

# *Abandoned & Unclaimed Property Briefing*

*Tracking the dramatic changes in the way states enforce abandoned and unclaimed property laws*

**Issue 4 - 2012**

*Dear Clients and Alumni,*

*This issue's featured article focuses on AUP issues that may arise for online video game companies. We evaluate the escheat laws and how they apply to online gaming. In addition, we have included summaries of state legislation we are tracking.*

*Additional significant AUP developments include a newly enacted business to business exemption in Michigan, gift card industry news in New Jersey, and Delaware proposals of VDA incentives. The Michigan development, enacted House Bill 4563, is summarized in the legislative developments section below. For more information on Michigan, [click here](#). The New Jersey gift card development is summarized [here](#). [Click here](#) for more information on Delaware Senate Bill 258.*

*We hope you enjoy reading this edition of our newsletter, and look forward to hearing from you. Your continued feedback is invaluable to us.*

*Regards,  
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## ***Online video games' virtual currencies present very real abandoned and unclaimed property issues***

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### ***Overview***

Many states are beginning to look closely at online video gaming companies to determine how escheat laws may apply to new "virtual" revenue streams. Additionally, state Abandoned and Unclaimed Property ("AUP") enforcement has increased, resulting in more frequent and thorough audits, as well as the imposition of significant penalties and interest for unremitted AUP. Accordingly, online video gaming companies should be aware of their compliance responsibilities and potential risk or exposure in the AUP area.

AUP is generally any property belonging to another, owing in the ordinary course of business, and not being held for a valid business reason. AUP represents obligations that may be shown as outstanding on a company's books and records or that may have been voided due to the passage of time. AUP creates a hidden liability for many companies unaware that such obligations may have to be reported and remitted to a state.

For most businesses, general types of AUP are uncashed payroll and vendor checks and accounts receivable credits. However, online video gaming businesses may find that their unique revenue streams also fall within the definition of escheatable property. In this article, we focus on revenue sources that are relevant and unique to the online video gaming industry - such as virtual currency and microtransactions.<sup>1</sup> We first look to the exponential growth observed and expected in the industry. Then, we review the various sources of virtual currency and how these new revenue streams may fit within old and revised unclaimed property laws.

### ***Online Gamers: Changing Demographics and Exploding Revenue***

What was once an industry perceived to be dominated by pre-teen and teenage boy gamers interacting in a fantasy world of potions and spells or hand-to-hand combat in military operations, online gaming might now be considered mainstream. The Entertainment Software Association reports that for 2011 72% of American households play computer or video games, the average age of gamers is 37, and 42% of the gamers were women. [Essential Facts about the Computer and Video Game Industry, 2011 Sales, Demographic and Usage Data](#). While Call of Duty: Black Ops®, Madden NFL 11®, Starcraft II: Wings of Liberty®, and World of Warcraft: Cataclysm Expansion Pact® still top the best selling charts for video and computer games, a clear shift of focus is present for online games where puzzle, board games, trivia games, and card games represent 47% of the types of games most often played, and action, sports, strategy games taking the number two slot at 21%. *Id. at page 4*. Now online gamers include virtual farmers, Scrabble® players, and slingers of wingless birds to stop the conquest of pigs.

<sup>1</sup> Microtransactions are small payments for virtual goods, i.e. an in-game bonus, such as an extra power or skill for a character, weapon, digital gift, digital clothing, etc.

The growing gamer base is attributable to many circumstances coming together: the rapidly expanding access to broadband networks, the explosive popularity of social networks, and the proliferation of handheld wireless devices.

Consequently, this growing gamer base has resulted in significant online video game revenue. In 2006, global online video revenue was \$5.4B and, in 2015 is projected to hit \$28.3B. [PwC Global Media and Entertainment Outlook 2011 - 2015.](#)

### ***Virtual currency in the real world of escheat laws***

As the video gaming industry's revenue sources evolve over time, the line between real and virtual currency begins to blur. While many games are still purchased at retail, these games often provide the gamer the option to play online, allowing subscriptions and virtual purchases (i.e., microtransactions) to supplement the games' retail revenue stream. Other games are now purchased exclusively online, also allowing for subscriptions and microtransactions. Finally, in recent years a new business model is beginning to develop: freemium games, which allow free online access to the game and gamers can enhance their gaming experience through microtransactions.

