State and Local Tax Bulletin

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BRADLEY ARANT BOULT CUMMINGS LLP

States Focusing on Unclaimed Property Collections to Help Offset Growing Budget Deficits

Christopher R. Grissom and William T. Thistle

Business Beware: In recent years, many states have begun to more aggressively pursue unclaimed property collections to mitigate budget shortfalls. Reportedly, more than 40 states are now using third-party auditors to assist them in tracking down companies believed to be out of compliance with the state's unclaimed property reporting requirements. For instance, Revenue Discovery Systems, Inc. ("RDS"), a Birmingham, Alabama-based company that assists states, counties and municipalities as their auditor for various local taxes, has recently begun conducting numerous unclaimed property audits spanning many industries. We understand that RDS (formerly known as AlaTax) is conducting unclaimed property audits in Alabama, Arkansas, Florida, Kentucky, Louisiana, Maryland, Montana, Tennessee, Virginia, and West Virginia and that many of these audits are on a contingency fee basis. Based on recent experience, it appears that RDS is stepping up its unclaimed property audits in Alabama and it expects more audits in several other states to begin soon.

Unclaimed property is generally defined as any financial asset, usually intangible, being held for the benefit of a person or entity that cannot be found. It is not real estate, abandoned personal property, or lost and found items. Common examples of unclaimed property are savings accounts, checking accounts, unpaid wages or commissions, stocks, dividends, money orders, unused gift cards or lay-away deposits, insurance refunds or payments, paid-up life insurance policies, utility deposits, and contents of safe deposit boxes.

Since the early 1990s, the list of items constituting unclaimed property has expanded greatly in many states and these audits have become a lucrative new revenue source for the states. The scope of these audits has expanded to include a review of a taxpayer's books and records for evidence of uncashed payroll, refund, or vendor checks; open credit balances and credit memos; and duplicate payments. In addition, states are increasing their efforts to uncover "under-reported" property like inventories, rebate checks, and general accounting errors.

Generally, unclaimed property is remitted to the state of the owner's last-known address as shown on the property holder's books and records. If no address can be determined, the property is generally remitted to the state in which the holder is incorporated. Taxpayers in Delaware, where more than 60%

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Upcoming Seminars Involving Members Of Our SALT Practice Group

September 14-18, 2009
Auburn University's annual Intensive Economic Development Course will be held at the Auburn University Hotel and Conference Center. Wood Herren will be speaking on "Alabama Incentives for Economic Development" on September 17. For more information, please visit www.auburn.edu/outreach/ecdi/intensive_09.html.

September 23-25, 2009
The 16th Annual Paul J. Hartman State and Local Tax Forum will be held at the Loews Vanderbilt Hotel in Nashville, Tennessee. Bruce Ely will co-present with Jeff Friedman and Professor Richard Pomp, "Adding Back? Throwing Out? Just Combine Us Already!" For more information, please visit www.hartmansaltforum.org.

October 20, 2009
Alabama Society of CPAs – Birmingham Chapter. Bruce Ely and Jimmy Long will present "Recent Alabama and Local Tax Developments and Predictions for the Spring 2010 Legislative Session" at the Harbert Center, Birmingham, Alabama.

October 20 - 23, 2009
COST's 40th Annual Meeting will be held in Las Vegas, Nevada at The Caesars Palace. "State Taxation of Flow-Through Entities & Their Owners" will be co-presented by Chris Grissom and Bill Backstrom on October 21. There is also a special tribute to SALT Pioneers on Friday, October 23. For more information, please visit www.cost.org.

December 14-15, 2009
The 28th NYU Institute on State and Local Taxation will be held at The Grand Hyatt, New York. Bruce Ely will serve on a panel providing an in-depth review of significant tax developments from regions across the country, entitled: "What's Happening Everywhere Today?" For more information, please visit www.scps.nyu.edu/salt.

of the Fortune 500 companies are incorporated, remitted more than *$375 million* in unclaimed property in 2008 to that state, up from $325 million in 2006. Other states hope to follow suit and, thus, taxpayers should be aware of this increased attention from states – and their contract auditors – by establishing clear administrative responsibility for monitoring, tracking, and reporting unclaimed property, including a review of existing record-retention policies to ensure that sufficient historical information can be produced to meet all state requirements for reporting and remitting unclaimed property. Some of these audits may reach as far back as 1981.

Given the state of the economy, the states' need to find new revenue sources, and increased unclaimed property audit activity, taxpayers should promptly review their unclaimed property reporting and recordkeeping practices and consider the potential need to pursue voluntary disclosure agreements in states where compliance is deficient or lacking altogether. Please contact Joe Gibbs, Chris Grissom, or Will Thistle of our SALT Practice Group to discuss any unclaimed property questions you may have.

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