Tax Insights & Commentary
Feb. 8, 2024, 4:30 AM EST

Companies Ignore Unclaimed Property Regulations at Their Peril

Related Stories

Outsourcing Unclaimed Property Reporting—Four Things To Consider
March 16, 2023, 4:45 AM EDT

Marcum's Angela Gebert analyzes states' increasing enforcement of unclaimed property laws and how companies can avoid risk and exposure.

Tax practitioners and corporations across the US face a pressing concern: a surge in state audit notices tied to unclaimed property, known as UP, with a particular emphasis on record retention. This issue has escalated to the forefront of corporate compliance as states intensify UP scrutiny, seeking to bolster their revenue in an era of tightening budgets.

UP audits require historical records that many companies may not have maintained. Some states are wielding a lookback period of 13 to 15 years, digging deep into companies' financial histories for unclaimed property, catching many off-guard.

Many companies don't believe they have unclaimed property or aren't clear about what qualifies. Here are crucial concepts to understand:

- UP isn't a tax, so the IRS's seven-year document retention rules don't apply
- UP must be remitted to the state of the last known address of the property owner. If the address is foreign or unknown, it's due to the state of incorporation
- There is an annual compliance filing requirement. More than half the states want a negative report filed if nothing is owed

The most common types of UP are uncashed or voided payroll checks, even if using a third-party provider such as ADP or Ceridian, uncashed or voided accounts payable checks or rejected automated clearinghouse services, and aged accounts receivable credits, whether on the customer account or previously written off. While these are the more common property types, there are many more depending on the industry.

UP laws weren't always enforced aggressively. The responsibility often fell to the state treasurer, attorney general, or secretary of state, rather than the state department of revenue, which typically lacked dedicated audit staff.

This changed in the 1980s, when a third-party audit firm proposed it could conduct audits on states' behalf for a contingency fee. This proposition was a game-changer, leading to the current climate where numerous third-party audit firms actively seek out companies of various sizes for non-compliance.

While UP, in concept, should have a net-zero impact on a state's bottom line, the amount collected versus the amount returned to the rightful owner differs drastically. An estimated over $70 billion in unclaimed property is sitting in state coffers, with many states now moving a portion of this money to their general fund to fill budget gaps.

States use numerous methods to force companies to address unclaimed property, and companies could receive any number of these types of notices:

- Annual compliance reminder notice
- Delaware verified report notice
- Self-audit notice
- Invitation to join the Delaware Voluntary Disclosure Program
- Audit notice from a third-party audit firm

The response deadline is usually only 30 to 90 days, and ignoring a notice or missing the deadline can trigger a third-party audit. The state may review not just the named entity but also any entity within its corporate structure. The degree to which records are reviewed will vary depending on the type of notice.

Many companies mistakenly believe they have no unclaimed property exposure, only considering their current outstanding checks and accounts receivable. What often goes unnoticed is the larger exposure from items written off during the 13-to-15-year lookback period, especially when most companies follow some type of seven-year IRS record retention policy.

The states can estimate to assess a UP liability for these years without records. Based on the sourcing rules above, this estimated liability would be remitted to the company's state of incorporation. This explains why companies are often baffled by notices from Delaware despite having minimal connections to the state.

To reduce risk, companies should consult with an experienced unclaimed property advocate upon receiving a notice. They also should review and extend current document retention policies to comply with the broader lookback period.

Companies also should ensure that respective internal teams are reaching out early to vendors, customers, and employees for any uncashed or unused credits to ensure the item is resolved timely and appropriately. Additionally, they should keep enough support to prove an item no longer is owed—a voided and reissued check, applied or refunded credit, proof of an accounting error or estimate.

Documentation that may need to be retained includes:

- Quarterly bank reconciliation with a bank statement and outstanding check listing
- Monthly bank-paid listings
- Quarterly detailed accounts receivable agings
- Any void or stale date reports provided by third parties issuing checks on the company's behalf
- Documentation to support voided checks, credit write-offs, settlement agreements, bankruptcies, and acquisition/liquidation documentation

Each department should revisit its policies, rejecting flawed logic such as "if they haven't claimed it, it's not owed" or "it's too small to matter." Ongoing education ensures these updated policies are consistently applied.

UP audits can be time-consuming, and it's often a daunting task to pull records for such long lookback periods. But if a company is proactive and diligent in following good policies and procedures, it can avoid significant risk and exposure.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

Author Information

Angela Gebert is the national unclaimed property practice leader at Marcum.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Rebecca Baker at rbaker@bloombergindustry.com; Daniel Xu at dxu@bloombergindustry.com