

Winning the Escheatment Battle

By Janine Armin and Brendan Sheehan of *Corporate Secretary Magazine*

Unclaimed property is not usually at the top of a corporate secretary's to-do list. But, as Mark Paolillo, national director of unclaimed property, Deloitte, Andrew Panacione, VP, CSC and Lynn Feldman, deputy general counsel, corporate secretary, Wyndham Worldwide, explain it has become a very big deal and the risks to corporations are significant. States are aggressively pushing to reclaim property and view it as a substantial revenue source.

If you have not done a review of your company's risk pertaining to unclaimed property then you need to do it today because, as Paolillo pointed out, the State of Delaware has a target audit list of 5,000 companies. It has become clear that the vast majority of companies are not compliant with current laws, mostly because they don't fully understand the depth of the problem. Anything that the company may hold that reaches dormancy, like payroll checks, insurance payouts, shares, bonds, vendor fees and so on, can be assessed and claimed. To further complicate matters, there are, as Panacione explained, 54 different reporting jurisdictions. Companies trying to do assessments on their own can find this to be a Herculean task.

There is no statute of limitations on these claims. Most states go back to 1981 (though they can go back further) making any audit very

expensive and time consuming. Once property is 'located' it must be accounted for and inaccurately accrued property has a real impact on P&L statements. Beyond this, if a company is deemed to be late in filing, the auditor may impose a substantial fine.

One side issue is shareholder relations. In many cases, stocks and shares have been claimed by the states, much to the annoyance of shareholders. There is a potential for liability in these cases because companies are required under the law to take 'fair and reasonable steps' to ensure property is allocated to rightful owners. Failure to do so will not endear a company to its investors.

After hearing the issues, one corporate secretary suggested that she will make annual unclaimed property reviews part of the formal compliance program to ensure nothing slips through the cracks.

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