
On July 6, 2017, the Illinois House of Representatives overrode Governor Rauner's veto of Senate Bill 9, which included significant corporate income and personal income tax rate increases and made several other changes to Illinois' tax laws.¹ Senate Bill 9 also repeals Illinois' existing unclaimed property law and replaces it with a modified version of the 2016 Uniform Unclaimed Property Act ("RUUPA"). The revised unclaimed property provisions become effective on January 1, 2018.²

It is possible that the legislature may repeal the recent unclaimed property changes before they become effective. During the somewhat rushed enactment of Senate Bill 9, House Bill 4078 was introduced, which, if enacted, would repeal the unclaimed property changes adopted in Senate Bill 9.³

Dormancy Periods and Triggers

Under Senate Bill 9, the designated time period during which property must be outstanding (the "dormancy period") is reduced for many types of property from the current five-year period to three years.⁴ Under current and revised law, for most property types, the trigger for the dormancy period is the date of the owner's last indication of interest in the property. Senate Bill 9 provides a specific list of the types of actions by an apparent owner that constitute an indication of an apparent owner’s interest in property. Further, the revised law adopts RUUPA provisions that extend these owner actions to include an owner’s electronic contact⁵ with the business holding the property.

Under current law, there are no specific triggers for certain types of property. Senate Bill 9 adopts new and alternative triggers for initiating the dormancy period for special property types such as individual retirement accounts ("IRAs"),⁶ health savings accounts ("HSAs"),⁷ and minors’ accounts ("UGMA" or "UTMA").⁸ While somewhat similar to those in RUUPA, the triggers for these property types hinge upon mail being returned from the post office as undeliverable ("RPO") and/or particular dates (i.e., the mandatory distribution date under federal income tax laws or date of death, the date on which the custodian is required to
transfer the property to the minor or the minor’s estate as required by other laws).

Interestingly, the trigger for securities property differs from RUUPA. Under Senate Bill 9, a security will be presumed to be abandoned on the earlier of the following dates: 1) three years after a first class mailing to the owner is RPO, or 2) five years after the date of the owner’s last indication of interest in the property. In practice, these standards appear contradictory because an RPO might often be considered an indication that the owner did not show the requisite interest in property. Further, application of these standards may be difficult as they require manual analysis of separate sets of data.

Note that for certain property types that include RPO as part of the trigger (i.e., securities, IRAs, etc.), there is an alternative trigger if the holder does not send communications to the apparent owner by first class United States mail at least on an annual basis. In these instances, an electronic communication (i.e., email), must be sent to the owner after a specified period from the date of the owner’s last indication of interest in the property. If there has been no owner response within 30 days, the holder does not have information to send email, or believes that the apparent owner’s email address is invalid, a first class mailing to the owner’s known address is required.

**Gift Card and Business to Business Exemptions**

Under current Illinois law, gift cards that do not expire or include a particular fee, as well as “business to business” transactions (including accounts receivable credits and outstanding checks issued from one business to another) are exempt from being treated as reportable and remittable unclaimed property. Senate Bill 9, effective January 1, 2018, treats business to business transactions as reportable and remittable unclaimed property.

The intent of the revised law as it pertains to gift cards is not entirely clear. Under Senate Bill 9, “gift cards,” which are defined as stored value cards that have no expiration date, are not subject to a dormancy, inactivity or service fee, have no cash redemption value unless otherwise required by law, and that can be decreased in value only by redemption for merchandise, goods or services from a single merchant or affiliated group of merchants, are excluded from the definition of property. However, the definition of a “stored value card” includes “gift cards,” and stored value cards are considered reportable property.

One potential interpretation of these provisions is that only gift cards (defined in the revised law as not expiring and not subject to certain fees that can be redeemed only at one merchant or affiliated merchants) are excluded from the definition of reportable property. Other gift cards, such as those that expire or are redeemable at more than one type of merchant, are stored value cards that must be reported. However, it is certainly not clear.

