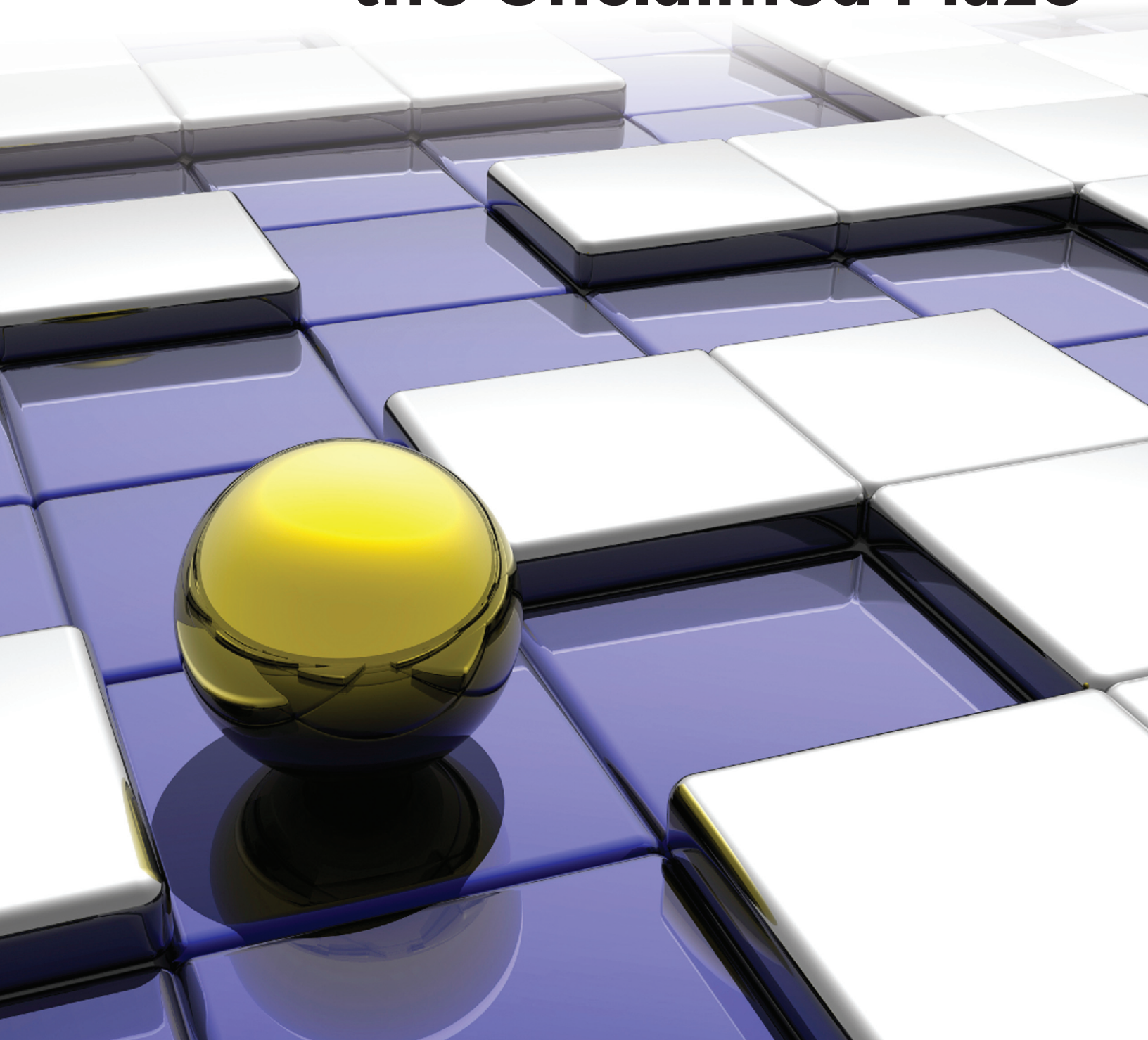


REGULATION

# *Navigating* **the Unclaimed Maze**



## Recognizing the nuances of unclaimed property regulations can save time and a whole lot of aggravation.

By MELANIE HILL

Salary checks that never reach former employees. Deposits that can't be returned to customers who have moved to parts unknown. Refunds that are never claimed. These are but a drop in the proverbial bucket of unclaimed property situations that media companies face. Whether they operate cable systems, broadcast stations or even cable channels, media companies are legally required to comply with the unique filing requirements established by various states – just like every other company in America.

The regulations governing unclaimed property are complex and require that companies conduct an annual review of their records and sort their obligations by state. Uncashed payments to former or current employees are reported to the employee's state of residence; uncashed vendor payments are reported to the vendor's state; account receivable credits and refunds are reported to the customer's state, and uncashed dividend or interest payments are reported to the bond or stockholder's state.

If the address is unknown, the obligation is reported to the media company's state of corporate domicile. Each outstanding obligation is dated, and when it reaches a specific age, referred to as a dormancy period, the amount is reported as unclaimed property and is subject to escheat, meaning the amount must be paid to the state and held by the state for safekeeping.

