UnclaimedProperty
PROFESSIONALS ORGANIZATION

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October 8, 2014

Charles A. Trost, Esquire
Waller Lansden Dortch & Davis, LLP
Nashville City Center
511 Union St., Suite 2700
Nashville, TN 37219-1760

Sent via email: charlie.trost@wallerlaw.com

Re: Supplement Submissions – 1995 Uniform Unclaimed Property Act Revision

Dear Mr. Trost:

The Unclaimed Property Professionals Organization ("UPPO") submitted its original comments to the ULC Drafting Committee for the 1995 Uniform Unclaimed Property Act (UUPA) on June 20, 2014 to assist in modernizing certain provisions of the Act.

Subsequent to our original submission, UPPO has been developing the attached supplemental documents to address specific issues either jointly identified by UPPO and NAUPA as areas for potential collaboration, or as requested by the ULC drafting committee chairs for joint association feedback during its meeting last February in Washington, DC.

UPPO respectfully submits three documents for your consideration:

1. ULC Directive for Association Collaboration (Early Reporting and Appeals Process)
2. Domicile
3. Other Tax Deferred Assets

All of these documents are submitted solely by UPPO at this time. We appreciate this opportunity to share our additional recommendations on these very specific and important issues related to the revision of the UUPA. Please do not hesitate to contact me with any questions, which I will pass along to the UPPO Board.

Thank you.

Sincerely,

Toni J. Nuernberg, CAE, CBA, CGA
Executive Director
Unclaimed Property Professionals Organization

cc: Katie Robinson, Staff Liaison, Uniform Law Commission (with enclosure)
Debbie L. Zumoff, JD, UPPO President
UPPO Board of Directors

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Response to ULC Directive for Association Position

ULC Requested Subject Matter	UPPO Position Summary
Early Reporting	(1) Holder may report and remit property prior to abandonment period upon disclosure to the administrator, providing the property is not interest bearing or securities, or items that change in value. (2) Indemnification to holder upon remitting property early.
Appeals Process - Audits AND Holder Claims	(1) Specific and detailed administrative appeals process, including process for mutual selection of hearing officer and *de novo review*. (2) Provides right to mid-audit conference directly with state administrators.

A. Election to Take Early Payment or Delivery

States such as Colorado, Arizona, and Utah for example,[1] permit administrators to take custody of unclaimed property before the dormancy period has run.

UPPO Proposed Language:

Recommendation to include the following provision in the revised uniform act:

> A holder may report and deliver property before the property is presumed abandoned, so long as the holder discloses to the state upon reporting and delivering the property that the dormancy period has not yet expired. Property delivered under this subsection must be held by the administrator and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this article.

Further, so as to ensure proper protection to the holder, the following indemnification language should be added:

> Upon delivering property to the state, the holder shall immediately and thereafter be relieved of and held harmless by the State from any and all liabilities for any claim or

[1] Colo. Rev. Stat. § 38-13-120(2); Ariz. Rev. Stat. Ann § 44-319(B); Utah Code Ann. § 67-4a-302(4).

claims which exist at the time with reference to the property or which may thereafter be made or may come into existence on account of or in respect to any such property.

B. Appeals Process

The Drafting Committee of the Uniform Law Commission expressly recognized that many states do not provide any official administrative appeals process for holders under audit.[2] Such a process upon the completion of the audit would be beneficial to both holders and administrators alike, allowing them to resolve legitimate questions without the expense and other burdens of formal litigation. Moreover, as the Uniform Law Commission rightly explained, unclaimed property audits often take years to complete. Especially where a private audit firm is conducting the audit on behalf of the states, aggrieved holders should not be required to acquiesce to what they may perceive as a burdensome and unreasonable process without having any opportunity to be heard by the state administrators responsible for enforcing the law.[3]

By way of example, a contingent fee auditor may request a substantial volume of data that would take a holder significant resources to produce. Perhaps the data is stored in paper format, in a warehouse of documents, and without any index or other roadmap to its location. The holder may believe that a review of such documentation could not lead to the discovery of any unclaimed property nor otherwise reflect the holder's level of compliance with the law. The holder should be entitled to an opportunity to present its position directly to the state administrator along with a request that the document demand be stricken from the audit. That opportunity should occur before the holder is required to undertake the burden of producing the records.