The lack of a business to business exemption and the ambiguous gift card provisions are a concern for many holders reporting to Illinois. This concern is intensified when considered in light of the transitional provisions contained in Senate Bill 9. These transitional provisions provide that the initial report filed under the revised law for property that was not required to be reported before the effective date of the law (January 1, 2018) but that is now required to be reported must include all items of property that would have been reportable during the five-year period before the effective date of the revised law. In other words, items that may have previously been exempted under the Illinois business to business or gift card exemptions during the past five report years may be required to be reported on the filing due to the state in 2018. To the extent that holders previously took property now required to be reported into income, there may be a need to reverse those transactions or establish financial statement reserves to fund the remittances of the property to Illinois when the 2018 unclaimed property report becomes due.
Owner Notice and Reporting

Senate Bill 9 also makes significant changes to the provisions that require the holder to provide certain notices to the apparent owner of property. First, while the generally mandated outreach notice remains a letter sent via first class mail to the last known address of the owner per the holder’s records, the time “window” during which the letter must be mailed changes under the revised law. For certain property types, the mode of mailing also changes. The general requirement in Senate Bill 9 is that a first class mailing must be sent not more than one year nor less than sixty days prior to filing the unclaimed property report. However, another statutory provision requires that, for securities and certain investment property (i.e., tax deferred accounts, IRAs, HSAs, etc.) valued at $1,000 or more, the holder must send the letter via certified mail not less than sixty days prior to filing the report.

Similar to RUUPA, Senate Bill 9 requires that, in addition to the due diligence letter, an email notice must be sent if the owner has consented to receiving emails. Further, the content of the notice letter and email is specifically addressed in the revised law. Specifically, the notice must include a heading that reads substantially as follows: “Notice. The State of Illinois requires us to notify you that your property may be transferred to the custody of the administrator if you do not contact us before (insert date that is 30 days after the date of the notice.” The notice must also meet various other specifications outlined in the revised law.

Another important difference from current law is the mandate that unclaimed property reports be filed “via the internet.” Previously, Illinois accepted reports on compact disk delivered to the unclaimed property office.

Also, in determining which state has jurisdiction over property, Senate Bill 9 permits a code, description or other indication of the location of the owner to qualify as the last known address of the owner. For example, if the only address-related information for an owner per the holder’s records is a zip code in Illinois, under the revised law, Illinois would extend its claim to the property. However, application of this provision may be problematic because other states may not have the same provisions, which could result in more than one state claiming jurisdiction over property.

Statute of Limitations and Record Retention

Senate Bill 9 adopts a longer statute of limitations than that included in RUUPA. The statute of limitations in RUUPA is five years after the filing of a non-fraudulent report; under Senate Bill 9, the statute of limitations is ten years after the holder has specifically identified the property in a report or notified the unclaimed property administrator of a dispute regarding the property. In practice, the statute of limitations will not apply unless the property has been reported or Illinois has been notified of a dispute specific to the property.

Senate Bill 9’s new record retention requirement is consistent with the statute of limitations, as it requires the holder to retain records for ten years after the later of the date the report was filed or the last date a report was due to be filed.

Enforcement / Interest and Penalties

Senate Bill 9 grants the administrator new enforcement tools and authority. In addition to being authorized to conduct holder audits, the administrator will be authorized under the revised law to:
• Require a holder to file a “verified” report if it is believed that the holder filed an inaccurate, incomplete, or false report or if no report was filed;\(^{24}\)
• Issue an administrative subpoena requiring a holder to produce records in an examination and to bring an action to enforce the subpoena;\(^{25}\)
• Hire third-party auditors to perform audits on a contingent fee basis;\(^{26}\) and
• Deduct the fees from the property collected by the third party auditor before depositing the property into the designated state fund.\(^{27}\)

Similar to current law,\(^{28}\) the revised law authorizes estimation in audits when records are unavailable or insufficient, but specifically prohibits the use of estimation in audits when a holder has retained appropriate records and filed reports.\(^{29}\) The use of estimation is specifically stated in Senate Bill 9 to be a penalty for failure to maintain records.\(^{30}\)

