

One Man's Treasure – Another Man's Penalty?

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Exciting stories of the jubilant surprise of people finding treasures of money from unclaimed property websites abound. Yet these treasures can come at a cost to businesses. While physician offices are all too aware of the federal health care program audits by the various entities – including RACs, MACs, and ZPICS - there is another type of audit on the horizon.

In late 2011 the State of Michigan Department of Treasury sent notices regarding an Unclaimed Property Voluntary Disclosure Program. Property is defined in the Unclaimed Property Statute as “tangible or intangible personal property owned by a person”. Unclaimed property in the context of physician offices would include not only uncashed employee pay checks but also uncashed reimbursement checks payable to patients. While this Voluntary Disclosure program closed as of January 31, 2012, the notice helps remind Michigan businesses, including physician offices, of their obligations under the Michigan Uniform Unclaimed Property Act to remit unclaimed property to the State. The notice also stated that if an entity does not have unclaimed property to report, Form 4305, Attestation of Compliance with Unclaimed Property Reporting, must be filed. A sample of this notice can be found at:
<http://www.michbar.org/opinions/ethics/unclaimedproperty.pdf> .

There does exist some question as to whether authority exists under the Act to mandate the filing of reports from every person whether or not they have unclaimed property to report. The State Bar of Michigan on January 3, 2012 sent correspondence to the State Treasury seeking clarification regarding the Notice's requirement of the attestation of compliance and the legal authority for this requirement. A copy of this letter can be viewed online at:
http://www.michbar.org/news/releases/archives12/membership_alert.cfm.

On January 27, 2012 the treasury department responded to the State Bar inquiry, citing to Section 31(1) of the Uniform Unclaimed Property Act as granting authority to require the Attestation Compliance Form. Section 31(1) of the Act states in part: “The administrator may require a person who has not filed a report under this act or a person who the administrator believes has filed an inactive, incomplete or false report to file a verified report in a form specified by the administrator.”

This should give pause to physician offices because MCL 567.251(2) allows the state treasurer, or anyone whom the treasurer contracts, to conduct audits to determine compliance with the Act. There has been some discussion that the State will increase the audits. This would not be surprising given the fact that the Act was amended in 2010 in an effort to lessen the State general

fund budget deficit. The State has also taken the position that they have the authority for a 10-year lookback period for these audits, an issue the State Bar also disputed.

Unclaimed property must be reported to the state after the statutorily prescribed time period has run for it to be considered dormant. For example, pursuant to MCL 567.225, any check which is outstanding for more than 3 years after it was payable is presumed abandoned and must be reported. Under MCL 567.236, Unpaid wages greater than \$50.00 that remain unclaimed for more than 1 year are presumed abandoned. MCL 567.238(4) provides for reporting of unclaimed property and states that it must be reported by July 1 of each year for the 12 month period ending on the immediately preceding March 31. If the value of the unclaimed property is greater than \$50.00, entities are also required to provide written notice to the last known address (provided there is no evidence this address is inaccurate) not less than 60 days but not more than 365 days before filing the required report.

Penalties under the act include not only penalties for failure to remit unclaimed property but also for failing to file a report regardless of whether the entity holds any unclaimed property. Penalties include interest at the current monthly rate of one percentage point above adjusted prime rate, per annum, per month on the unremitted property starting from the date the property should have been delivered, and a civil penalty equal to 25 percent of the value of the property. Additionally, pursuant to MCL 567.255, for those with no unclaimed property, the Act also allows for a civil penalty of \$100.00 per day for each day with a maximum penalty of \$5,000.00 for willfully failing to render any report or perform other duties required under the Act.

Physician offices should check with their accountants regarding any unclaimed property and ensure they have filed the appropriate forms with the treasury office, particularly if they received one of the notices referenced above. More information can also be found in the Manual for Reporting Unclaimed Property found at http://www.michigan.gov/documents/2013i_2598_7.pdf.