Thus, UPPO proposes that the new Uniform Act include mechanisms to balance the interests of both holders and the states, not only once the audit is complete, but also while the audit is ongoing. The audit conference provision (proposed Section 22(B)) affords the holder a mechanism by which to exercise this right to direct interaction with the state administrator. Permitting the holder to a conference with the state during the audit helps to ensure such oversight and involvement. It also preserves the states' ability to outsource certain aspects of the audit function.

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[2] See Memorandum to Interested Parties dated February 13, 2014 at 7.

[3] The U.S. Chamber Institute for Legal Reform notes that unclaimed property audits "imposed substantial costs and burdens on companies, often requiring the hiring or redeployment of dozens of employees to meet the private auditors' demands." *Unclaimed Property Best Practices for State Administrators and the Use of Private Audit Firms* at 4 (April 2014) available at: http://www.instituteforlegalreform.com/uploads/sites/1/BestPractices.pdf.

State administrators have limited resources and should not be required to expend resources where holders are acting with an improper purpose, such as to delay an audit. Thus, the proposed language permits the administrator to decline to hold a conference in circumstances where the holder is acting to delay the audit or is acting with some other improper purpose.

With respect to a post-audit appeals process, the drafted language reflects a truly independent review of the state administrator's determination, which is not unfairly weighted toward either the state or the holder. Such an appeals procedure is essential to sound state administrative processes[4] as forums independent of, and uninfluenced by, agencies that can render adverse decisions against citizens. Because of their impartiality, independent appeals tribunals bring confidence and respect between citizens and state administrators.[5] Indeed, a tribunal that reviews state agency decisions must be independent from that agency in order to truly provide an unbiased and fair review of the record.

Further, this meaningful and fair review is required by due process.[6] The Constitution guarantees that no person shall be deprived of life, liberty or property, without due process of law.[7] Thus, in reviewing state agency decisions of unclaimed property, an independent appeals tribunal is needed to satisfy the Constitutional requirements for a meaningful review.[8]

In particular, the independent process should provide for due process by requiring notice and an opportunity to be heard.[9] For that reason, holders must be permitted the opportunity, proposed in subsection (b), to be heard by state administrators prior to undertaking costly and time-consuming efforts to produce data requested by auditors.

Moreover, courts have recognized that due process requires an impartial decision maker.[10] In the case of unclaimed property, often times it is the holders that will appeal adverse decisions by a state agency. It would be nearly impossible for an appeal to be meaningful and unbiased if holders were required to appeal

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[4] *See* Council on State Taxation Policy Position on Independent Tax Appeals Tribunals; Tax Executives Institute, Inc. Support for the American Bar Association's Model State Administrative Tax Tribunal Act; *see also* Garland Allen and Craig B. Fields, *The Model State Administrative Tax Tribunal Act: Fairness for All Taxpayers*, The State and Local Tax Lawyer, Vol. 10, 2005, p. 83.
[5] Tax Executives Institute, Inc. Support for the American Bar Association's Model State Administrative Tax Tribunal Act.
[6] The procedural component of the Due Process Clause requires the state to formulate procedural safeguards and adequate post-deprivation processes sufficient to satisfy the dictates of fundamental fairness and the Due Process Clause. *Zinermon v. Burch*, 494 U.S. 113, 149 (1990).
[7] U.S. Const. Amends. V, XIV.
[8] Holders have due process rights with respect to unclaimed property proceedings, even where the property at issue is owned by a third party. *See, e.g, Standard Oil Co. v. State of New Jersey*, 341 U.S. 428 (1951); *W. Union Tel. Co. v. Com. of Pa.,* 368 U.S. 71, 75 (1961). Indeed, in many instances, the main issue of the appeal is whether the state is taking custody of the holder's own property.
[9] *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 268-69 (1970); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).
[10] *Klco v. Dynamic Training Corp.*, 192 Mich. App. 39, 42 (1991).

to a tribunal or a decision-maker whose interests were aligned with the agency charged with administering the state's unclaimed property laws. This is because the holder's interests and the agency's interests necessarily diverge—the state has assessed the liability and the holder disagrees with it. Thus, we have articulated a method by which both parties can equally participate in choosing the decision maker with respect to post audit appeals.