One commonality of these revenue sources is the use of a gamer's online account balance, which may be reflected in either the virtual currency of the game or in a stated currency, such as U.S. dollars. What may appear to be fantasy funds of Lindens® in Second Life® or credits on Facebook® in the virtual world, represent hard and fast cash in the accounting world that must be recognized as income to the gaming company or, if appropriate, escheat to a state if unclaimed by the property owner. The unclaimed property issues surrounding certain property types that are specific to the gaming industry are discussed below; however, the gaming industry is not immune to audits of the more traditional property types, such as payroll and accounts receivable, and it should not disregard these areas when examining potential unclaimed property risks and liabilities.

### ***Gamer Account Balances of Virtual Currency***

One of the more significant unclaimed property issues surrounding virtual currency is that of a gamer's unclaimed account balance. Online gaming companies typically sell virtual currency through web payments; mobile payments through companies like Zong® or BOKU®; or alternatively through gift cards/retail cards, which can be redeemed to get virtual currency. From an accounting perspective, such "virtual currency" is reflected on the balance sheet as a customer deposit or deferred revenue (i.e., a liability). Virtual currency may be used by owners to purchase virtual goods or to enhance their gaming experience.

States may assert that virtual currency, similar to prepaid cards, is potentially escheatable to the extent the property is not used and becomes dormant (i.e., the applicable period of time passes since the last activity related to the virtual currency or customer account). The treatment of such property for AUP purposes varies by state and is not always well defined. Given the recent explosion of the online video gaming industry, states may start to develop escheat rules that are in-line with this growing industry. While the unique attributes of the online video gaming model have not been vetted, it has been well established that customer deposits and deferred revenue in other industries come under the purview of AUP provisions in most states. In order to determine the AUP

implications of such virtual currency programs in the online video gaming industry, the provisions, terms and conditions of the virtual currency program offered by each company with each game should be evaluated and analyzed in light of unclaimed property provisions, and, where applicable, legal counsel should be consulted if statutory provisions require interpretation.

### ***Subscriptions and Microtransactions***

As touched on above, subscriptions and microtransactions are two types of revenue streams that are prevalent and, in the case of microtransactions, a growing source of revenue for online gaming companies. Subscriptions are membership agreements that cover a stated period of time during which the member may access the online game for a fee. Through 2009 pay-to-play was the dominant membership model for online games. However, in 2010 subscription fee revenue fell for the first time as more online games started to adopt the "freemium" model or "free to play," which provides free access to the online game, but add-ons and enhancements to the game, such as a premium membership, are sold to the gamers through microtransactions.

The unclaimed property issues surrounding subscriptions and microtransactions are very recent areas on which states are beginning to focus. Specifically at issue are the unused balances of gamers. For example, if gamers purchase a one year subscription enabling them to download 10 new games, but then never do so, is the value of that subscription considered AUP in the future when it becomes dormant? Similarly, if a member purchases a certain amount of "credits" or virtual currency through a microtransaction and never uses them for a specific period of time, some games require that the member forfeit those credits or account balances. Efforts by states to broaden the application of AUP laws to capture these new property types is a sign of the economic times and indicative of the increased aggressiveness in state enforcement of AUP laws. Additional analysis of this area within the context of the subscription's terms and conditions, as well as the relevant states' laws, is essential. Without doing such an analysis, it is difficult to say whether a state's laws may apply to the property, and, if so, which dormancy periods or other key criteria will apply.

### ***Retail Cards / Gift Cards / Prepaid Cards***

Similar to other retail and service industries, video games often provide retail cards, gift cards, and pre-paid cards (collectively "prepaid cards") for use by gamers. Upon a customers' purchase of the cards, the gaming company holds the implicit commitment to ensure that the prepaid cards are redeemable at its website. With that commitment, the company also implicitly agrees to have its website operate properly so that customers can join any time and get the intended benefit. Similarly, customers accept the fact that the prepaid cards will only be redeemed at the company's website and will follow all the terms the company sets forth for prepaid card purchases and usages.

The treatment of prepaid card services for AUP purposes varies by state. Generally, the state's law that applies is based on the last known address of the property owner, or, if that information is not available, then the state of incorporation of the holder. This is a critical assessment that will be used to determine other factors, such as whether a state's exemption may apply, the length of the dormancy period (i.e., time that must pass before the property is considered abandoned, dormant and/or escheatable), and the state to which the property must be remitted. Over 30 states have some form of an exemption or

deduction for dormant prepaid cards; however, the rules for qualification of the exemptions or deductions vary by state. Some state exemptions may generate potential income or "breakage" to the holder if the prepaid cards are not redeemed over time.

Two examples of states with such exemptions are California<sup>2</sup> and Virginia. In order to qualify for the exemption in California, the retail card may not have an expiration date. In contrast, the Virginia exemption is much broader, covering "credits, gift certificates, coupons, layaways, and similar items, provided such credits, gift certificates, coupons, layaways, and similar items are redeemable in merchandise, in services, or through future purchases."<sup>3</sup> The dormancy period also varies by state but typically ranges from three to five years.

