

# THE UNCLAIMED PROPERTY LEDGER

1ST QUARTER 2008



## IN THIS ISSUE

### CURRENT EVENTS

Highlights of current events

### HOT TOPIC

**When I outsource to a Third Party Administrator (TPA), do I outsource my liability?**

*By Michael Ryan and Nick Nichols*

This article explores when outsourcing a function where the responsibility and liability reside for unclaimed property reporting.

### ABOUT SMS VANACORE

SMS Vanacore's focus is to educate and assist our clients with unclaimed property and to locate the owners of unclaimed property.

### CONTRIBUTOR'S CORNER

**A First Timer's View of the UPPO Annual Conference**

*By Lennie Kaufman*

Hear firsthand the value and benefits of attending the Annual Conference Unclaimed Property Professionals Organization

### LEGISLATIVE UPDATES

Available only in our online edition

## CURRENT EVENTS

The team at SMS Vanacore was pleased to announce our new company at the end of 2007. We are continually upgrading our products and services to exceed our clients' expectations. Our newsletter has a new look, with timely and resourceful unclaimed property information for our readers to use for educational and professional purposes. We hope you enjoy this first 2008 edition of the quarterly newsletter and as always, we look forward to any feedback you may have by sending an email to [newsletter@smsvanacore.com](mailto:newsletter@smsvanacore.com).

## UPCOMING CONFERENCES

On April 14th, Christa DeOliveira, SMS Vanacore's Chief Compliance Officer will be speaking at the State Auditor Training Conference being held in Salt Lake City.

SMS Vanacore will be exhibiting at the Securities Industry and Financial Markets Association (SIFMA) Conference from May 4-7 in Phoenix.

On June 8-11, SMS will be exhibiting at the Annual Meeting of the National Investor Relations Institute (NIRI) in San Diego.

SMS will be attending the National Conference of the Society of Corporate Secretaries and Governance Professionals (SCSGP) from June 25 - 29 in Boca Raton.

Recently, Mike Ryan and Christa DeOliveira were presented with Certificates of Appreciation at the recent Annual Conference for the Unclaimed Property Professionals Organization (UPPO). They were acknowledged for their volunteer work on various committees.



The team at SMS Vanacore is pleased to announce that Lennie Kaufman has joined us to become Executive Vice President & Director of Relationship Management & Sales. Mr. Kaufman is a recognized transfer agent industry expert with extensive securities and financial services experience.

Prior to joining us, Mr. Kaufman served as Executive Vice President and General Manager of Wells Fargo (Norwest) Shareowner Services from 1996-2007. His leadership focused on delivering a high quality product, and providing superior customer service. He plans to apply the same focus at SMS Vanacore and continue supporting our strong commitment to quality and customer service. Prior to running the Wells Fargo stock transfer agency, he ran Norwest's global loan syndication business for 4 years, and spent over 10 years as a corporate banker.

While running the Transfer Agent, he participated in multiple industry associations where he developed important relationships with customers and regulators. He most recently served as Vice President, Treasurer, and Board Member of the Securities Transfer Association (STA). He has also served as a Board Member, Officer, and former President of the Midwest Securities Transfer Association (MSTA). Additional industry memberships included the Shareholder Services



©2008, all rights reserved.

To subscribe or submit suggestions, please send an email to [newsletter@smsvanacore.com](mailto:newsletter@smsvanacore.com)

SMSVANACORE.COM 866-421-6800

Association (SSA), the National Association of Stock Plan Professionals (NASPP), and the American Society of Corporate Governance Professionals (the "Society"). Mr. Kaufman earned both an undergraduate degree in Business Administration and an MBA from the University of Minnesota.

## HOW ARE YOU TRACKING, LOCATING, AND REPORTING IRA ACCOUNTS?

Some states have started to call attention to a possible "compliance gap" in the reporting of Individual Retirement Accounts (IRA). They believe due to confusion over who has the duty to file these accounts, their relative "newness", the quality of records, and owner data, along with confusion over state reporting requirements, there could be underreporting. States are looking closely at this and at least 21 states have started sending out letters notifying holders they have hired a third party auditor to audit IRA accounts.

SMS Vanacore is working diligently with industry organizations and individual states to get a clear understanding of each state's reporting requirements for IRA accounts. SMS Vanacore can assist you with the due diligence, location process, and state reporting requirements. For more information about our services and the status of the IRA audit, please contact Michael Ryan at 212-764-8666 extension 135 or at [Michael.Ryan@smsvanacore.com](mailto:Michael.Ryan@smsvanacore.com).