UPPO Proposed Language:

Section 16: Action to Establish Claim.

An owner ~~person~~ aggrieved by a decision of the administrator or a person whose claim for property has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the [appropriate] court, naming the [administrator] as a defendant. ~~[If the aggrieved person establishes the claim in an action against the administrator, the court may aware the claimant reasonable attorney's fees.]~~

Section 22(A) Enforcement of Final Determination

1) The administrator may maintain an action in this or another state to enforce this Act after the issuance of a final examination report, as defined in subparagraph (3) below, so long as the administrative appeal rights of the holder have expired. The court may award reasonable attorney's fees to the prevailing party; except that the state may be awarded fees only where it is the prevailing party and the holder acted with fraud or willful misconduct.

2) Any holder aggrieved by a final examination report may, within 30 calendar days from the date such final examination report is issued, pursue a judicial appeal pursuant to [STATE's administrative procedures law] or, in lieu of a direct judicial appeal, any holder so aggrieved may elect, but is not required,[11] to pursue first an administrative appeal as set forth in this Section.

3) Elective Administrative Appeal by Holder.

a) Within 30 calendar days from the date of a final examination report issued by the State administrator, a holder may file a written appeal with the Administrator's Office.
b) If the holder files neither a written administrative appeal pursuant to this Section within 30 calendar days nor elects to pursue its judicial appeal rights in

[11] Failure to pursue an administrative appeal does not constitute failure to exhaust administrative remedies that would preclude the ability of a holder to pursue a judicial remedy.

accordance with [STATE's administrative procedures act] the holder will be presumed to have agreed to the final examination report.

c) For purposes of this section a "final examination report" is a report issued by the Administrator and contains findings that specify the entities audited, property types audited, the years audited, and the final amount allegedly due the State.

4) The written appeal must be dated and signed by the holder and contain the following information:

a) The names of all parties involved in the audit at issue;
b) The specific findings the holder is protesting including any amounts in question, property types, and the years audited. The holder is presumed to have agreed to any findings not contested;
c) A clear and concise description of each error that the holder is alleging the Administrator's Office made in its findings;
d) The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in any hearing to the arguments and legal authorities contained and cited in said appeal;
e) The relief requested; and
f) Whether or not the holder is requesting a hearing.

5) The Administrator must acknowledge receipt of the holder's written appeal. Within 10 calendar days from the Administrator's acknowledgement of his or her receipt of the written appeal, the holder must pay the undisputed amount of the audit findings to the Administrator.

6) Hearing.

a) If the holder files a written appeal, a designated hearing examiner shall be selected by the process described in paragraph (9).
b) The designated hearing examiner shall schedule a hearing, to be conducted within 60 calendar days from the date of notification of his or her selection. The Administrator, designated hearing examiner and the holder shall agree upon a date(s) for the hearing which are within the 60 calendar day period.
c) The designated hearing examiner shall issue a Notice of Hearing, notifying the Administrator and holder of the date, time, and place of the hearing.
d) The Notice of Hearing shall notify the Administrator and the holder that:
    i) The Administrator and holder may present witnesses and documents at the hearing.
    ii) Failure to appear for the scheduled hearing without good cause shall be treated as a withdrawal of the Request for Hearing, and the designated hearing examiner will make a final determination based upon the record.

iii) The designated hearing examiner may reschedule a hearing upon determining that good cause exists.

e) The designated hearing examiner shall have the discretion to allow the Administrator or the holder to provide additional information subsequent to the hearing and will supplement the record accordingly.

7) Final Determination. Within 60 calendar days, after the hearing is held and the record is complete, the designated hearing examiner will issue a written decision (the Final Determination) to the Administrator and holder. The Final Determination will include findings of fact and conclusions of law.

8) Record. The designated hearing examiner shall prepare an official record of the appeal that includes, but is not limited to, a transcript of all testimony and all papers, motions, documents, evidence and records reviewed in the appeal process, and a statement of matters officially noted.

