ARE YOU PREPARED FOR THE RAPIDLY APPROACHING ABANDONED PROPERTY DEADLINES?

State & Local Tax Alert
December 1, 2014

Winter is right around the corner. For businesses that have abandoned property on their books (and virtually every operating entity has abandoned property, whether it knows it or not), that means due diligence letters must soon be mailed to the property owners.

Do You Have Abandoned Property that Obligates You to Comply With Abandoned Property Laws?

Every state (and a few Canadian provinces) has an abandoned property law. Despite this ubiquity, compliance by holders of abandoned property is notoriously low because in the past states have not enforced these laws with much vigor. But that has changed in recent years as a result of the economic downturn and expanding budget deficits. Rather than taking the controversial steps of raising taxes or imposing new taxes, states are increasingly turning to their abandoned property laws to raise revenue. Consequently, abandoned property audits have skyrocketed in recent years.

If you think you may have abandoned property, but you're not sure, let's go over a few of the requirements. Abandoned property laws apply to every type of entity (corporation, partnership, LLC, etc.), and they even apply to banks, nonprofits, and governmental agencies. A "holder" of abandoned property is any organization that possesses property legally owned by another. The three most common areas of abandoned property are uncashed payroll checks, uncashed accounts payable checks, and unused gift cards or certificates. If you have any of these items (and there are dozens of other categories of abandoned property) sitting on your books, you cannot simply take the funds into income. Rather, after a set amount of time known as the "dormancy period," during which there is no communication with the property owner, these funds become "abandoned" and are required to be remitted to the state of the owner's last known address. If you don't have an address for the owner, and therefore don't know which state should receive the funds, or if the owner is in a foreign country, then the funds are escheatable to the holder's state of domicile (typically, the state where the entity was formed).

Attorneys

Joseph Endres

Practices & Industries

Abandoned Property Audits

State & Local Tax

What Type of Reporting is Required?

If you're a holder of abandoned property, you must file an annual report detailing the property and must remit the property to the state. The filing deadline varies state to state and even varies within a given state depending on the type of entity holding the property. In New York, most typical business corporations have to file an abandoned property return on **March 10** for all property that became abandoned (i.e., property for which the dormancy period has run) during the previous year.

But before you file the abandoned property return and submit the property to the state, most states, including New York, require the holder to perform due diligence. This due diligence entails attempting to contact the owners of the property to inform them that if they don't claim the property by a certain date, it will be remitted to the state. For example, New York requires holders of abandoned property to make a first-class mailing to each person or entity whose name is expected to appear on their report of abandoned property and request a signed written statement from the owner acknowledging the property's existence. This mailing must be made by **December 10**—90 days before the return's due date. And if the property exceeds $1,000, New York requires holders to make a second mailing via certified mail at least 60 days prior to the final report/remittance. This mailing must be made by **January 10**.

How Do You Get Compliant if You Haven't Been Filing?

If you haven't been compliant with your abandoned property obligations, the potential exposure can include the abandoned property itself as well as interest and stiff penalties. For example, New York can impose 10 percent interest and a penalty of $100 for every day an abandoned property report is late. However, most states offer some type of amnesty or voluntary compliance program to help bring holders into compliance. For example, New York offers a voluntary disclosure program that will cancel all penalty and interest so that just the abandoned property is due. But you have to be careful with these programs because in some states, including New York, the look-back period for the voluntary disclosure can reach all the way back to 1992!

Conclusion

There's no doubt about it, compliance with abandoned property laws can be a hassle. But the increased risks of an audit and the substantial interest and penalties associated with failure to report and remit abandoned property make proper record keeping and compliance a necessity. Please call us if you have any questions about your abandoned property obligations or if you need help with an abandoned property audit or assessment.