## HOT TOPIC

### When I outsource to a Third Party Administrator (TPA), do I outsource my liability?

*By Michael Ryan and Nick Nichols*

For reasons of efficiency and cost-savings, many companies outsource various functions to specialized service providers called Third Party Administrators (TPA). Companies outsource specific functions to TPAs that range from administration to full operational processing. The TPA may manage all aspects or specific parts of an outsourced function.

In regards to unclaimed property, it is important to remember that many outsourced functions can have significant unclaimed property compliance implications. Some of these include:

- Payroll processing and HR functions
- Securities transfer agent
- Check processing

You may have outsourced the RESPONSIBILITY, but not the LIABILITY.

### Who has the liability?

From a state's perspective, requirements are ultimately between the state and the holder; the state may or may not even know you have outsourced certain processes. As such, it is critical to understand exactly the services being provided by your TPA and address the liabilities accordingly. For a check processing example, if your TPA is simply mailing checks for you, but your company maintains the records and the account balances, then liability and responsibility remains with your company for unpaid or uncashed items. However, if

your TPA handles production, processing, and the financial obligations, the responsibility might be with the TPA.

The most important consideration to determine responsibility will be what is provided for in the contract between your company and the TPA. Does the contract clearly outline which party is responsible for reporting unclaimed property and any negative consequences of not reporting or is it silent? Unfortunately, it is all too common for TPA contracts to be silent and not address unclaimed property reporting.

If your contract does clearly outline that your TPA is responsible for unclaimed property reporting, it's still important to understand what processes are happening. You should ensure that the reports are being filed timely and accurately. You can request preliminary lists, copies of due diligence letters, and copies of final reports with proof of delivery and payment. These copies should be archived alongside your internal reports so that you have complete information in the event an audit trail is required in the future.

If your contract is silent to unclaimed property reporting responsibilities, then it will be important to determine who takes the responsibility. If you have a TPA that handles payments, where the TPA performs the steps of processing necessary data and issuing checks, but where your company funds the checks as they are presented for payment. Whether the bank account that is used to cut the checks belongs to the holder or it belongs to the TPA, in this scenario the holder has not issued the funds to the TPA for items not presented. Therefore, for the holder to report the unclaimed property, they will need detailed records from the TPA of what has not been presented for payment. Conversely, if the TPA does the reporting, then they have the records, but they will need the funds to be remitted from the holder.

On the other hand, if your company outsources its payroll, then typically the full amount for all funds due to employees and for taxes is transmitted to the payroll company. Unfortunately, it can be easy to overlook uncashed payroll checks, especially with most employees opting for direct deposit. It is important to determine what payroll functions you outsource, who is holding the records and money, and who and how the unclaimed property is to be reported and monitored.

Another common example of using a TPA relates to publically traded companies' stock, mutual funds, and public debt where the maintaining of the securityholder files have been outsourced to a "Transfer Agent". Typically, the transfer agent is also the paying agent and tracks all types of payments; including dividends, cash-in-lieu of fractional shares, liquidations, interest, and redemptions. For various stock position types including certificated, book-entry, dividend reinvestment, and unexchanged classes, they all need to be tracked for activity and managed in regards to unclaimed property. Once again, ensuring that your contract reflects the responsibility to report is pivotal. It is always advisable to ensure your agent is managing the responsibility and receive documents supporting this for each reporting cycle.

Failure to manage any of these, or other outsourced functions for unclaimed property can raise a compliance concern from the states and possibly result in an audit. Remember that from the state's perspective, they may have no idea your

function is outsourced. Additionally, if a state does know and goes to your TPA first, but does not get the answers or the timely action that they are looking for, they will come directly to your company about the issue. If you are not familiar with your TPA's process, getting answers may require a significant investment of time and effort, but it is worth it to identify any risks and take appropriate actions to mitigate any risks.

