

THE UNCLAIMED PROPERTY LEDGER

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By Christa DeOliveira, CIA, CCEP

This article looks at the unclaimed property questions surrounding 529 Plans or Qualified Tax Plans.

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.

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The Real Costs of a Lost Investor

By Mike Ryan

In this article the value of searching for lost shareholders and customers is explored.

CURRENT EVENTS

February 15-18, 2009, SMS Vanacore will be exhibiting at the National Investment Company Service Association (NICSA) Annual Conference and Expo in Miami, Florida.

On March 10-13, 2009, SMS Vanacore will be exhibiting at the annual Unclaimed Property Professionals Organization (UPPO) Conference in Jacksonville, Florida.

SMS Vanacore wants to congratulate Christa DeOliveira our Chief Compliance Officer. In the recent UPPO election she was voted in as Second Vice President. She will officially join the Board at the UPPO annual conference in March 2009.



SMS Vanacore would like to wish you and yours a joyous and safe holiday season and a prosperous New Year.

HOT TOPIC

Unclaimed Property Questions Surrounding 529 Plans

By Christa DeOliveira, CIA, CCEP

There are many questions surrounding 529 plans and their unclaimed property implications. These unanswered questions are perplexing not only holders, but states as well. As such they were a topic at the recent National Association of State Treasurer's (NAST) Treasury Management Conference in Addison, Texas from December 8 - 11.

Overview

529 plans or Qualified Tax Plans have been in existence since 1988. They are defined in the IRS code and are formally called Qualified Tax Plans; however, the nickname of 529 plans is from the section of tax code that authorizes them. The plans are administered by higher education institutions or state agencies.

Under 529 plans there are two options: the prepaid tuition plans and guaranteed saving plans. According to the College Savings Plan Network, 15 states offer prepaid plans and 48 states plus the District of Columbia offer savings plans (www.collegesavings.org).

Prepaid plans permit families to lock in prevailing tuition rates by making a payment or installments of payments, this investment locks in future tuition at the cost of current rates. This vehicle can be used to pay part or all of tuitions costs. With these prepaid plans, from the time of the payment to the time that the student/beneficiary uses the benefit, the state manages the money and when a student enrolls they receive the benefit of an education, regardless of how much tuition costs may have risen.

Typically, the tuition guarantee only applies to state schools and there are residency requirements; although, there are generally provisions to receive funding to apply to the cost of out of



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state or private schools. This is commonly based on the average cost of in state tuition. This offers some security in the event that a student ultimately does not attend the schools in the state sponsored program where the prepaid plan was set up.

529 savings plans are more abundant and have historically been a more common alternative. In these plans funds are invested in a state plan and grow tax free based on the performance of the underlying asset which typically consists of mutual funds. These plans are like any other investment, in that they carry the risk of losing money. These plans offer additional flexibility over prepaid plans and also allow for one investment change annually. They can be used for other qualified expenses beyond tuition including books and room and board. Also, savings plans can be used for graduate school, while prepaid plans are limited to undergraduate tuition and fees. These plans share a similarity to a Roth IRA, in that after tax dollars are invested and qualified distributions are tax free. Additionally, some states also offer tax incentives for amounts invested in 529 plans.

All plans have a designated owner and beneficiary. Commonly the owner will be a parent or grandparent and the beneficiary their child or grandchild. An interesting feature of 529 plans is that the beneficiaries can be changed. For example with savings plans, if a parent invests money for their oldest child and the funds are not entirely depleted then the beneficiary could be changed to a younger sibling and again if the funds are not depleted, they could then be rolled to another family member including the original beneficiary's child.

Residents of a particular state may in most instances participate in the plans of another state, if they find they prefer the features of another state's plan. However, pursuing this alternative may deprive them of any state level tax advantages offered by their home state's plan.

The presenters were Kathleen F. McGrath, Esq. the Director of Pennsylvania's Tuition Account Program, Scott M. Gates Director of Kansas' Learning Quest Program and Stephen Larson, Iowa's Deputy Treasurer. The presentation stated that as of September 30, 2008 there were 11 million 529 plan accounts containing \$120 billion. Undoubtedly, that amount has eroded to an extent due to the recent market conditions; regardless, significant assets are involved and it is prudent to iron out the unclaimed property treatment of these assets.

