals or organizations." (341 U.S. 428 (1951).)

AUDITS FOR UNCLAIMED PROPERTY

Many states have pursued companies through audit examinations for past due unclaimed property liability. Most, if not all, state statutes provide states with the right to audit the books and records of a holder for compliance with the state's unclaimed property laws. All 50 states' statutes authorize the imposition of penalties and interest where holder compliance is deficient. On average, an unclaimed property audit will involve a range of 10 to 20 reporting years, plus an additional five to seven years to include the applicable dormancy period.

Because the record retention policies of most holders are a much shorter period, many states use estimation techniques based on available data to calculate unclaimed property liability for years when a holder is unable to supply actual records. For example, Delaware has historically audited companies for unclaimed property liability dating back to 1981, although Delaware has shortened its look-back period through legislative amendments adopted in 2015 and 2017, which now generally limit its look back to ten report years (15 transaction years). Therefore, even if a company has an insignificant amount of liability for the years tested by the auditors, the liability may be significant on an extrapolated basis.

It is difficult to predict the time it will take for an audit to be completed. An audit of a Fortune 500 company typically takes at least two to three years, but could take five to seven years, or longer. In many states including Delaware, an unclaimed property audit of a company is administered by a third-party audit firm acting on behalf of one or more states that elect to participate in the audit.

With respect to the Delaware unclaimed property audit program, Delaware enacted a new unclaimed property statute in 2017 (the "2017 Delaware Act") that contains new provisions related to audits, among other matters, and that were designed to be business-friendly. These amendments provided a number of benefits over the older audit regime, including:

- Delaware may not audit a company without first notifying the company that it may enter into the Delaware VDA program.
- The look-back period was shortened to a ten report year look-back period (15 transaction years) adopted from the 2016 Uniform Act.
- Delaware's new statute includes, for the first time, an explicit record retention requirement of ten years from when the holder submits an unclaimed property report.
- Delaware enacted a new ten year statute of limitations for the state to commence an action or proceeding.
- Delaware's new statute requires the promulgation of regulations for estimation methodologies that must be adopted by July 1, 2017.

AUDIT INFORMATION REQUEST

An audit typically begins with an initial document request sent by the auditor to the company. The auditor will use this request to determine:

- Which entities within a company's organizational structure should be included in the audit.
- What years should be examined (which should be those years in which the subject company has complete books and records).

The years included in the audit will be used to form the basis for extrapolation for any years when the company does not have complete books and records. The auditor will continue to send increasingly detailed document requests typically relating to general ledger detail, including information about accounts payable and accounts receivable items and bank reconciliations. The auditor will use this information to assess the company's unclaimed property liability. In an audit of securities, the auditor may request the dates of the most recent stockholder contact and a list of outstanding dividend payments. If a company receives an audit notice it should engage counsel and consultants experienced in unclaimed property matters (see Best Practices).

LIABILITY ASSESSMENT

At the end of an audit, or if the audit is completed piecemeal, at the end of an audit of a certain category of unclaimed property, the auditor will issue a liability assessment. This assessment may include the levying of interest and penalties that can double a company's liability. The assessment may be negotiated with the applicable state depending on the strength of a company's legal defenses. Unless the company wishes to litigate or appeal the assessment, the audit or portion of the audit will be complete. Companies should seek a settlement and release agreement from the applicable state for the unclaimed property type audited and the years covered by the audit (see Best Practices).

A company that is not currently under audit but that may have unclaimed property exposure should consider participating in a VDA program (see Voluntary Disclosure Programs). This will bring the company into compliance and may avoid the possibility of a company being audited and possible interest and penalties. Participation in a VDA program may be particularly important for companies organized in Delaware because Delaware:

- Regularly sends out audit notices.
- Has established a statutory amnesty-like VDA program.