### Where do I go from here?

For the functions you are outsourcing, it is time to identify your TPAs, review your contracts, and determine who is responsible for handling the unclaimed property reporting. If the TPA is responsible, ensure they have been reporting and how. Items to review include:

- Are they reporting to state of last known address correctly?
- Are they using the correct dormancy periods?
- What property codes are being used?
- Is the TPA reporting to your company's state of incorporation for owner unknown property or the TPA's state of incorporation?
- What EIN is being used for the reports?
- Is your company indemnified from liabilities that may result from the handling of unclaimed property?
- Has your company received copies of reports filed and procedures followed (including what and how they report and their due diligence process)?

If you determine you are responsible for reporting, then it will be important to coordinate getting any necessary information back to the company so that you have the necessary information to prepare the report. Also, it is useful to set up appropriate schedules to get future information. Another consideration is to work with the relevant groups internally to discuss the possibility of including specific unclaimed property reporting provisions for subsequent contracts with TPAs.

Lastly, having a complete understanding of an existing TPA's unclaimed property processes becomes even more critical if you bring that process back in-house. Your company needs to understand how specific items were reported in the past, the property codes used, etc., before sending out reports in subsequent reporting cycles. In reviewing your TPAs, you will most likely discover a few items that need to be addressed, but you will be happy you found them before the auditors for a state did!

To automatically receive notification of posting for of our online newsletters, you may subscribe by sending an email to [newsletter@smsvanacore.com](mailto:newsletter@smsvanacore.com).

## ABOUT SMS VANACORE

SMS Vanacore's experienced team designs custom unclaimed property programs to fit our client's particular needs. We tailor programs to help reduce unclaimed property liability, retain assets under management, service owners and holders, and maintain compliance with SEC and state regulations. Our full scope of services include:

- SEC Compliance Searches
- Extensive Investigative Searches
- Address Verification and Due Diligence Mailings
- Initial Compliance Programs
- State Unclaimed Property Reporting
- New Account Verification and Fraud Mitigation Programs
- Compliance Consulting Services
- Monitoring of Unclaimed Property Laws and Regulations

## CONTRIBUTORS CORNER

### A First Timer's View of the UPPO Annual Conference

By Lennie Kaufman

In my previous position, the world of unclaimed property (UP) was one I understood at a 30,000 foot level. As the General Manager of a commercial transfer agent, I was fortunate to have very capable people who understood the details of the process, and how the various parties fit together. Upon joining SMS Vanacore, I needed to achieve a much better view of how the UP process works. When I asked my colleagues the best way to begin, they pointed me to the Annual Conference of the Unclaimed Property Professionals Organization (UPPO). So I jumped from the clouds into a swarm of UP activity.

The Conference definitely lived up to the expectations set out by my peers. From the first session on Tuesday afternoon, I began to start building knowledge from two basic courses: UPPO 101 and Unclaimed Property 101. Both provided a solid foundation for someone new to UP. What surprised me about the "basic" courses was the attendance at those sessions. Several hundred people filled up the room. At many conferences from prior lives, a "basics" course on a sunny afternoon would have been sparsely attended, with most attendees taking advantage of tennis, golf, spa, or beach activities (if available). It was clear that people were here to learn, and there were many "first timers" like me trying to get a better understanding of a topic which is getting a good deal of attention these days.



In addition to learning about the process of working with UP; the Conference brought together many different UP constituencies. The majority were from the “holder” community—across a very broad group of industries. Also, there was strong representation from various state UP agencies and programs, as well as many companies that support the UP process with an array of services, products, and consulting solutions. I was impressed by the interaction of conference participants—especially their willingness to share information and help each other learn. It was a great opportunity for people from the state agencies and the holder community to share information, ideas, and reduce potential misperceptions. There was also a formalized group within UPPO called “Members as Mentors” which put some structure around the learning process.

The business program itself offered presentations aimed at people with different levels of expertise and understanding—from beginners to those with advanced knowledge. There were also sessions that divided the participants by industry groups, sessions which separated the attendees by their role in the UP process (holders vs. state agencies), and sessions where the express focus was interaction between the attendees with different roles.

There was a heavy focus on current topics, such as changing state requirements, the changes in the California UP process (and what drove those changes), and the evolving requirements for different classes of property. This included discussions about employee benefit properties, gift cards, and stored value cards.

As is true with most conferences, one of the most important benefits at UPPO was the opportunity to network. This occurred during breaks, meals, and even during sessions. There was also an exhibitors area at the Conference where a dozen or so product partners could display their offerings, answer questions, meet new people, and renew relationships with fellow attendees.