Prior to reporting any individual item, the media company is generally required by the state to make one last attempt to

contact the employer, customer or vendor about the property, a process known as due diligence.

Companies become exposed when they have unknowingly written off reportable items to income in prior years. Even greater exposure exists for companies that have not filed annual reports or acquired exposure through acquisitions. Media companies can control this risk by assigning employees to unclaimed property reporting that reflect the company's organization structure. The company may also plan to combine filings for multiple entities or to escheat some types of property early in some states in order to achieve uniformity and operational simplicity.

The consequences of not having a plan can result in substantial assessments and interest since states routinely audit non-compliant companies for periods up to and often exceeding 10 years.

One way to understand unclaimed property requirements is to focus on the unique nuances of the individual categories of unclaimed property types and to understand that dormancy periods for each category will vary by state. The laws in many states are modeled after the 1966, 1981 and 1995 Uniform Unclaimed Property Acts, so an understanding of the differences between these Acts is helpful in filing accurate reports on a multi-state basis.

### Wages and Compensation

Under the 1966 Act, the dormancy period for unclaimed wages was seven years. Today, 39 states escheat payroll

checks after one year of dormancy. That forces employers to perform due diligence and locate terminated employees who are due a last payroll check within a comparatively short period of time after it was issued. Needless to say, in our mobile society, the likelihood of locating a former employee significantly decreases after a year.

The 1966 and 1981 Acts do not define "wages" in a manner that broadens the category to include non-employee payments. Media companies should resist any attempts by states with statutes based on these Acts to assert that non-employee commissions are escheatable as wages. There's no question that such amounts are reportable; it is merely a question of whether they are reportable as miscellaneous property after five or seven years rather than as wages after one year.

Under the 1995 Act, this property category is described as "wages or other compensation for personal services." Unclaimed property reported in this category is not limited to amounts paid under an employer-employee relationship and shown on W-2 statements. Commissions and other non-employee compensation payments are clearly included in this category under the 1995 Act.

Even Tennessee's statute, which is modeled after the 1966 Act, has been amended to include commissions, professional service fees and expense reimbursements in the category of wages if the item is regarded as gross income under the Internal Revenue Code for individuals. While a cross-reference to the federal tax code is unusual in state unclaimed property statutes, it serves as an example of how statutes are sometimes customized, adding to the complexity of multi-state reporting.

In this particular instance, one might normally assume that payments to an attorney or other professional operating as a sole proprietorship are reportable as vendor payments, subject to a longer dormancy period, rather than as wages subject to the shorter one-year dormancy period.

While most administrators, including Tennessee, would not rush to assess penalties on late reporting for this type of property, it may be operationally preferable to report after the shorter

dormancy period in order to avoid controversy, increase the chances of finding the payee through the timelier due diligence process, and to remit earlier in a few states in order to achieve greater uniformity in a multi-state reporting function.

### Performing Artists

Unclaimed checks issued pursuant to a performing arts contract are reportable as miscellaneous property after seven years under the 1966 Act and after five years under the 1981 Act. Classification under the 1995 Act depends on whether the payment is to an individual performer or to a corporation.

Under the 1995 Act, a performance check issued to an individual is reported as wages after one year while a check issued to a corporation is reported as miscellaneous property after five years.

### Last Known Address

Since the media company's state of domicile receives by default any property that is not identified with an address, the media company must be careful in determining whether address information exists in sub-ledger records. The 1981 Act defined "last known address" as "a description of the location of the apparent owner sufficient for the purpose of the delivery of mail." A full mailing address is requisite for a state to claim property on behalf of a resident. Comments to the 1995 Act indicate a broadening of this right by noting: "where a holder originally had the address of the owner and it has been subsequently destroyed, a computer code may be one way of establishing an address within the state."

Therefore, even under the 1995 Act, the maintenance of a state code in computer records associated with a specific payment will not, by itself, be regarded as the last known address if the holder never obtained a complete mailing address for its books and records.

### Off-Site Production

Conflicting claims among states can arise when employment is terminated at an out-of-state production location, particularly when the last paycheck was issued to an address at the off-site location.

The problem is avoided when paychecks are automatically deposited since the permanent address would prevail unless

the employer actually recorded the temporary residential address of the traveling employee.

### Extras and Temps

Temporary set crews and extras are often employed by a union, guild or a specialized employment agency. If the media company contracts directly with the guild to supply the talent, it will have no unclaimed property reporting obligation once the payment is made to, and cashed by, the guild per the contract provisions.

In such cases, the guild is responsible for complying with unclaimed property filing requirements for its temporary or transient members.

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### Agents and Residuals

It is common for agents to require media companies to pay them directly for the services of the artists they represent, with the understanding that the agent will in turn pay the artist. Once payment is received by the agent under the terms of a performance contract, the media company is relieved from unclaimed property reporting on the item, and the agency becomes solely responsible for any escheat issues relating to the payment.