POSSIBLE AUDIT DEFENSES AND REPORTING POSITIONS

There are many arguments that can be asserted to reduce a company's unclaimed property liability in the context of an audit and for prospective reporting. The most common arguments for reduction of liability are:

- Business-to-business exemptions (see Business-to-Business Exemptions).
- Property-type exemptions (see Property-type Exemptions).
- Federal preemption (see Federal Preemption).
- Unreasonable estimation methodologies (see Unreasonable Estimation Methodologies).
- The company is not the holder for unclaimed property purposes (see The Company Is Not the Holder).
- The derivative rights doctrine (see The Derivative Rights Doctrine).
- The obligation is not "fixed and certain" (see The Obligation Is Not "Fixed and Certain").

In the context of an audit, these arguments are typically asserted for negotiating a company's unclaimed property liability or, if necessary, litigation. In the context of prospective reporting, a company should seek advice from experienced counsel and consultants in determining whether to take a reporting position to exempt certain unclaimed property or to report it.

BUSINESS-TO-BUSINESS EXEMPTIONS

Some states do not require a company to remit unclaimed property when the owner of the property is a commercial entity and maintains an on-going business relationship with the holder (B2B Exemption). The rationale behind the B2B Exemption is that companies often engage in multiple business transactions and these transactions may involve an inadvertent overpayment in one instance and an underpayment in another and this does not follow the principle of holding property in custody for a lost owner.

B2B Exemptions vary in scope and application. For example, in a subset of states, the B2B Exemptions only apply if the holder maintains a current business relationship. In these states, the B2B Exemption may operate more like a deferral than an exemption and may be applicable only until the business relationship ends.

PROPERTY-TYPE EXEMPTIONS

Before remitting any unclaimed property to the applicable state, a holder should confirm that this property is not exempt under the state's unclaimed property laws. Although many states have adopted one of the Uniform Acts, states vary widely about the categories of property that may be exempt. For example, some states specifically indicate that rebates must be reported while others do not expressly identify rebates as a property type. At least three states exempt rebates. Some states including Delaware exempt by statute "goods received/invoices received," which are like inventory credits. In addition, many states exempt types of gift certificates, gift cards and stored-value cards (see Gift Card-Specific Best Practices). Adding to the complexity of unclaimed property reporting, some states that do not have an explicit statutory exemption for a type of property may not require this property to be reported as an administrative matter or under the state's written or unwritten reporting policies.

FEDERAL PREEMPTION

A company may also be able to avoid certain unclaimed property liability under federal preemption arguments grounded in the Supremacy Clause set out in Article VI, Clause 2 of the US Constitution. Based on case law and the legislative history and intent of the Employee Retirement Income Security Act of 1974 (ERISA), distributions made under a qualified ERISA plan may be exempt from unclaimed property reporting (see *Commonwealth Edison v. Vega*, 174 F.3d 870 (7th Cir. 1999)). Federal preemption arguments may also arise under:

- Bankruptcy laws.
- Banking laws, including the Federal Credit Card Accountability and Responsibility and Disclosure Act of 2009.

- The Health Insurance Portability and Accountability Act of 1996.
- Interstate carrier laws.
- Other laws.

UNREASONABLE ESTIMATION METHODOLOGIES

Companies under audit often try to challenge a state's use of extrapolation methodologies of estimating liability for periods when a company does not have records. In certain circumstances, such challenges are successful, such as in a June 2016 opinion issued by a federal district court in Delaware where the Court held that Delaware's estimation methodology applied to an audit whose scope went back 22 years, without an express statutory record retention period, violated substantive due process (*Temple-Inland, Inc. v. Cook*, 192 F. Supp. 3d 527 (D. Del. 2016)). This case was the basis for Delaware's adoption of the 2017 Delaware Act. Although companies are sometimes able to challenge an extrapolation based on various arguments, the weight of the authority suggests that a holder cannot escape unclaimed property liability by disposing of its records. For example, the court in *Division of Unclaimed Property v. McKay Dee Credit Union* suggested that allowing a company to avoid remitting unclaimed property by disposing of its records would frustrate the purpose of an unclaimed property act (958 P.2d 234 (Utah 1998)).

However, a company may argue that the auditor or state's estimation methodology was unreasonable and not a fair representation of the unclaimed property that was likely due. The case law indicates that extrapolation is permissible if the methodology was reasonable, reliable, and trustworthy. This may result in a battle of the experts with a holder engaging a consultant or a statistician to challenge the methodology employed by the auditor or state.