9) Designated Hearing Examiner Selection: The designated hearing examiner shall be a (i) former member of the judiciary or (ii) a licensed attorney who is qualified by experience or training to serve. The designated hearing examiner may not be employed by nor a contractor of any of the parties to the appeal. The designated hearing examiner will be mutually selected by the parties through the following process:

a) Within 45 calendars days after the written appeal is filed with the Administrator's Office, each party shall provide to the other a list of no more than 5 people who are qualified to be a designated hearing examiner.
b) Within 5 calendar days from receipt of the list, each party may, without cause, submit 2 names for removal from the list provided by the opposing party.
c) Within 5 calendar days from communicating the removal of names, the parties shall agree to a random selection process for choosing the designated hearing examiner from the remaining names and shall select the designated hearing examiner in accordance with such process.
d) The Administrator shall notify the hearing examiner of his or her selection within 5 calendar days from the selection.

10) Judicial Review.

a) Any party adversely affected by the designated hearing examiner's decision is entitled to judicial review and may pursue such review by filing notice within 45 calendar days from the date that the designated hearing examiner's final determination is received by that party, in accordance with [STATE's administrative procedures act]

b) The review shall be conducted by the court without a jury and shall be a *de novo* review of the issue (s) in dispute at the time of initiating the court review.

Section 22(B) Audit Conference

1) Upon written request of a holder, third-party auditor, or upon its own motion, the Administrator shall convene a conference during the course of the audit to resolve disputes concerning the scope and methodology of the audit itself.

2) The Administrator, as well as a representative of the holder and a representative of the third-party auditor must all be present at the conference.

3) All written requests for a conference must state the years audited, property types, the amounts in question (if known), and the reason the conference is necessary.

4) The conference may be conducted telephonically or in person at the Administrator's offices.

5) A holder's or third-party auditor's request for a conference shall be liberally granted unless obviously interposed for purposes of delay or other improper purpose.

6) Any guidance provided by the Administrator will apply to the particular audit for which the conference was requested and will not constitute a binding decision or determination subject to any appeal.

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UPPO GRAC WORK/STUDY GROUP-"DOMICILE"

Approved by UPPO Board of Directors October 2, 2014

I. Revise Definitions of Holder "Domicile"

In *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71, 75 (1961), the United States Supreme Court held that it was a violation of the Due Process Clause to subject a holder of unclaimed intangible property to the possible conflicting obligations caused by two or more states claiming the same property. In *Texas v. New Jersey*, 379 U.S. 674, 677 (1965), the U.S. Supreme Court established two rules to "settle the question" of which state has the right to escheat unclaimed property and thereby resolve this Due Process issue. The Court established as the "primary rule" that "the right and power to escheat the debt should be accorded to the State of the creditor's last known address as shown by the debtor's books and records." *Id*. at 680-81. The Court established as a "secondary rule" that, if the primary rule failed, then ***"the State of corporate domicile"*** has the right to escheat the debt. *Id*. at 682. The Court construed a corporation's "domicile" to mean its state of incorporation. These rules constitute federal common law which must be followed by all states. *Illinois v. City of Milwaukee*, 406 U.S. 91, 105-06 (1972); *N.J. Retail Merchs. Ass'n v. Sidamon-Eristoff*, 669 F.3d 374, 391-93 (3d Cir. 2012).

However, the Supreme Court has not specifically addressed what is the "domicile" of an LLC or other unincorporated entity for purposes of applying the secondary rule. In the absence of this guidance, more than one State may attempt to escheat the same property. This is a very real risk, as the states have construed the federal common law rules differently as applied to unincorporated entities such as limited liability companies ("LLCs"). In particular, over thirty states, as well as the Uniform Unclaimed Property Acts of 1981 and 1995, currently define the "domicile" of an unincorporated entity for this purpose as the entity's "State of principal place of business."[1] Three states have defined an

[1] Unif. Unclaimed Prop. Act of 1981, §§ 1(6), 3(4); Unif. Unclaimed Prop. Act of 1995, §§ 1(4), 4(4); Ala. Code § 35-12-71(3); Alaska Stat. § 34.45.760(6); Ariz. Rev. Stat. § 44-301(6); Ark. Code § 18-28-201(4); Colo. Rev. Stat. § 38-13-102(4); D.C. Code § 41-102(6); Fla. Stat. § 717.101(8); Ga. Code § 44-12-192(5); Haw. Rev. Stat. § 523A-1; Idaho Code § 14-501(6); Ind. Code § 32-34-1-6; Kan. Stat. § 58-3934(e); La. Rev. Stat. § 9:153(4); Me. Rev. Stat. 33 § 1952(4); Mich. Comp. Laws § 567.222(f); Mont. Code § 70-9-802(4); Nev. Rev. Stat. § 120A.051; N.H. Rev. Stat. § 471-C:1.VI; N.J. Rev. Stat. §

LLC's or other unincorporated entity's state of domicile to be the entity's state of formation.[2] The statutes of the remaining states are silent on the issue.