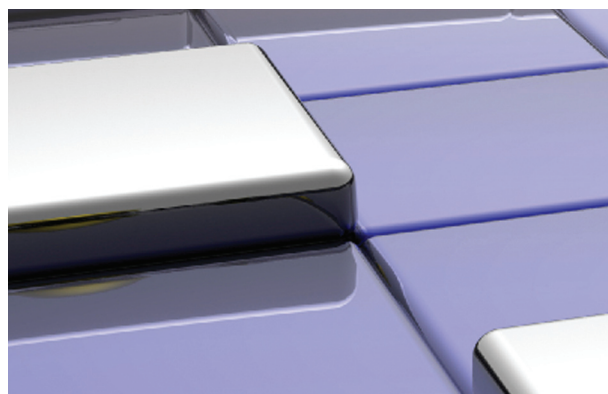
Some performance contracts may include clauses where the performer participates in an ongoing revenue stream, which may generate ever-diminishing residual payments vested to multiple and successive heirs who are usually not identified in the contract. It may be a best practice to require that an agent be established in the contract so that the agent bears responsibility to identify, locate and pay the heirs – and bear unclaimed property reporting responsibility.

### The Utility Factor

The Acts define "utility" as a company

operating a franchise, equipment, or license for the transmission of communications. While the term "utility" clearly includes cable operators, it is less clear that the term was intended to include satellite distribution companies.

It is likely that most states regard satellite distribution companies as utilities to the extent that a particular unclaimed property relates to the provision of satellite broadcasting services. With this background in mind, we will look at property classifications under the 1966, 1981, and 1995 Acts, as there are variances in how they might apply to cable and satellite operators.



### Prepaid Services

Under the 1966 and 1981 Acts, any sum paid in advance for utility services that remains unclaimed by the owner for more than one year after termination of the services is reportable. Cable and satellite operators typically require subscribers to pay them in advance for the following 30 days of service. Prepayments by subscribers in states that have enacted laws patterned after the 1966 and 1981 Acts may escheat as prepaid utility services.

The short dormancy period forces the operators to attempt to notify the former subscriber of the impending escheat before the last known address becomes too stale. Although the definition of prepaid utility services should not create subscriber refunds when refunds are not contractually due, the definition itself creates confusion, and potential controversy, if the periodic payment is construed to be a prepaid utility service and the subscriber is not contractually due a refund.

The 1995 Act does not specify that utility service prepayments are reportable; rather it states that any refund owed to

a utility subscriber is reportable after one year.

If the service agreement is structured so that the periodic subscription fee is not pro-ratable upon early cancellations, and the subscriber is not owed a refund under the contract, the definition under the 1995 Act does not create a refund subject to escheat. On the other hand, if the contract requires (or company practice allows for) pro-rata refunds, the amount is escheated under the 1995 Act as a utility subscriber refund after one year of dormancy rather than after three years of dormancy, which applies to other types of customer refunds.

Some states will assert that “unapplied remittances” should be escheated as unclaimed property if the company can not identify the customer account. If the unapplied remittance is escheated and the account receivable is written off as bad debt, the media company will suffer a double loss for failing to link the unapplied remittance to the bad debt.

### Equipment Deposits

The 1966 and 1981 Acts specify that when consumers give a utility a deposit

for service, and it remains unclaimed by the owner for more than one year after termination of the service, it is presumed abandoned. While multichannel providers do not typically require deposits for service, they sometimes require them for equipment, like set top boxes or satellite dishes, which are owned by the operator and used by the subscriber.

A forfeited equipment deposit under these Acts should be reported as miscellaneous property after five or seven years rather than reported as a deposit (as the term is defined in the Act) after one year, unless the operator has chosen to report the property early. Media companies should be aware that billing policies wherein the subscriber, under damage clauses or upon service interruption, is billed for the full value of the equipment, unreduced by the equipment deposit, could allow the state grounds to assert that the equipment deposit functions as payment security rather than as an equipment security and require escheat after one year. In contrast, the 1995 Act does not define “deposit” and likely results in the inclusion of equipment and security deposits in the

same deposit category, resulting in a shorter one-year dormancy period.

Unclaimed property auditors routinely review write-offs to income in search of potential items subject to escheat. Equipment deposits, despite being rightfully taken into revenue under the contract terms when the equipment is damaged or not returned by the subscriber, must nonetheless be substantiated by clear policies that are consistently followed.

On occasion, excess forfeited deposits may exist, at least in theory, if the deposit is significantly greater than the value of the equipment at the time of forfeiture. This could occur when accelerated depreciation methods are used and/or the actual equipment cost significantly exceeds the required deposit.

While an overly aggressive state might suggest the excess is escheatable, it should be rebuttable since the operator has the inherent right to establish the deposit in an amount that reflects a choice between its competing interests of minimizing risk versus maximizing affordability. It is important to establish consistency in treatment among subscribers.

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