
Delaware District Court Rules That Delaware's Unclaimed Property Audit Process Violates Substantive Due Process Constitutional Rights

On June 28, 2016, the United States District Court for the District of Delaware issued an opinion in the case of *Temple-Inland, Inc. v. Cook*, Civ. No. 14-654-GMS, granting in part and denying in part cross motions for summary judgment filed by the State of Delaware (the "State") and Temple-Inland, Inc. (the "Company"). Significantly, the Court granted the Company's claims that the State's audit conduct violates substantive due process rights under the United States Constitution. Declining the State's invitation to abstain from deciding the case pending a review by a Delaware state court of the statute allowing for the extrapolation and estimation of liability for periods for which a holder lacks records, the Court held that the combined effect of several aspects of the State's executive actions created a game of "gotcha" which "shocks the conscience."

Among the specific facts the Court cited as troubling were: (i) the length of the audit look back; (ii) actions by the State that the Court construed as seeking to prevent the applicability of a statute of limitations; (iii) the failure to notify the Company of the need to maintain business records for Delaware unclaimed property purposes longer than is standard in business, (iv) prolonged retroactive application of the State's extrapolation and estimation statute for the sole apparent purpose of raising revenue; and (v) the failure to follow fundamental principles of estimation by employing methods where characteristics that favored liability were promoted, but characteristics that reduced liability were ignored, resulting in a risk of multiple liability to the Company for the same unclaimed property. The Court noted that none of the monies claimed by the State as a consequence of its abandoned property liability estimation could ever be returned to owners, because there were no names, addresses or specific property associated with any of the estimated amounts, and persons claiming unclaimed property amounts from the State must prove ownership.

Although the Court deferred to a later date its ruling on a remedy for this due process violation, finding the State to be in the best position to identify the remedy "most palatable in its anticipated efforts to normalize the enforcement of its unclaimed property laws," this ruling raises important issues for holders involved in Delaware audits and Voluntary Disclosures. In particular, the case raises serious questions concerning the length of the permissible look back period and the application of the statute of limitations to holders with even a sporadic history of filing unclaimed property reports. Likewise, the Court's ruling that the State's estimation methodology creates "significantly misleading results" as the result of its failure to ensure that the characteristics and qualities of the property within the sample are replicated across the whole raises important questions concerning the identity and characteristics of the sample used to extrapolate and estimate liability for periods where records are lacking.

Click [here](#) to download a copy of the court's opinion.

Please contact Morris Nichols attorneys in the Unclaimed Property Counseling Group if you would like a more detailed discussion of the court's holdings or to discuss the implications of this case.

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