THE COMPANY IS NOT THE HOLDER

Companies that have intercompany agreements or common paymaster arrangements with affiliated companies should consider which entity is the "holder" for unclaimed property purposes within the organizational structure. Companies that engage third-party administrators, for example, to administer a rebate program, have a similar issue. In determining who is the holder, courts have considered various factors, including which company:

- Ultimately holds the unclaimed property.
- Is the "debtor" to the owner and is therefore liable to the owner if the owner seeks its property.
- Holds itself out as the "holder" of the unclaimed property.

There is authority suggesting that more than one entity could be the "holder" for unclaimed property purposes, but this would depend on the state statute and the facts and circumstances. In *Fitzgerald v. Young America Corp.*, 45 states collectively sued Young America Corp., a rebate fulfillment company, for failing to remit un-cashed rebate checks (No. 6030 (D. Iowa Jan. 5, 2009)). Certain merchants that had used Young America as a third-party administrator of their rebate programs were also later added as defendants. The court denied the merchants' motion to dismiss, in which they argued that they were not the "holders" for unclaimed property purposes because Young America was responsible for fulfilling the rebates, finding that the term "holder" was not limited to those in possession of the property under the Iowa Unclaimed Property Act in effect at the relevant times.

THE DERIVATIVE RIGHTS DOCTRINE

It is well-settled that a state's right to claim custody of property under escheat law is derivative of an owner's property right, and a state cannot create or revive an obligation that had no existence or had become extinct. This is consistent with an underlying policy of unclaimed property law that the state holds unclaimed property as custodian to protect the owner's rights. Therefore, if an owner does not have the right to claim particular property, presumably the state has no right on which to base its escheat claim. This presents interesting reporting issues.

For example, if the unclaimed property consists of tickets (which only have value until a set date), there may be an issue about whether the state:

- Must take the tickets.
- Can require a company to remit the cash value of the tickets.

Holders have argued that under the derivative rights doctrine, they should not be required to remit unclaimed property if the statute of limitations has run and therefore the owner could not seek this property from the holder. However, courts have found that states may abrogate the benefits of this doctrine by statute. For example, most state unclaimed property laws include "anti-limitations" provisions that make statutory or contractual limitations periods ineffective against the state. Courts have generally enforced those statutory provisions on the basis that the expiration of an owner's interest does not invalidate the state's interest. (See *Benson v. Simon Prop. Grp., Inc.*, 642 S.E.2d 687, 691 (Ga. 2007) and *In re Kimberly's A Day Spa, Ltd. v. Hevesi*, 810 N.Y.S.2d 616, 618 (2006).)

THE OBLIGATION IS NOT "FIXED AND CERTAIN"

An underlying tenet of unclaimed property law is that the state's right to claim custody of unclaimed property is dependent on the owner having a right to claim the property. Therefore, for a state to claim a derivative right, the underlying owner must have had a "fixed and certain" interest in property. This generally means that the owner's property interest must be "liquidated and enforceable." This argument may apply in several different contexts. For example, in *State v. Sperry & Hutchinson Co.,* the court found that the state's right to escheat unredeemed green stamps was contingent on the stamp holder's right to redeem and where a stamp holder had not accumulated a requisite number of stamps to fill a complete book, the state did not have an enforceable right to require escheatment of those stamps (153 A.2d 691 (App. Div. 1959)). If an owner must satisfy certain prerequisites to having a right to property held by the holder (for example, collecting a certain number of stamps), the property may not be a liquidated and enforceable amount and therefore may not be subject to escheat.

VOLUNTARY DISCLOSURE PROGRAMS

Many states have an ongoing VDA program or periodically provide for one. These programs may be appealing for companies that historically have under-reported or not reported unclaimed property because it enables them to become compliant for previous periods, possibly without the imposition of penalties or interest. Because of the priority rules established by the US Supreme Court, a company interested in participating in a VDA program should participate in a program in states in which it or its operating subsidiaries are

organized and in states in which it has a material amount of business (see Where to Report Unclaimed Property). Participating in a VDA program has the following advantages:

- It enables a company to perform its own internal review instead of an audit.
- VDA programs typically take less time than audits.
- Reduced or no interest and penalties assessed.
- Potentially a reduced look-back period for extrapolated liability.

