UNCLAIMED PROPERTY LAW: ARE YOU FULLY COMPLIANT WITH THIS OFTEN-IGNORED LAW?

Introduction:

Over the years, unclaimed property laws have become a steady and reliable source of funding for state budgets. For example, Unclaimed property was the third-largest revenue source for state of Delaware during the 2019 fiscal year. During 2019, Delaware collected $554.0 million in unclaimed property and returned $114.3 million, leading to net collections of $439.7 million. With increased financial pressure on state governments due to the pandemic, states are increasingly looking to unclaimed property revenues to provide short-term solution to fiscal strains.

Thus, it has become extremely important for the businesses and its finance executives to be aware of the unclaimed property laws and associated compliance obligations.

Unclaimed Property: What it means?

Unclaimed property is generally defined as a liability a company owes to an individual or entity when a debt or obligation remains outstanding after a specified period.

Unclaimed property can be tangible or intangible property due and owing to a third party (the owner) where there has been no contact with the owner for a specific period (commonly referred to as dormancy period). The dormancy period is the time during which property remains unclaimed before becoming escheatable, which may generally be one, two, three, or five years.

Some of the examples of property which may become unclaimed in standard business operations are uncashed checks related to payroll or other accounts payable, credit balances in accounts receivable accounts etc. In addition, other types of liabilities such as securities for public companies, certain retirement accounts for financial service providers, gift cards for retailers or customer rebates for manufacturers may also create unclaimed property risk.

The Where, When, What, Why of Reporting:

Once the business entity has identified that it holds unclaimed property, the next question is what are the next steps?

- ***Where* to report?** – Priority rules based on Supreme Court's judgement in Texas vs. New Jersey, 379 U.S. 674 (1965)

  Rule 1: Property goes to the "last known address"

  Rule 2: If "last known address" not known or does not have an unclaimed property law, then report in the "holder domicile".

- ***When* to report?** Varies from state to state – typically fall & spring deadlines.

- ***What* property is reportable?** – Unclaimed property described above.

- ***Why* report?** – It's the law. Failure to comply with state unclaimed property laws can prove to be costly to a holder. Given the average lookback period of 15 years along with the penalty and interest provisions, the overall impact for the business can end up being substantial. Some states may also file criminal charges against companies that fail to comply with reporting requirements.

  Example -Assume a holder's average annual unclaimed property audit liability is $50,000. Based on the look-back period of 15 years for holders that never have filed unclaimed property reports, the assessment may be $750,000. In addition, the state can levy a failure-to-file penalty of up to 25% of the assessment, which in our example is $187,500. In most instances the state also can impose interest, ranging from 10% to 15% of the assessment.

Unclaimed property audits by state authorities:

There can be multiple aspects like lack of reporting or inconsistent reporting history, fluctuations in amount & type of property reported, non-reporting of certain industry specific items, etc which may trigger audit by state authorities. States are also employing new technology created by third-party firms to analyze datasets to help expand criteria for identifying audit candidates.

Once a state has determined it will audit a company, it is likely that multiple states will join the audit. The states often appoint third-party specialized firms to conduct these audits.

Under audit, detailed financial records will be requested by the auditor for the period covered by the audit, which could extend to 15 or more years.

Voluntary Disclosure Agreements (VDA):

Most states have adopted some type of voluntary disclosure program / amnesty programs. Some states have formal programs where in first the company puts in a request for VDA and after reviewing, the states might accept or reject the request. Key advantages of VDA are limited lookback periods and waiver of interest/ penalties. So, if the businesses realize that they are non-compliant with unclaimed property laws, they can evaluate the impact and opt for the VDA.

How can KNAV help?

We understand that unclaimed property laws are often ignored but can cost the company dearly. We assist our clients with-

- Identifying and quantifying the unclaimed property assets.
- Unclaimed property compliances for various states.
- Preparing and filing application for VDA program.
- Co-ordination with the state / third party audit team in case of audits.
- Establishing unclaimed property policies and procedures.

If you have any queries, please get in touch with us at tax@knavcpa.com

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