Finally, there were a number of evening events where people could further discuss the many issues covered at the conference. I am already looking forward to next year’s annual conference in Jacksonville, Florida for the learning and networking opportunities I am confident it will provide.

More information about UPPO can be obtained on their website at [www.uppo.org](http://www.uppo.org).



## LEGISLATIVE UPDATES

This web edition includes highlights of recently passed legislation impacting unclaimed property and gift cards; it does not convey legal advice. Previous legislative updates are available in the first and third quarter online editions of our newsletters at [www.smsvanacore.com/news.html](http://www.smsvanacore.com/news.html). (Budgetary legislation is only cited when there are peripheral provisions that might be of interest.)

### ARIZONA

HB 2781 signed 6/25/07: An appropriations bill that sets aside 12.5% of the dollar value of the properties recovered by unclaimed property contract auditors is appropriated to pay the contract auditor fees. This is estimated to be \$1,770,000.

HB 2786 signed 6/25/07: For the following properties the dormancy period has been reduced from 5 to 3 years:

- Principal on debt other than a bearer or an original issue discount bond of a business association is presumed abandoned after the maturity date and the interest on the debt is presumed abandoned after the payment date.
- Security related property, including dividends, profit, distributions, payments on principal or other sum held or owing by a business association is presumed abandoned after the date prescribed for payment, or delivery.

### CALIFORNIA

HB 1248 signed 10/14/07: Exempts from the Unclaimed Property Law any property in the official custody of a court if the property may be transferred to the Trial Court Operations Fund under specified provisions of law.

SB 86 effective 8/24/07: The California State Controller’s Office has put together a summary of this legislation, it can be reviewed at [www.sco.ca.gov/eo/pressbox/2007/pc0823/budtrailerfs.pdf](http://www.sco.ca.gov/eo/pressbox/2007/pc0823/budtrailerfs.pdf). Some highlights of the bill include, a statement that property received by the state shall not permanently escheat. It also proclaims the intent of the Legislature is to reunite unclaimed property with its owners. It outlines a more aggressive notification program: within 165 days from when a report is due and when remittance occurs a notice will be sent by mail to each person with property valued at \$50 or more. If the report includes an SSN, that SSN will be sent to the Franchise Tax Board to attempt to locate a current address. Notifications will be sent to the different address, if a different address is found or the address listed on the report if a different address is not provided. Additionally, other state or local agencies may furnish addresses or other information that could assist in identification or location of the apparent owner. Mailed notices will notify the addressee that property is being held which they appear to be entitled; the name and address of the holder and pertinent information regarding name and address changes; a statement that if a satisfactory claim is not pursued by the owner to the holder, then the property will be placed in the custody of the Controller and may be sold or destroyed and future claims for property or proceeds of sold property must be directed to the Controller.

Property will be held for 18 months before it is sold or destroyed. Securities will be held for 18 months, but no more than 20 after the final filing date. If securities have

been sold the owner is entitled to the net proceeds; whereas, if the securities have not been sold the owner is entitled to receive the securities. Once securities are transferred into the state's name pursuant to unclaimed property laws, the holder, transfer agent, registrar, or other person acting on behalf of the holder is relieved of all liability of every kind to any person including, but not limited to, any person acquiring the original certificate or a duplicate certificate for any losses or damages resulting to that person by the issuance and delivery to the Controller the duplicate certificate or registration of uncertificated securities. All escheated military items will be held in trust at the California State Military Museum and Resource Center.

Payments will be due no sooner than 7 months and no later than 7 months and 15 days after the final date for filing the report. The provision requiring EFT for cash amounts over \$20,000 and the associated 2% penalty remains in this legislation. It does allow for not paying or delivering property and making adjustments to a report for any owners that have established their right to receive property on a form to be prescribed or approved by the Controller.

Outside of the legislation, a new email subscription service has been established; individuals may subscribe to receive updates and law changes that impact holders, to subscribe complete the form at [www.sco.ca.gov/col/ucp/holder/listserv/index.shtml](http://www.sco.ca.gov/col/ucp/holder/listserv/index.shtml). Additionally, it is important to note, while California has passed this new legislation, as of yet this new approach has not been approved by the federal court and the temporary injunction described the last edition of The Unclaimed Property Ledger has not been removed or modified.

