

Unclaimed Property: A Delicate Balance for Delaware - Enforcing the Law in the Face of Ongoing Legal Challenges and Economic Uncertainty

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Unclaimed property is an arcane concept, a modern outgrowth of ancient legal principles. These principles, as recognized in a series of U.S. Supreme Court opinions, provide the State the right to take custody of abandoned property - uncashed checks, unclaimed bank accounts, stock certificates and much more - in the possession of a person or company (i.e., "holders"), which has not been claimed by the owner for a defined period of time ("dormancy period") pursuant to certain "priority rules." Under these rules, once property is in the State's possession, it may (1) hold it indefinitely for the benefit of the owner who may come forward to claim it in the future or (2) take property for which there is no known owner or which is never claimed by an identifiable owner and use that property for "the common good" (e.g., fund government operations). As case law and commentators have noted, "in these situations the policy is that it is better that the states and its citizens enjoy the benefit of the windfall rather than the holder."¹

For Delaware, the legal home to thousands of "holders," collection of, and fiscal reliance on, unclaimed property has always been tricky. Delaware markets itself to American business as the "corporate capital of the world" with a world-class judiciary, a balanced corporate tax structure and responsive state government. But it is a dicey proposition to also then pursue these same companies for often millions of dollars in unclaimed property, some of which is "estimated," much of which is used by Delaware to fund State operations. Though enabled by law to collect these monies from its companies, the State must balance what it can do with what it should do. Trying to strike this delicate balance has involved legislative changes, creation of programs encouraging voluntary compliance and - most recently - litigating with companies. And it is all further complicated by the economic stress that both the State faces from the disruptions of coronavirus, or COVID-19 (and the need for every dollar available to address that disruption), and that companies also face with operations closed and revenues in decline.

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¹ 2016 Revised Uniform Unclaimed Property Act, Prefatory Note, pp 1-4.

PROFESSIONALS

Katherine H. Betterly

Michael Houghton

PRACTICE AREAS

Unclaimed Property

