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FOUNDED 1949

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MEMORANDUM

To: Our Escrow Clients and Friends

From: Michael C. Haas

Date: July 1, 2010

AN UPDATED PRIMER ON ESCHEAT

After waiting unsuccessfully three years for someone to act so you can release funds being held in escrow or for someone to negotiate an outstanding check, it is time to send money to the State under the provisions of the Unclaimed Property Law. The State requires that escheat reports be filed annually based on information as of June 30. If reports are not submitted to the State Controller by November 1 or funds are not remitted between June 1 and June 15 of the following year, interest is charged at 12 percent per annum. Because of this stiff assessment, it is important that you stay aware of which funds are subject to escheat and when they are to be sent to the Controller.

Of the two categories (outstanding checks and escrow funds in holding), it is rather straightforward to define when outstanding checks are eligible. Once a check has been outstanding for more than three years from the date of issuance, it is required to be escheated. However, if you have contact with the payee and the payee acknowledges the uncashed check, you are not required to escheat those funds. You may either continue to carry the check as outstanding, or cancel the original check and reissue a new check to the payee. Keep in mind, the State deems the three-year period to revert to the issue date of the original check.

However, it is not always as clear as to when dormant funds in escrow are to be escheated. The requirement is that once there has been no activity on a file for three years, the funds are to be remitted to the State. Section 1518(a) of the California Code of Civil Procedure states that funds are to be escheated if *during a three year period the principal to escrow to whom the funds belong has not increased or decreased the funds in escrow, has not corresponded in writing concerning the funds, or has not otherwise indicated an interest in the funds with the escrow agent.* (emphasis added)

As you can tell, determining inactivity is quite subjective and is left in your hands. A file is not active or inactive based solely on the date of the last transaction. The last contact date is more important. In addition, if a file is involved in litigation, the funds probably should not be escheated.

It is important that you document any contact you have with either a payee or a principal so as to establish the date of last contact. The state, during its recent audits, has emphasized that it is important to determine not just the date of the last contact, but also who is entitled to the funds.

After you have determined which funds are to be remitted to the State, there are different steps to follow depending on the types of funds involved. In the case of outstanding checks, consider placing stop payments on all checks now being voided. Some people believe that any check three years old would not be presented for payment now and so are not concerned about placing stop payments. In addition, some people believe their bank would not pay a check over three years old without first getting authorization from them that the check is still valid. Most banks that work closely with the escrow industry are familiar with escrow company's escheat rules and probably would verify any check over three years old before paying it. But to play it safe, some people place stop payments on any check being voided before issuing the check to the State for escheatment.

Whether you place a stop payment on a check or simply cancel it, it is suggested that the check adjustment credit the funds into a holding escrow rather than back into the original escrow. That way, you can write one check to the Controller out of the holding escrow instead of having to write a check from each particular escrow out of which the outstanding checks were drawn originally.

For funds being held in escrow for more than three years, draw a check from the specific escrow payable to the Controller. There is no adjustment to be made to the trust accounting.

You are allowed to charge up to a \$2.00 service fee per item that gets escheated.

Any escheat report with more than fifty payees is required to be submitted via magnetic media. In addition, the state requires any escheat report of more than \$20,000.00 to be transmitted electronically – by ACH debit or wire transfer.

The Controller requires that the last known address and the appropriate social security number be furnished when completing the escheat forms. While it usually is not a problem to provide the last known address, it may be a burden to comply with the social security number requirement. You usually do not have the social security number or tax identification number of every payee to whom funds are disbursed through escrow. The State has been agreeable to waive this requirement on a case-by-case basis.

Although escheating funds to the State can be a frustrating process, it is important to comply with the regulations. In addition, keep a careful eye on dormant accounts and old outstanding checks as these funds are possible targets for fraud.

To try to minimize the number of old outstanding checks required to be escheated, it is suggested that the monthly outstanding check list be reviewed and that payees be contacted to remind them to negotiate their checks.

It is further recommended that dormant funds and old outstanding checks be monitored on a regular basis because it is part of your annual audit procedure to include a list of items to be escheated in the report submitted to the Department of Corporations. You can reduce your audit costs by keeping the funds subject to the escheat rules at a minimum.

If a principal to escrow or a payee of an outstanding check comes looking for funds that already have been escheated to the State, refer them to the Controller's office to obtain a claim form. The Controller's phone number is (800) 992-4647 and the website is www.sco.ca.gov. It is possible the Controller's office will want a copy of the transmittal page you submitted when the funds were escheated.

In addition, if you escheat funds in error, you can contact the Controller's office to file a claim form to recover the money.

As always, we are available to complete the escheat forms for you and to answer any questions you may have concerning the escheat process.