During the session multiple questions were raised, the most fundamental being, should 529 plans be subject to unclaimed property laws? As a follow up question to that one, would the answer be the same for prepaid plans as it is for guaranteed savings plans? It was suggested that perhaps keeping prepaid plan assets as part of the plan to benefit other participants, similar to an ERISA defined benefit pension plan model and escheat only savings plans.

Another question that was raised was if it is determined that accounts should be reported, then to which state should they be reported? This was an interesting topic as a survey that the task force conducted was cited, it indicated that 23 out of 39 states felt 529 property should be reported and 10 respondents stated it should go to the last known address, 13 respondents stated property should be reported to the state of the sponsoring plan. Although, the discussion that ensued strongly showed that the session participants felt that the model adopted from the landmark Supreme Court case *Texas v. New Jersey 1965* should be followed, with escheated property going to the state of last known address or to the state of corporate domicile when the address is unknown.

What should be a triggering event to begin the dormancy period, when should property be reportable? There was the suggestion to look towards no owner generated activity, date of required distribution, date of attempted distribution or date of undeliverable mail.



Unclaimed Property Questions

At the recent meeting of the NAST Treasury Management Conference, there was a session devoted to 529 plans. It was a joint session with the NAST affiliate organizations of the National Association of Unclaimed Property Administrators (NAUPA) and the College Savings Plan Network (CSPN). The session presented findings of the joint NAUPA and CSPN 529 Plan Task Force. It revealed the results of a survey that was conducted and rather than supplying answers of how to address 529 plans as unclaimed property, the session worked to identify the questions surrounding the issue, with the goal of the task force continuing to work towards answering the unanswered questions. One of the stated goals of the taskforce is to, "work with representatives from the public and private sector to identify issues associated with this type of asset."

If a model was adopted based on date of required distribution it could result in ranging widely as some plans require distribution for prepaid plans at 10 years after age 18 or by 35 for some savings plans. There is the additional complication of state laws being different, so the date of required distribution would depend on the governing state's plan rules. Also, with the option of changing the plan beneficiary to another family member, the dates of distribution would not be static.

Whether to liquidate or not was discussed. It was proposed that there is no need to liquidate funds in a prepaid plan as it is already in the state's custody and the funds for a prepaid plan could stay in the current plan to benefit the other participants. It was also proposed the state unclaimed property offices could handle the location of the owners while assets remain in the plan, this was met with some resistance from

the state administrators. Their concern centered around the administrative issues associated with one state entity holding funds and a different entity administering the outreach and location process.

Who could claim the property was discussed. Would this be the owner or could the beneficiary also claim? Would this be impacted if there was a successive owner? Would there be circumstances under which the beneficiary could make a claim, if so what would those circumstances be?

For the question of when 529 property should be reported the consensus seemed to be for property to have a 3 to 5 year dormancy period, after the dormancy period was triggered.

Of the administrators that responded to the survey, none stated they had specific provisions for 529 plans, 61% stated a general provision would apply and 69% indicated uncashed distributions would be subject to unclaimed property in 3, 5 or 7 years. (This topic will be explored further in a future newsletter article.)

While the 529 plan presentation at the NAST Treasury Management Conference was informative, it made it clear there are currently more questions than answers on this topic. It is commendable that the NAST affiliate organizations, NAUPA and CSPN, are taking on this complex issue with their joint task force. For the holder community, it is also encouraging that they have included members of the holder community on their task force. SMS Vanacore will continue to follow the developments regarding unclaimed property and 529 plans and will have future newsletter articles on this topic.