SB 250 signed 10/13/07: This legislation amends prior gift certificate legislation to allow for any gift certificate with a cash value of less than \$10 to be redeemed in cash and exempts donated gift certificates from the no service fee and no expiration date prohibitions. Gift certificates for food product are prohibited from containing an expiration date or service fee, unless issued for perishable food products.

SB 920 signed 10/13/07: The Franchise Tax board may provide the Controller with the address or other identifying information from tax returns to locate owners of unclaimed property. The information may not be disclosed and can only be used to find owners or to determine unclaimed property compliance.

## CONNECTICUT

SB 229 effective 7/1/07: The dormancy period for any money order issued or sold in Connecticut on which a business association is directly liable has been reduced from 15 to 7 years from the date of issuance.

## DELAWARE

HB 250 signed 7/1/07: Authorizes the Director of Revenue to enter into agreements where contingency and other fees are provided to finders of property to be escheated to the state. The Director may direct that payment for said fees or other costs associated with the escheat of property under these agreements, including litigation expenses, be made from the money held in the escrow, custodian or other accounts established under this paragraph. This act establishes an Appropriated Special Fund account, from which charges

relating to receiving and processing remittances and reports by holders, and claims by owners as well as advertising and travel fees and associated costs may be paid and abandoned property remittances may be deposited. Unencumbered balances on June 30 in excess of \$150 shall revert to the General Fund. Semi-annually a report of amounts in escrow or in custodian accounts shall be given to the Director of the Office of Management and Budget and the Controller General.

## FLORIDA

SB 22 signed 10/26/07: This legislation modifies phrasing and the provisions for when a gift certificate may have an expiration date. A gift certificate purchased or credit memo issued may not have an expiration date, expiration period, or any type of post-sale charge or fees. A gift certificate may have an expiration date of not less than 3 years if it is provided as a charitable contribution, or not less than 1 year if it is provided as a benefit pursuant to an employee-incentive program, and the expiration date is prominently disclosed in writing to the consumer at the time it is provided. Additionally, a gift certificate may have an expiration date if it is provided to the recipient, or to a purchaser, as part of a loyalty or promotional program when the recipient does not pay a separate identifiable charge for the certificate, or if it is provided in conjunction with a convention, conference, vacation, or sporting or fine arts event so long as the majority of the value paid by the recipient is attributable to the event. An issuer may honor a gift certificate that has expired on or before the effective date of this act. This applies to all gift cards purchased and credit memos issued on or after June 28, 2007.

SB 672 effective 7/1/07: Credit balances held by a financial institution which result from the performance of or participation in check-clearing functions through a clearinghouse are not subject to the reporting requirements of unclaimed property.

SB 1638 effective 6/28/07: This legislation provides definitions for credit memos and gift certificates; these items as defined in §501.95 are not required to be reported as unclaimed property. Gift certificate sold for consideration may not have an expiration date or any type of post sale fees. Expiration dates of not less than 3 years are permitted for gift certificates given as a charitable contribution with no consideration given by the consumer when the expiration date is prominently disclosed in writing. Expiration dates may also be imposed for promotional programs such as employee incentive or consumer loyalty programs; certificates issued pursuant to these programs may not expire in less than 1 year and must be prominently disclosed in writing. The legislation specifically states unredeemed certificates or credit memos are "not required to be reported as unclaimed property." Consideration paid for unredeemed certificate and credit memos is the property of the issuer and is only subject to the rights of a purchaser/owner and is not subject to claims made by any state acting on behalf of the owner.

## IDAHO

HB 346 signed 2/13/2008: Amends the Unclaimed Property Act to exclude the interest provisions of subsection (6) of section 63-3045 of the Idaho Code.

## ILLINOIS

HB 369 effective 1/1/08: Expiration dates earlier than 5 years and post sale fees on gift certificates are prohibited. Certificates issued prior to 1/1/08 subject to fees and expiration dates must contain a clear and conspicuous statement printed on the card stating there is a fee, how often it will be assessed that inactivity triggers the fee and when the fee will be assessed. The statements must be visible prior to purchase, unless the card lists a toll free phone number with a conspicuous statement notifying that owners can call the number to retrieve the remaining balance and any applicable expiration date.

## LOUISIANA

HB 531 effective 7/9/07: Each fiscal year, \$15 million dollars from the sale of unclaimed property will be deposited into the Unclaimed Property Leverage Fund, within that fund a special account will be set up as the I-49 North Account. The source of monies in the I-49 North Account shall be 50% percent of the funds deposited in the Unclaimed Property Leverage Fund each fiscal year. Monies from the I-49 North Account can only be expended for transfer to the Louisiana Transportation Authority be used exclusively to match federal funds costs construction of I-49 North within Louisiana.