As noted, both the 1981 and 1995 Uniform Acts define "domicile" to mean the State of incorporation of a corporation and the State of the principal place of business of a holder other than a corporation. The Official Comments to the Acts do not elaborate on the definition or provide insight into the reasons for such difference in treatment between corporations and unincorporated entities. However, in 1981, when the definition of "domicile" was initially adopted as part of the Uniform Unclaimed Property Act, LLCs did not exist and most unincorporated entities—e.g., general partnerships and trusts-- were creatures of common law formed by actions of individuals rather than created by the filing of documents with a state agency (or political subdivision of a state) pursuant to the law of a particular state. Moreover, while such non-corporate entities created pursuant to state statute had become much more common by the time the 1995 Uniform Act was promulgated by the Uniform Laws Commission, a rule treating LLCs differently from corporations was also by then reflected in federal case law regarding diversity jurisdiction, which likewise differentiated between corporations and unincorporated entities. *See, e.g.*, *Carden v. Arkoma Assocs*., 494 U.S. 185, 196-97 (1990); *Johnson v. SmithKline Beecham Corp*., 724 F.3d 337, 347-48 (3rd Cir. 2013).

However, UPPO believes that defining the "domicile" of LLCs and other unincorporated entities that exist only when organized pursuant to the statutory provisions of a specific state's laws as the State in which the principal place of business of such entities is located, rather than the State under whose laws the entity is organized, is inconsistent with the clearly expressed intention of the Supreme Court to adopt custody rules that are easy to apply and do not require holders, states or courts to make complex determinations that turn on an analysis of the particular facts of each case. In *Texas v. New Jersey*, Pennsylvania had argued that the state in which the holder's principal place of business is located should have jurisdiction to take custody of all unclaimed property held by that holder. However, the Court said that it wanted to avoid the "uncertainty of any test which would require us . . . to decide each escheat case on the basis of its

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46:30B-6(e); N.M. Stat. § 7-8A-1; N.C. Gen. Stat. § 116B-52(3); Okla. Stat. § 651(e); Or. Rev. Stat. § 98.302(4); R.I. Gen. Laws § 33-21.1-1(5); S.C. Code § 27-18-20(6); S.D. Codified Laws § 43-41B-1(6); Utah Code § 67-4a-102(9); Vt. Stat. § 1241(4); Wash. Rev. Code § 63.29.010(6); W. Va. Code § 36-8-1(4); Wis. Stat. § 177.01(6); Wyo. Stat. § 34-24-102(vi).

[2] N.D. Cent. Code § 47-30.1-01; Va. Code § 55-210.2; Wis. Stat. § 177.01.

particular facts . . . ."[3] Since the determination of where a business' "principal" offices are located will frequently require a detailed factual inquiry, the Court rejected Pennsylvania's proffered "principal place of business" test.

The Court stressed in *Texas v. New Jersey* that the selection of the custody rules adopted by it in that case was "not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic." Rather, the Court's selection of which state should have the right to escheat unclaimed property "is fundamentally a question of **ease of administration** and equity"[4] . . . [and the rules adopted by the Court are] the fairest, [**are] easy to apply**, and in the long run will be the most generally accepted to all the states."[5]

