BLJ: Abandoned Property Law brings surprises

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In recent years, the New York State Comptroller's Office has increasingly made an effort to audit businesses for abandoned property. The law regarding abandoned property has been on the books in the state for many years. However, it's often overlooked, which can lead to problems for businesses.

"It's been around forever but businesses don't know about it," said Joseph Endres, a partner at Hodgson Russ LLP. "They don't know about it because the state doesn't put that much into enforcing it."

While "abandoned property" may conjure images of physical land, it refers to such things as paychecks that haven't been cashed or gift cards that haven't been fully used. For example, if a paycheck is issued to an employee who worked one day and quit but never cashed the check, the money stays in the business' account. It must be reported to the state, which then holds it for the employee. If it's not held there, the business could be subject to fines.

The state Department of Taxation and Finance employs hundreds of auditors who "go out and do hundreds of audits every year and collect a ton of money," he said.

Conversely, the Comptroller's Office, which administers the state's abandoned property law, only has fewer auditors.

"It's not a big, bureaucratic apparatus, and in the past they just haven't been able to do too much in terms of doing audits and enforcing the law," Endres said.

Banks make up the bulk of unclaimed property filings, Endres said. According to the Office of Unclaimed Funds, banks make up about 33 percent of filings.

"That's not an uncashed check," he said. "That's a person who opens an account with a couple bucks in it and ends up just leaving it there because it's more of a hassle than it's worth to close."

The law is based on consumer protection, he said.

With the Comptroller's Office now conducting an increasing number of audits, he said, a number of outreach events are scheduled statewide to keep business owners abreast of the law and their responsibilities in terms of compliance.

There were 67 outreach events in 2016-17, according to OUF.

The state office is holding about $15 billion. In fiscal 2016-17, $424 million was paid out to claimants, with 495,000 accounts processed. According to OUF, 65 percent of claims made are for under $100.

"(The office) brings in hundreds of millions of dollars each year," Endres said, noting that the office collected $808 million in funds in fiscal 2016-17.

Endres is a tax attorney who leads the Abandoned Property Audits Practice at Hodgson Russ. Years ago he was hired to handle an abandoned property audit and that part of his practice gradually has grown.

“It’s a pretty significant part now,” he said. “It’s keeping me busy. That just happened as a result of the state conducting more audits.”

Businesses that hold abandoned property are obligated to notify the person for whom the money was intended, according to Endres.

“It’s a first-class letter that says, ‘Hey, I have your property. If I don’t hear from you, I’m obligated by law to give it to the state, so reach out to me and tell me what to do about this,’ ” he said.

Credits on an account can be tricky for businesses because many are unsure how to handle them, he added. Types of property are deemed abandoned over different periods of time. For instance, uncashed payroll checks “escheat,” or become abandoned, after three years. For gift cards, there is a five-year period before they are escheatable to the state.

“The issue is that you have to track these different types of accounts and figure out when you have to turn them over to the state,” Endres said.

Businesses may not be as informed about the Abandoned Property Law as they should be, Endres said, and the way the law is applied can trip them up. While a state tax audit may look at three or four years of returns, an auditor affiliated with the Comptroller’s Office may go back to 1992 if the business has never filed abandoned property. A diligent business may have records going back 10 years, he said. The auditor will examine records for those 10 years and look for any abandoned property that should have been reported during that period. Liability is then projected back to 1992 or when the business opened.

“That can really make these liabilities explode,” he said. “There’s this huge extrapolation that is possible if your business has been around for a long time.”

Under state tax law, there’s a statute of limitations on how many times a business can be audited. In abandoned property Law, there is no statute of limitation. Gift cards are escheatable after five years, even though the card may have expired after three years.

“There are a lot of little rules that are set up to favor the state in these audits,” Endres said.

Unreported abandoned property earns interest, he added. It can earn up to 10 percent interest per year for the amount of time it goes unfiled. There’s also a $100-a-day penalty for every day that a return is late and not filed.

“If you have abandoned property, it’s basically a $36,000-per-year penalty,” he said, adding that he has yet to see the Comptroller’s Office make a business responsible for the full fine. “That keeps going every year.”

Endres said because many aren’t aware of the Abandoned Property Law, the state needs to do more to educate business owners. He’s currently working on an audit that could have a profound impact on the business.

“It’s heartbreaking to see a business – a smaller business, family-owned – that was successful, did a good job and grew the business but just never did anything with the Abandoned Property Law and now is facing this big penalty that could be devastating to them,” he said.

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