However, most states prohibit a company already under audit in their state from participating in its VDA program. Counsel and consultants experienced in unclaimed property matters can assist a company to:

- Determine in which states the company should participate in a VDA program.
- Assist with the VDA process.
- Conduct internal review of the company's records.

Companies should have external counsel involved in the voluntary disclosure process to maintain privilege for matters such as internal risk assessments (see Best Practices).

DELAWARE VDA PROGRAM

In June 2012, Delaware enacted legislation creating a new VDA program that was intended to be more business-friendly than prior programs. The pre-2012 VDA program was administered by the Delaware Division of Revenue, which was also responsible for Delaware unclaimed property audits. In contrast, the new VDA program is administered by the Delaware Secretary of State, which is generally viewed favorably in the business community. Delaware made further changes to its VDA program by legislative amendment in July 2015 and by the 2017 Delaware Act in a manner that was intended to be even more business-friendly. The 2015 and 2017 amendments continue the new VDA program through the Delaware Secretary of State. The new VDA program, as amended in 2015 and 2017, provides many advantages, including:

- Shortened ten report year look-back period (15 transaction years).
- The ability to convert audits pending as of July 15, 2015 into the VDA program, so long as the holder elects to such conversion within 60 days of the adoption of the regulations referenced above.
- The promulgation of regulations for estimation methodologies by July 1, 2017.
- Participants will not be charged interest or penalties, but an audit may result in interest and penalties.
- Participants receive a complete release from liability for all previous periods for all property types addressed in the VDA.
- Participants will be protected against unclaimed property audits for all years and property types covered by the program.
- It is administered by an independent entity compensated on an hourly basis as compared to an auditor that may be compensated on a contingent fee basis.
- Accounting consultants assist such independent entity to ensure the program is administered competently, fairly and consistently.

The Delaware Division of Revenue may audit a company if the company does not enter the Delaware VDA program within 60 days of receiving a notification that the company may enter into the VDA program. Also, a company will be ineligible to participate in the VDA program when it receives an audit notice.

BEST PRACTICES FOR UNCLAIMED PROPERTY

The best course of action for a company for unclaimed property depends on many factors, including:

- The company's industry and business.
- Whether it is under audit.
- Whether the company is already participating in or has the opportunity to participate in a VDA program.
- The states involved.

Most, if not all, companies should:

- Hire experienced unclaimed property counsel and consultants (see Experienced Counsel and Consultants).
- Maintain privilege (see Maintaining Privilege).
- Perform an internal risk assessment (see Internal Risk Assessment).
- Set up written unclaimed property policies and procedures (see Establish Written Unclaimed Property Policies and Procedures).
- Address unclaimed property in transaction documents and in third-party administrator documents (see Transaction Documents and Third-party Administrator Documents).
- File unclaimed property reports regularly in all applicable jurisdictions (see Where to Report Unclaimed Property).

EXPERIENCED COUNSEL AND CONSULTANTS

Because of the complexity and potential amount of liability when dealing with unclaimed property, a company should engage experienced unclaimed property counsel and consultants. Experienced counsel is important to:

- Create attorney-client privilege and work product privilege to protect documents and information gathered in connection with the audit from disclosure.
- Formulate defenses to reporting certain unclaimed property.

Experienced consultants can also assist in identifying defenses to potential unclaimed property liability. In addition, consultants can assist a company's team of internal finance, accountants, or tax personnel with identifying relevant information and remediating potential items of unclaimed property.

MAINTAINING PRIVILEGE

A company should take steps to preserve the attorney-client and work product doctrine privileges while under audit or participating in a VDA program to ensure that sensitive information is not discoverable by the applicable states in any later litigation. Case law suggests that engaging outside counsel may afford greater protection in preserving attorney-client privilege than using in-house counsel alone. If a holder wishes to engage an outside consultant to assist with an unclaimed property audit or VDA program, the engagement should be structured so that the outside counsel engages and directs the consultants and that the work performed by the consultants is at counsel's request. This potentially protects

work-product prepared by the consultants with attorney-client or attorney work-product privilege.