For the same reasons the Supreme Court determined that the State of domicile of a corporation is the state under the laws of which it is incorporated and designated such "domicile" as the second priority state to claim property from a corporate holder, UPPO believes that the Uniform Unclaimed Property Act should likewise define the "domicile" of unincorporated entities that exist by virtue of state statutes to be the state under the laws of which such unincorporated entities are created and exist. There can be only one such state for any unincorporated entity; such state is typically easily ascertainable; and the determination generally does not require inquiry into the particular facts of the business. Moreover, in *Delaware v. NewYork,*[6] the Court said that "the rules developed in Texas [v. New Jersey] and Pennsylvania [v. New York] reflect the traditional view of escheat as **an exercise of sovereignty** over persons and property owned by persons. . . . [W]hen a creditor's last known address cannot be determined or the laws of the creditor's State do not provide for escheat, the secondary rule protects the interests of the debtor's State **as sovereign over the remaining party to the underlying transaction**."[7] In the case of a debtor entity that is organized pursuant to and exists solely by virtue of the laws of a particular State—whether such entity is a corporation or an unincorporated entity-- the State under whose laws the entity is created is properly considered the "sovereign" of such entity. Consequently, UPPO believes that the State under the laws of which an incorporated *or unincorporated* entity exists should be treated as the "domicile" of the entity for purposes of application of the second priority rule; and the State where the principal place of business of an entity is

[3] 379 U.S. at 679.

[4] *Id.* at 683 (emphasis added).

[5] *Id.* At 683 (emphasis added).

[6] 507 U.S. 490 (1993)

[7] *Id.* at 503 .

located should be viewed as the "domicile" only of entities such as sole proprietorships, general partnerships or common law trusts that are creatures of common law formed by the consent and actions of individuals rather than pursuant to filings under the statutory laws of a particular state.

II. Revise Definition of "Domicile" to Address Mergers and Reincorporations

Additionally, questions have arisen regarding the time at which the determination of the applicable state of domicile entitled to claim custody under the second priority rule should be made. For example, a holder may be incorporated under the laws of one state at the time an obligation that subsequently becomes unclaimed property arises, but may be redomesticated under the laws of a different state when the property reaches presumed abandonment. Or the original obligor of indebtedness that eventually becomes unclaimed property may have been merged with and into another entity that is organized under the laws of a different state before (or after) the obligation in question is presumed abandoned. Recognizing the well-established rule that the rights of states to claim custody of abandoned property do not "vest" until the property in question has actually been presumed abandoned,[8] UPPO believes that the State of domicile of the holder when property first reaches presumed abandonment is the applicable "domicile" for purposes of application of the second priority rule, regardless of whether the holder was previously or may be subsequently domiciled in a different state. However, where owner unknown property is exempt under the laws of the State of domicile of the holder at the time the property is issued, created, or initially owed to the owner, such property should not become escheatable by virtue of any subsequent change of domicile of the holder by merger, redomestication or otherwise.

Accordingly, UPPO recommends that the definition of "domicile" be amended to provide as follows:

"Domicile" means the State of incorporation of a corporation; the State of formation of a limited partnership, limited liability company, statutory trust or other legal entity created pursuant to State statute; the State of home office of a federally-chartered entity; the State in which the probate or other court having primary supervision of an estate of a deceased or incapacitated owner is located;

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[8] *See, e.g., State of Arkansas et al. v. Federated Dept Stores,* 175 Bankr. 931 (S.D. Ohio 1992); *In re: Drexel Burnham Lambert Group, Inc. et al.,* 151 Bankr. 684 (S.D.N.Y. 1993); *In re: Continental Airlines, Inc.,* 161 Bankr. 101 (Bankr. D. Del. 1993). *Cf. New Jersey v. Union Bag-Camp Paper Corporation*, 35 N.J. 390, 173 A.2d 290 (N.J. 1961)(where New Jersey corporation merged with and into Virginia corporation after property had reached presumed abandonment under New Jersey law, New Jersey was entitled to claim custody of such property from Virginia successor corporation).

the State in which the administrative activities of a common law trust are primarily conducted; and except as otherwise provided, the State of principal place of business of a sole proprietorship, general partnership, or other unincorporated entity formed by agreement or joint action of the participants in the business and not pursuant to the statutory laws of a particular state. Where the State of domicile of a holder changes subsequent to the date on which property is issued, created, or initially owed to the owner, the holder's state of domicile for unclaimed property purposes shall be the State where the holder is domiciled at such time as the property is deemed abandoned under such State's laws. However, where owner-unknown property is exempt under the laws of the State of domicile of the holder at the time the property is issued, created, or initially owed to the owner, such property remains exempt notwithstanding any subsequent change of domicile of the holder.