Further, Senate Bill 9 includes additional and more substantial penalties and interest for noncompliance but eliminates the criminal penalty for wilful non-compliance.\(^{31}\) A holder that fails to report, pay, or deliver property within the required timeframe will be subject to a $200 per day penalty for each duty not performed up to a total of $5,000 and will be subject to interest of one percent per month on the value of the property from the date the property should have been reported, paid, or delivered.\(^{32}\) Willful failure to report or pay property or fraudulent reporting subjects the holder to a penalty of $1,000 per day up to $25,000 plus 25 percent of the amount or value of the property that was reported or should have been reported or paid.\(^{33}\)

**Other Industry-Specific Provisions**

**Securities and Investment Property**

In addition to the special trigger and owner outreach provisions for securities property, Senate Bill 9 prescribes particular treatment for securities property remitted to the administrator. The administrator may sell a security three years after it is received and the administrator provides the owner notice of the security. The administrator can sell the security sooner if the administrator determines that it would be in the best interests of the owner.\(^{34}\) If the administrator sells the security prior to the expiration of the three-year period, a claiming owner is entitled to receive either replacement of the security, the market value of the security at the time the claim is filed plus any dividends or interest up to the time the claim is paid, or the net proceeds of the security at the time it is sold plus any dividends or interest up to the time the security was sold.\(^{35}\)

**Mineral Proceeds**

Another change in Senate Bill 9 that differs from current Illinois law is that, effective January 1, 2018, Illinois will be a “current-to-pay” state for the purposes of reporting of mineral interests.\(^{36}\) This provision requires that when property is reportable, any other property right or interest accrued from the property is also reportable. For mineral interests, this means that once one item in an owner’s account is outstanding for the duration of the dormancy period, all other items within the account are reportable on or before the next report deadline and any items that are posted to that account in the future are automatically reportable on or before the next report deadline.

**Next steps**

Senate Bill 9 makes significant changes to Illinois unclaimed property laws that will require affected businesses to revise many of their existing practices associated with
compliance and reporting of unclaimed property to Illinois. It is unclear at this time whether the bill to repeal the unclaimed property changes in Senate Bill 9 will advance.

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Footnotes

1 Illinois Senate Bill 9, Public Act 22 (enacted July 6, 2017).
2 The Senate had voted to override the Governor’s veto on July 4, 2017 and the bill was therefore considered enacted into law after the July 6, 2017 House vote.
3 Another bill, Senate Bill 2224, introduced on July 21, 2017 would likewise repeal the unclaimed property changes adopted in Senate Bill 9.
4 Id. at §15-201.
5 Id. at §15-210(b)(1) and §15-102(26).
6 Id. at §15-202.
7 Id. at §15-203.
8 Id. at §15-204.
9 765 ILCS 1025/10.6.
10 765 ILCS 1025/2a(b).
11 Id. at §15-102(11)(A).
12 Id. at §15-102(24)(C)(iii); Id. at §15-102(30)(A)(ii).
13 Id. at §15-1503(a).
14 Id. at §15-501(a).
15 Id. at §15-501(c).
16 Id. at §15-501(b).
17 Id. at §15-502(b)(6).
18 Id. at §15-401(a).
19 Id. at §15-301(1).
20 Id. at §15-610(b).
21 2016 Uniform Unclaimed Property Act, §610(b)
23 Id. at §15-1002(1).
24 Id. at §15-1001.
25 Id. at §15-1002.
26 Id. at §15-1009(b)(1).
27 Id. at §15-1009(b)(3).
28 765 ILCS 1025/11.5.
29 Id. at §15-1003 (c) and §15-1006.
30 Illinois Senate Bill 9, Public Act 22 (7/6/2017), §15-1006.
31 765 ILCS 1025/25(b).
32 Illinois Senate Bill 9, Public Act 22 (7/6/2017), §15-1204.
33 Id. at §15-1205.
34
Id. at §15-702.
35 Id. at §15-703(a).
36 Id. at §15-209.