Typically, for an accountant's services to be within the scope of the privilege, the case law strongly suggests that, at a minimum, there must be an active, demonstrable, and continuous consultation amongst the attorney, the client, and the consultant to permit invocation of the attorney-client privilege. *Pfeiffer v. CA, Inc.* underscores the importance of engaging counsel and structuring any engagement of consultants (C.A. No. 4195-CC (Del. Ch. Feb. 12, 2009). In *Pfeiffer*, CA and Delaware disagreed over the amount of unclaimed property liability owed by CA. The initial assessment of liability calculated by Delaware was less than $4 million, but the case ultimately settled for more than $17 million. The increase in unclaimed property liability was largely due to internal documents uncovered by Delaware during the discovery phase of the litigation. Delaware was able to gain access to information, documents, and strategies from meetings between CA and its retained accounting consultant in which CA's potential liability was discussed. The liability reports produced by the consultant were not undertaken with the involvement of counsel and were not protected by the attorney-client privilege or the work-product doctrine.

INTERNAL RISK ASSESSMENT

Companies should perform internal risk assessments to determine potential unclaimed property exposure. If a company does not have internal personnel with expertise in unclaimed property, it should engage experienced consultants to perform the forensic accounting required to accurately estimate potential unclaimed property liability both currently and for previous periods. To retain privilege over this assessment, companies can engage experienced counsel to assist (see Maintaining Privilege). This is particularly important if the company will participate in state unclaimed property VDA programs.

ESTABLISH WRITTEN UNCLAIMED PROPERTY POLICIES AND PROCEDURES

Companies that have not historically had comprehensive written unclaimed property policies and procedures often have a tendency to underestimate their potential unclaimed property exposure. Therefore, companies should adopt written policies and procedures to maintain compliance on an ongoing basis and periodically review and update them under unclaimed property laws and practice. In addition, companies should educate their employees on unclaimed property reporting, particularly those responsible for compliance. If a company does not have expertise to educate its employees, the company should encourage its employees to participate in unclaimed property educational conferences.

TRANSACTION DOCUMENTS AND THIRD-PARTY ADMINISTRATOR DOCUMENTS

Unclaimed property is often not addressed in contracts in which unclaimed property could be particularly relevant. For example, in an acquisition, there could be a material issue concerning whether the buyer or the seller is liable for unclaimed property liability associated with the company or assets being sold if the agreement does not specifically address unclaimed property.

Because of the overall lack of reporting or complete reporting by companies, it is possible that if not addressed appropriately, a buyer could assume all present and historical unclaimed property liability associated with a company or assets that it acquires. Therefore, buyers should review unclaimed property records and filings as part of due diligence of a potential target. Buyers should also consider addressing unclaimed property in the applicable transaction document. For example, although unclaimed property is not a tax, it may be included in the definition of "tax" in a transaction agreement so that any representations and warranties concerning taxes and reporting to governmental entities would include unclaimed property.

In addition, unclaimed property should also be addressed in agreements with third-party administrators, including, for example, rebate fulfillment companies and stock transfer agents. It is advisable to both:

- Expressly indicate which party has escheat responsibility.
- Provide for indemnification by the party with escheat responsibility if a state seeks applicable unclaimed property from the other party.

GIFT CARD-SPECIFIC BEST PRACTICES

Companies that issue gift cards or gift certificates (gift cards) could have significant unclaimed property liability resulting from unused balances on issued gift cards. To reduce a company's unclaimed property exposure for gift cards, the entity issuing the gift cards should be organized in a state that exempts gift cards from its unclaimed property laws. However, under the priority rules, this may not avoid unclaimed property liability if the issuer maintains the address of the owner of a gift card and the address is in a state that does not exempt gift cards (see Where to Report Unclaimed Property). Rather, this would only reduce unclaimed property liability for gift cards issued to owners whose address is unknown. If a company issuing gift cards is concerned about unclaimed property liability, the company should engage experienced counsel to:

- Assess the states that may be the most beneficial to the company.
- Assist in structuring a gift card company in that state.
- Advise on appropriate inter-affiliate documentation and practices.

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