HB 677 effective 7/10/07: Property deposited with the Louisiana Political Museum and Hall of Fame that remains unclaimed for 10 years shall be considered abandoned and escheat to become the property of the museum, provided prescribed owner outreach requirements through publication have been met.

## MAINE

HP 187 signed 6/27/07: This legislation creates a financial literacy program funded by excess monies from the Unclaimed Property Fund.

## MASSACHUSETTS

SB 2345 signed 3/11/08: A purchaser of a gift certificate shall be allowed to receive the balance in cash when it cannot have more value added and if it has already been redeemed for at least 90% of its face value. For a gift certificate where value can be added, it may be redeemed for cash if the remaining value is \$5 or less. A gift certificate shall not include pre-paid calling arrangements or any electronic card usable with multiple unaffiliated sellers of goods or services. Sellers of gift certificates that impose fees that reduce the total value of the gift certificate, shall be punished by a fine of not more than \$300 per violation. Whoever redeems a gift certificate and deducts a gratuity without the consent of the owner, shall be punished by a fine of not more than \$300 per violation.

## MICHIGAN

SB 229 adopted 10/31/2007: Budgetary legislation, the Department of Treasury may contract with private auditing firms to audit for and collect unclaimed property due this state. Amounts are appropriated to cover auditing and collection costs and fees not to exceed 12% of the collections, or a lesser amount as prescribed by the contract. From unclaimed property funds collected by the Department of Treasury, \$51,000.00 shall be paid as annual dues to the National Conference of Commissioners on Uniform State Laws.

## MINNESOTA

SF 69 effective 8/1/07: This legislation provides definitions for gift certificate and affiliate. For gift certificates issued or sold on or after 8/1/07 expiration dates and service fees are prohibited. These restrictions do not apply when the issuer discloses any expiration date and fee associated with the gift certificate and they are:

- distributed to a consumer for loyalty, promotional, award, incentive, rebate, or other similar purposes when money or other tangible thing of value was not given by the consumer for the gift certificate or card;
- sold below face value or at a volume discount to employers or to nonprofit and charitable organizations for fund-raising purposes;
- debit cards or other legal access devices used to access a deposit account;
- issued by an employer to an employee in recognition of services performed by the employee;
- issued by financial institution and that can be used at multiple merchants; or
- prepaid calling cards.

## NEBRASKA

LB 668 signed 3/10/08: A gift certificate or card which is not assessed any fees and does not have an expiration date shall not be presumed abandoned; this removes the previous restriction of only applying to cards and certificates with values of less than \$100.

## NEVADA

AB 279 effective 10/1/07: It is a deceptive practice if service fees are imposed on gift certificates on the basis of inactivity, unless the duration of inactivity is at least 3 continuous years. The provision of service fees not exceeding \$1 per month, has remained unchanged. Gift certificates with an expiration date are presumed abandoned on the expiration date, 60% of the unredeemed value is subject to escheat. For gift certificates where the issuer does not collect and maintain the name and address of the owner, the address of the owner shall be considered to be the Office of the State Treasurer. Proceeds from abandoned gift certificates must separately be accounted for in the Abandoned Property Trust Fund and annually must be transferred to the newly created Educational Trust Fund. These monies may only be expended for educational purposes.

## NEW MEXICO

HB 127 effective 7/1/07: The dormancy period for gift certificates has been increased from 3 to 5 years. This legislation provides a definition for gift certificate. Gift certificates may not have an expiration date less than 5 years after the date of issue. If an expiration date is not conspicuously stated on a gift certificate, it is presumed to have no expiration date and shall be valid until redeemed or replaced. Other than an initial charge, which may not exceed the face value, fees of any kind in relation to the sale, redemption, or replacement of a gift certificate are not permitted. Violations will be considered an unfair or deceptive trade practice. Gift certificates do not include:

- certificates or store gift cards or general use prepaid cards distributed to a consumer for promotional, award, incentive, rebate or other similar purposes without any money or other tangible thing of value being given by the consumer in exchange for the gift certificate;
- gift certificates, store gift cards, or general use prepaid

- cards sold below face value or at a volume discount to employers or to nonprofit and charitable organizations for fund-raising purposes;
- written promises, plastic cards, or other electronic devices that are used solely for prepaid telephone services; or are associated with a deposit, checking, savings, or similar account at a banking or other similarly regulated financial institution and that provide payments solely by debiting the related account; and
- gift certificates issued by financial institutions or licensed money transmitters.