UPPO GRAC WORK/STUDY GROUP – "Other Tax Deferred Retirement Plans"

Approved by UPPO Board of Directors – August 28, 2014

Overview

There are many retirement plans which are available to individuals. Some plans are governed by the Employee Retirement Income Security Act of 1974 (ERISA) while others are not. For plans governed by ERISA, traditional IRAs and ROTH IRAs we previously submitted recommended language for the new act.

In this document we have addressed other tax deferred retirement plans not previously addressed. Below we have provided an overview of certain tax deferred retirement plans. However, the proposed language is intended to apply to all tax deferred Non-ERISA retirement plans not previously addressed. Some types of the specific retirement plans discussed below may be governed by ERISA. In those cases, the recommended language submitted for ERISA plans would be applicable. For the non-ERISA plans, the attached language is recommended for the new act. The recommended language is also intended to apply to all retirement plans which meet the specific definition.

Internal Revenue Code 457(b) Deferred Compensation Plan

457(b) Deferred Compensation (457(b)) plans are plans established by state and local governments and organizations exempt under section 501(c) of the Internal Revenue Code for their employees. 457(b) eligible plans allow employees of the sponsoring organizations to defer income taxation on funds contributed to the retirement plan. Employers may also make contributions. Additionally, earnings on the retirement funds are tax-deferred.

Employees must take distributions by April1st following either the later of the year of retirement or age 70 ½.

Some 457(b) plans are governed by ERISA.

Internal Revenue Code 403(b) Tax-Sheltered Annuity

403(b) Tax-Sheltered annuity (403(b)) plans are plans offered by public schools and certain charities. A 403(b) plan is similar to a 401(k) plan in that contributions are generally exempt from income taxation. Employers may also make contributions. Additionally, earnings on the retirement funds are tax-deferred.

Employees must take distributions by April1st following either the later of the year of retirement or age 70 ½.

Some 403(b) plans are governed by ERISA.

Simplified Employee Pension and SIMPLE IRA

A Simplified Employee Pension (SEP) provides employers a simplified option to make contributions to their employees' retirement plan. The contributions are made directly to an IRA established for each employee. Only the employer can make contributions to the SEP. Like the SEP plan, a SIMPLE IRA (Savings Incentive Match Plan) provides employers with a simplified method to contribute to their employees' retirement. Under the SIMPLE IRA, the employee makes salary reduction contributions and the employer makes matching contributions directly to an IRA established for the employee. Additionally, earnings on the retirement funds are tax-deferred.

Employees must take distributions by April1st following the year of attaining age 70 ½.

Some SEP and SIMPLE IRA plans are governed by ERISA.

Topic: Other Tax Deferred Retirement Plans

Section of the 1995 Uniform Unclaimed Property Act Impacted: Section 2. PRESUMPTION OF ABANDONMENT

UPPO Recommendation: The Revised Uniform Unclaimed Property Act (Revised Act) should provide that tax deferred non-ERISA retirement plans are presumed abandoned based on the mandatory distribution age and returned correspondence. This revision will provide needed clarity, reduce compliance challenges, and protect the rights of owners.

Required Action: Revise Section 2: PRESUMPTION OF ABANDONMENT (a)(14) to provide that tax deferred non-ERISA retirement plans are presumed abandoned based on mandatory distribution age and returned correspondence.

Renumber Section 2: PRESUMPTION OF ABANDONMENT subsection (a)(14) to subsection (a)(14)(i).

Recommended Language:

(a)(14)(i) property in an individual retirement account, defined benefit plan or other account or plan that qualifies for tax deferral under the income tax laws of the United States, but which is not otherwise governed by the Employee Retirement Income Security Act of 1974 (ERISA), is presumed abandoned 3 years after the owner attained the mandatory distribution age, as indicated by the IRS Code, and the location of the owner is unknown. The location of the owner is presumed to be unknown if two pieces of correspondence are returned as undeliverable as noted on the owner's account as defined in SEC Rule 17 Ad-17.

This section of the Revised Act is effective immediately and also applies to amounts that, on the effective date, are in the possession, custody or control of the holder.