To automatically receive notification of posting for of our online newsletters, you may subscribe by sending an email to 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 shareholders 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



CONTRIBUTOR'S CORNER

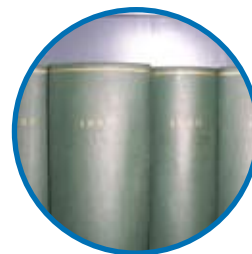
The Real Costs of a Lost Investor

By Mike Ryan

A historical study by The Conference Board (www.conferenceboard.org) reported: investors are 2.5 times more profitable, generate 2.1 times the number of business referrals and frequent your businesses 1.7 times more. Additionally investors typically spend 1.5 times more money with you than the non-investing consumers because of their relationship as an investor in your company.

An investor whose account was considered lost and remitted to the state as abandoned property, could be interpreted by the investor that they were not important to the corporation. They are more likely to share their poor experience with family, friends and colleagues. If this investor is an attorney; they are more likely to make their concern public. A lost investor, who was located, has the opposite opinion and is thankful that the corporation considered them important and they are likely to share that that experience. In short, regardless if an investor or a customer has either a positive or negative experience, they will most likely share it.

It is estimated the cost to obtain a new investor equal in size to activating a dormant investor is at least 10 times more. In addition, you still need to prove yourself to the new investor; while activating a lost investor ensures that investor they are important to the company. Even if that investor now decides to close their account, you may create revenue from the liquidation process compared to the cost of escheating.





SEC Rule 17Ad-17 requires for transfer agents to perform searches for lost securityholders. The rule was designed to establish minimum search requirements for finding lost securityholders. Transfer agents are the custodians of securityholder records and Rule 17Ad-17 obligates them to exercise reasonable care in finding securityholders and establishes minimum requirements, including two database searches and for an information database service is to be used at least once.

Securityholders are to be considered lost when correspondence sent to the address on file is returned by the U.S. Postal Office as undeliverable. (If the transfer agent resends any returned item within one month, then it can delay the lost classification until that the second mailing is returned as undeliverable.) Strictly speaking the securityholder is no longer lost if and when a transfer agent receives an updated address from the securityholder.

Transfer agents have flexibility to use their discretion to determine the most appropriate time to conduct the two required searches, as long as the first search is conducted between 3-12 months of securityholder becoming lost and the second search is conducted between 6-12 months after the first search was completed.

Here are the requirements for the information database, it must:

- Contain addresses from the entire U.S. geographic area,
- Contain at least 50% of the U.S. adult population,
- Be indexed by taxpayer identification number (TIN) or name, based on whether TIN search or name search (name searches are permitted when a TIN search is not reasonably likely to locate the lost securityholder, such as if a TIN is missing or incomplete) and
- Be updated at least four times per year.

Any service or combination of services producing comparable results to two database searches may also be used. When an alternative approach is used, written procedures documenting and describing the alternative approach are required.

Transfer agents are not permitted to charge the securityholder for the cost of the two required searches. The rule states search firms may be used to locate securityholders, but this may not result in a charge to the securityholder, until after the required searches have been conducted.

Certain classes of securityholders are excluded from the search requirements. These exclusions include when it is documented a securityholder is deceased or when there is an aggregate value of assets of less than \$25 (this includes the aggregate value of all account assets including dividend, interest, other payments due, etc.). Also, excluded are securityholders that are not a natural person, such as a corporation.

The search requirements of 17Ad-17 have been responsible for reuniting many securityholders with their assets and in so doing have also reduced property escheated to states and enhanced customer loyalty. Based on the success of these search processes other industries such as broker dealers, banks and insurance companies, not otherwise required to perform these searches, have adopted this model as a best practice approach.

Though not the original reason behind the SEC search requirement, positive results not only have reduced escheatment, but they can also increase proxy returns and customer loyalty by having more correct addresses and securing the customer base.

Another timely consideration is the impact of the rash of foreclosures, will this affect the integrity of shareholder registration addresses? The markedly increased amount of foreclosures will ultimately cause an increase in the transient nature of the U.S. population, especially in the regions that have been hardest hit, which could in turn translate into more lost shareholders. Once again, this will reinforce the value of lost shareholder searches.

As states continue to shorten their dormancy periods and liquidate property, companies need to ensure they are in compliance with SEC lost securityholder searches and state unclaimed property due diligence requirements. Doing more to contact owners of lost property is more important than ever in these economically turbulent times and can also help to retain loyal customers.

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