Dissecting Unclaimed Property/Escheat Due Diligence Requirements

Summary: Find out what your company needs to do to comply with unclaimed property reporting requirements.

You’ve finally got all your outstanding checks in order and have ensured you are not remitting more than you need to the various States to comply with their unclaimed property reporting requirements. As you perform a double check to make sure your company is totally compliant, you come across the State due diligence requirements. Unclaimed property due diligence – what is it and what does your company need to do in order to comply?

One State defines due diligence as a “written notice sent by a Holder, after the appropriate dormancy period has elapsed, that informs the Owner that his/her property will be turned over to the State as abandoned property unless the Owner contacts the Holder”. While another’s definition is “the use of reasonable and prudent methods under particular circumstances to locate apparent Owners of inactive or dormant accounts”.

Whatever State definition you look at, due diligence is an unclaimed property compliance function that requires Holders to reach out, normally through a first class mailing, to Owners of unclaimed property to try and re-establish contact. It’s the beast inside the beast of unclaimed property compliance reporting!

The object of Holder due diligence is to: 1) establish contact with the true Owner; 2) return unclaimed property to the rightful Owner; 3) and to find Owners of unclaimed property that has remained dormant on the Holder’s books and records for a specific period of time.

The Holder benefits achieved through the due diligence process include: Owner communication may be re-established. It may prevent current, past and future unclaimed property reporting obligations. Successful due diligence provides positive customer service. Positive Owner contact from due diligence may decrease workload (item is no longer unclaimed). It may even increase business by the Owner re-depositing the lost funds into another account with the organization. More recently, performing due diligence alleviates possible fines or penalties for non-compliance.

What are the requirements of State due diligence? Although Statutes do not normally prescribe the steps/letter specifics, some type of due diligence is required by the majority of State statutes. In general, a search letter, sent first class mail, is required to be mailed 60 to 120 days before the report due date which means it should be mailed between July 1 and September 1 for most Holders. However, for Insurance Companies and Holders with spring reports, this mailing should be done between January 1 and March 1, as a rule of thumb. In most cases this mailing is required to be a first class mailing. In most States, the costs of these mailings cannot be deducted as the States consider it a “cost of doing business”.

Three States, Delaware, New York and Puerto Rico also require certain Holder types to advertise in local newspapers. Although for Puerto Rico this only applies to companies incorporated or physically located there, and in New York and Delaware it’s mostly for Financial Institutions and Insurance Companies. Please check with each State’s individual law for further instruction/information/requirements on this advertising function.

The basic components of a due diligence letter include a statement that the unclaimed property will be reported to the State if the Owner does not respond; a statement of property type; a statement that the Owner can always reclaim the property from the State; a statement of the date by which the owner must respond back to the Holder in order to claim the property; and the name, address, email and phone number of the Holder contact person on the letter.

A typical State due diligence statute includes the following: The Holder has an address in their records for the apparent Owner and the records do not indicate that the address is bad or inaccurate. (Some State statutes say an address where “mail can be delivered”). The claim of the apparent Owner is not barred by any other law of this State (child support/delinquent taxes). The value of the property is at least $____ dollars [$S____]. In most States the due diligence amount corresponds with the State’s aggregate amount. So if a State has an aggregate amount of $50.00, then the Holder would only need to perform due diligence on property items valued over $50.00.
There are about a dozen or so States that require certification that the due diligence was done. This is normally fulfilled when an Officer of the company signs the State affidavit/verification & checklist.

There are four States that under certain situations require the Holder to send out their search letters via Certified Mail, and in some cases this mailing cost is deductible. These States include Iowa, New York, New Jersey and Ohio. Please refer to each State’s individual statutes for further information.

Although most States do not allow the cost of the search letter mailings to be deducted (it is considered the “cost of doing business”), California, Illinois and Nevada are three States where the Holder may deduct the cost of these mailings. Please refer to each State’s individual statutes for further information.

The Holder checklist for due diligence should include the following prior to any mailing. Has the Owner increase or decreased the account? Has the Owner contacted the Holder about the account? Has the Owner indicated an interest in property? Does the Owner have any other accounts with the Holder? Is the Owner a current employee of the Holder’s? Is the Owner a well-known individual business or government entity?

How long should the Owner have to respond to the search letter? Some States prescribe a specific time period. Some States say 30 days, where others say 60. Some States say until October 1 before a November 1 report due date. Others actually suggest to “allow enough time for the Owner to respond”.

Are there audit concerns for non-compliant due diligence? Yes. All Holders need to keep documentation to verify due diligence was performed and also keep a copy of what the actual letter looks like and says. Some State statutes now allow for penalties for due diligence non-compliance.

What are some best practices suggestions for Holder due diligence? States due diligence requirements are mandatory as a final step prior to escheat reporting and remittance. Holders can perform their own internal due diligence prior to the mandatory requirements. Holders may decide to send first class mailings 6-12 months prior to the dormancy to reduce certified mail candidates, or elect to send an easy to respond to due diligence mailing 6-12 months prior to the dormancy period ending.

How can Holders increase positive due diligence responses? Make sure outgoing envelopes do not look like junk mail. Print key words on the envelope itself such as: “Time Sensitive - Open Immediately”; “Mandatory Response Required”; or “Unclaimed Funds/Money”. Keep the due date time short to force a quick response. Give options on how to respond such as by fax, mail, telephone, or email. Lastly, use understandable words, not “Escheat”.

All in all, fulfilling the State required due diligence functions can be a burden. But with a thought out process, practice and good in house procedures, after the first couple of times it can become an afterthought incorporated into your in house unclaimed property policies and procedures.

For further information about due diligence or any unclaimed property compliance issue, please feel free to contact Pat Healy with PEACC at 410.303.5510 or phealy@peacc.com. PEACC – “Where unclaimed property consulting doesn’t have to be expensive – just good!”

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