### ***Proactive Measures***

Online gaming companies may benefit by carefully scrutinizing their prepaid card programs, virtual currency programs, subscription programs, as well as other potential areas of AUP to determine whether an AUP liability may exist. With revenue projected to expand in an industry with growing visibility, the online video gaming industry is likely to grab the attention of state unclaimed property administrators. Consultation with a knowledgeable unclaimed property specialist can give a company ideas on how to effectively and efficiently manage its AUP function. For example, state voluntary disclosure agreements or alternative arrangements for prepaid card programs may help resolve prior period liabilities and improve ongoing compliance.

## ***MULTISTATE DEVELOPMENTS***

*While not fully inclusive of all developments in state AUP, the following provides highlights of some notable items.*

### *Alabama*

#### 2012 AL H 438, as passed by House April 10, 2012

This bill would allow banks to treat all deposit products equally regarding abandonment and would allow all payment instruments issued by the state to be remitted to unclaimed property for the benefit of the payee at expiration. The bill would also require a holder to electronically report with certain exceptions, would clarify property received by early reporting and would provide protection to consumers who claim their property through a third-party source.

#### 2012 AL H 126, signed by Governor May 15, 2012

House Bill 126 enacts the following:

- to establish the Unclaimed Life Insurance Benefits Act;
- to require the insurer to search the death master file;
- to require that no fee is to be charged associated with the search;
- to require the insurer to notify the State Treasurer; and

<sup>2</sup> Cal Rev. & Tax. Code § 1749.45(a). Note that in 2009, California attempted to repeal its exemption via Assembly Bill 77, which failed to pass.

<sup>3</sup> VA Code Sec. 55-210.8:1B.

- to require the insurer to submit the unclaimed life insurance benefits or unclaimed retained asset account, plus interest to the State Treasurer.

### *Arizona*

#### 2012 AZ H 2023, signed by Governor April 10, 2012

Certificates of deposit and any interest are presumed abandoned three years after maturity.

#### 2012 AZ H 2371, signed by Governor April 3, 2012

The holding period for certain unclaimed property used as evidence in a judicial or administrative proceeding and that remains unclaimed in the hands of a state, county, city or town agency is reduced from 90 to 30 days. Other clarifying and administrative changes are also made.

### *California*

#### Unclaimed Property Holder Handbook April 1, 2012

The updated handbook incorporates changes adopted by Senate Bill 495 relating to certain retirement account funds, qualifying tangible or intangible property that is exempt from escheating to the state, the seven year dormancy period for electronic money transfers with written instruments (draft) issued as payment, and the three year dormancy period for electronic money transfers without written instruments (draft) issued as payment.

The updated handbook has also been revised to update the Holder's Claim for Reimbursement (HCR-1) form and instructions, the Securities Summary (SS-1) form and instructions, and electronic funds transfer (EFT) instructions.

#### Holder Outreach, 2012 Spring Newsletter, April 1, 2012

CCH: The State Controller's Office (SCO) has issued its 2012 Spring Newsletter regarding the California Unclaimed Property Program, that includes, among others, an article on reporting new names after the Holder Notice Report has been filed. Unclaimed (abandoned) property holders are cautioned that they should not include new names on their Holder Remit Report. Instead, holders should put the new names on a Supplemental Holder Notice Report, prepare a Uniform Holder Face Sheet form (UFS-1), and label both the CD (or diskette) and the top of the UFS-1 form "SUPPLEMENTAL." The Supplemental Holder Notice Report should only contain new records. The remit date should be no sooner than seven months, nor later than seven and a half months after the supplemental report is successfully approved. The State Controller's Office will notify holders if their report is disapproved.

### *Florida*

#### 2012 FL H 7111, signed by Governor May 4, 2012

The statute regarding the report of unclaimed property is revised to exempt social security numbers from reporting requirements.

*Hawaii*

2012 HI H 2486/S 2748, enrolled to Governor May 8, 2012

Amends the due date for remitting unclaimed property. Previously, property was due to be remitted six months after the report is filed. House Bill 2486 would require that property be remitted with the report.

*Kentucky*

2012 KY H 135, signed by Governor April 11, 2012

Unclaimed Life Insurance Benefits: requires recognition of the escheat statute, complete and proper disclosure, transparency, and accountability relating to any method of payment for life insurance death benefits regulated by the Department of Insurance. The bill also requires insurers to compare in-force life insurance policies against the Death Master File to determine potential matches.