## NEW YORK

SB 961 approved 7/18/07: Addresses pre-need funeral plans. A definition for a pre-need administrator is provided. The legislation outlines requirements for owner outreach, outreach to funeral home directors, and making reasonable attempts to ascertain if an owner has died. Addresses how to handle both revocable and irrevocable agreements and how to determine and handle abandoned funds in a variety of circumstances. The legislation outlines a variety of dormancy periods dependent on situational specifics. Essentially, when it is determined funds have been abandoned, if the agreement is revocable the funds or surplus funds would need to be turned over to the state as unclaimed property; whereas, if the agreement is irrevocable then the funds or surplus of funds would be turned over to indigent care burial fund.

## NORTH CAROLINA

SB 242 signed 8/17/07: Property held in the Escheat Fund is subject to garnishments for taxes owed.

SB 1517 effective 12/1/07: Provides definitions for gift card and maintenance fees and requires conspicuous disclosure of maintenance fees and prohibits them for at least 1 year after the date of purchase. Any sellers or issuers of cards violating this commit an unfair trade practice. The legislation exempts gift cards that are issued by a financial institution that are usable at multiple unaffiliated sellers of goods or services.

## OKLAHOMA

SB 1 signed 6/4/2007: At its discretion the Tax Commission may furnish any information disclosed in its records for the purpose of administration of the Uniform Unclaimed Property Act.

## OREGON

HB 2104 effective 1/1/08: The dormancy period for any demand, savings, or matured time deposit with a financial institution has been reduced from 5 to 3 years. The requirement for 3 months written notice before a holder may impose any fee or cease paying interest due to dormancy or inactivity has been changed from certified mail to first class mail. Renewable time deposits are still considered matured on the expiration date of their initial time period, unless the owner consents to a renewal at the time of renewal by communicating in writing, the financial institution has sent a written or electronic statement, and the statement was not returned. Also, if the delivery of the property would result in a penalty or forfeiture, then the delivery may be delayed until the time when there will be no penalty or forfeiture.

Additionally, the dormancy period has been reduced from 5 to 3 years for

- checks, drafts, or similar instruments including a cashier's check and a certified check, for which a financial institution is directly liable;
- funds held or owing under a life or endowment insurance policy or annuity contract that has matured or terminated;
- stock, certificates of ownership, or other intangible equity ownership interests in a business association; and
- any dividend, profit distribution, interest, payment on principal, or other sum held or owing by a business association.

HB 2513 signed 7/16/07: Provides definition for a gift card excludes prepaid phone cards and prepaid commercial mobile radio services. Prohibits expiration dates, fees on cards and declining face value associated with the passage of time. However, cards with expiration dates may be sold if the card

- has the phrase "EXPIRES ON" or "EXPIRATION DATE" when followed by the date on which the card expires and if this is printed on the card in 10 point font;
- is sold below face value; and
- the card does not expire for at least 30 days.

HB 5043 & 5049 effective 7/1/07: Both budget bills state "expenditures by the Department of State Lands for unclaimed property finder's fees... are not limited."

## TEXAS

HB 3693 effective 9/1/07: Nonprofit electric cooperatives may deliver unclaimed property to a scholarship fund for rural students, to stimulate rural economic development, or to provide energy efficiency assistance to members. The comptroller shall prescribe procedures and forms for notice of unclaimed property, delivery of reported money to the respective options, how to file a claim, and procedures to ensure equitable participation by all nonprofit cooperatives in the state.

## UTAH

SJR 11 adopted 3/13/08: This joint resolution provides direction to study many items including treating expired gift certificates as unclaimed property.

## WISCONSIN

AB 617 signed 3/21/08: Statue amending to provide a definition for fiscal year, the period beginning on July 1 and ending on the following June 30. Also, alters the date service charges may be assessed from December 31 to June 30 of the year covered in the filed report.

To subscribe, ask questions, or submit suggestions, please send an email to [newsletter@smsvanacore.com](mailto:newsletter@smsvanacore.com).