*Michigan*

2011 MI H 5577, as passed by the House May 31, 2012

This bill reduces the dormancy period for unclaimed property from ten years to five years for property except gift cards or gift certificates.

2011 MI H 4563, signed by Governor May 24, 2012

This bill amends the Uniform Unclaimed Property Act to exclude credit balances, overpayments, deposits, refunds, discounts, rebates, credit memos, or unidentified remittances created on or after April 1, 2009 and issued, held, due or owing in any transactions between two or more associations. The exclusion does not apply to outstanding checks, drafts or other similar instruments, demand, savings or matured time deposits, as detailed under MCL 567.227 or property held in a safe deposit box or repository, as detailed by MCL 567.237.

"Association" means a business association, public corporation, or any other commercial entity, including a sole proprietorship.

*Nebraska*

2012 NE L 1026, signed by Governor April 10, 2012

This bill amends the Uniform Disposition of Unclaimed Property Act to repeal provisions which require that the "amount due" of unclaimed property in the records of the State Treasurer be treated as confidential.

*New Jersey*

2012 NJ A 1871, as passed by Assembly March 15, 2012 and 2012 NJ S 1962, introduced May 17, 2012

This bill would reverse prior changes to the abandonment periods for escheatment on travelers checks, money orders, and stored value cards (SVCs). The bill restores the 15 year abandonment period for travelers checks issued on or after the date of enactment. The bill restores the seven year abandonment period for money orders issued on or after the date of enactment. The bill provides that SVCs issued on or after the bill's date of enactment are no longer subject to escheatment.

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[2012 NJ S 1928, as amended by the Senate May 31, 2012 and 2012 A 3045, introduced June 7, 2012](#)

S1928/A 3045 takes a much more limited approach than A 1871 noted above and would amend Chapter 25 to only exempt from escheatment SVCs issued on or after the date S 1928/A 3045 is enacted, and to exclude them from the data collection requirements. The bill also generally maintains the prohibition on SVC: (1) dormancy fees; (2) inactivity penalties; and (3) expiration dates. The bill does not, however, address the other amendments found in Chapter 25, such as the abandonment periods of travelers' checks or money orders.

*New York*

[2011 NY S 6943, introduced April 13, 2012](#)

Requires insurers to perform a comparison of life insurance policies against the federal Death Master File to identify potential matches of its insureds or account holders and to complete a good faith effort to confirm the death of the insured and locate beneficiaries.

*North Carolina*

[2011 NC S 810, introduced May 21, 2012](#)

Currently, a holder of unclaimed property that files a report must maintain records containing the information required to be included in the report for ten years. This bill would reduce the time required to maintain records to five years.

*Oklahoma*

[2011 OK S 1450, signed by Governor April 24, 2012](#)

Under the unclaimed property statute, property that is reported and delivered to the State Treasurer is treated as abandoned, even if it is not "presumed" abandoned, if it is "in the best interest of the property owner for the property to be treated as abandoned...". Additionally, if a claimant makes a verifiable and proper claim, but fails to properly transfer securities into the claimant's name within ninety (90) days of claim approval by the State Treasurer, the State Treasurer may, upon notice to claimant, sell and convert such securities to cash for the benefit of the claimant.

*Rhode Island*

[2011 RI S 2433, as passed by House June 11, 2012](#)

This act would exempt gift cards or gift certificates that are given to a non-profit corporation or association, for fundraising, from the prohibition against expiration dates, provided an expiration date is clearly stated on the card or certificate in bold print.

[2011 RI H 7788, introduced February 28, 2012](#)

"Personal money order" is defined with the caveat that no expiration date may be applied. Accordingly, unredeemed personal money orders are not escheatable.

*South Dakota*

2012 SD H 1270, signed by Governor March 2, 2012

The dormancy period for intangible property, money orders, bank checks or drafts, savings or time deposit accounts, stock or other intangible property ownership interest in a business if a dividend, distribution or other sum payable as a result of the interest, gift certificates or credit memos, and property held in a safe deposit box if unclaimed by the owner after the lease period ends is decreased from five to three years. The dormancy period for life insurance policy funds is decreased from four to three years.

*Wisconsin*

2012 WI A 418, signed by Governor April 6, 2012

Under current law, a person holding tangible or intangible property presumed to be abandoned by the owner must report the unclaimed property to the state treasurer. A person claiming an interest in the reported property may file a claim with the treasurer to recover the unclaimed property. Current law permits a person who claims an interest in the reported property to enter into an agreement that permits another person to locate, deliver, recover, or assist in the recovery of that property. This bill requires a copy of any such agreement to be included with the claim filed with the treasurer.

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