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LEGAL BRIEFING: New York State Abandoned Property Law
Abandoned Property Law: Widely Applicable and Perilously Ignored

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The New York State Abandoned Property Law ("APL") requires every business in New York to surrender property, usually money, to the State when the property has remained unclaimed by its owner for specific time periods. The surrender process is complicated and a failure to follow the strict and mechanical requirements of the law can result in steep penalties and interest. A few examples of property potentially subject to this law include:

- uncashed paychecks,
- unredeemed gift certificates,
- unpaid or unreimbursed escrow funds,
- unclaimed securities and amounts owed to the owner of the securities,
- unclaimed bonds and amounts owed on bonds,
- checks issued to vendors or contractors in payment for goods or services where the check has gone uncashed, or
- funds received from a customer where the goods were not delivered or services were not rendered, among others.

The law applies to virtually every business, but applies to many business differently than others. There are special requirements for certain business, such as banks and utility companies. There are even special requirements for the government. Despite its broad application, however, many businesses are either unaware of APL or have, for a variety of reasons, not prioritized complying with the APL.

It is more likely that older businesses will have abandoned property problems than new businesses. This is, in part, because the longer the property has been abandoned and unreported, the larger the potential penalties. New businesses, however, are far from exempt. An abandoned property problem can arise for small businesses within a couple of years after starting operations.

The APL requires businesses to audit their books, identify unclaimed property, send out notices, and report and pay abandoned property to the New York State Comptroller in a specific manner and subject to specific time deadlines. If the Comptroller's Office of Unclaimed Funds audits a business and finds amounts that should have been reported and surrendered, they can charge a 10% annual interest rate on the amounts. There is also a \$100 penalty applied for every day a report is late if a business has willfully failed to file a report. While most businesses that are not in compliance are uninformed and, therefore, should not be subject to the \$100 daily penalty, 10% interest can cause numerous small amounts of unclaimed property to grow into a large liability quickly.

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Examples

Unfortunately, statutes of limitation, which usually protect business and individuals from claims for old actions or failures, offer no relief here. There is no statute of limitations for APL audits and it is possible that a business could be audited in 2030 and held liable for a paycheck it issued in 1964 that an employee never cashed. If that paycheck was for \$100, the business could be liable for approximately \$40,000, not including the daily penalty. If the business is audited in 2015, that amount would still be approximately \$10,000.

If there are multiple such unclaimed amounts, or if the unclaimed amounts are large, even a few years can result in painful and unexpected payments. For a medium-sized business that averages \$900 in unclaimed paychecks per year and \$3,000 in unclaimed, unreimbursed customer prepayments per year, the total amount due looking back to 2009 could reach \$50,000 to \$55,000 by 2017. If the business willfully failed to fulfill its reporting obligation, the business can expect a potentially crippling penalty on top of the payment due (\$100 per day is \$36,500 per year). These results may seem absurd, but when enforcement schemes lack a statute of limitations and apply 10% interest, results like these can and do occur.

Solution

To avoid interest, a business can engage in voluntary compliance and file a report and pay the unclaimed funds to the Comptroller; however, a note of warning is appropriate. While a business is preparing to comply, the Comptroller can commence an audit at any time. If an audit is commenced before a business files its voluntary compliance report, which must include payment, then the business will be liable for interest. Therefore, the compliance process must be handled in a very careful manner so as to permit the business to undertake compliance without triggering an audit. The Comptroller does offer options that permit a business to avoid an audit for a brief period while the business undertakes compliance, but once an option is selected, the business must be ready to comply within the allotted time period or risk facing an audit, penalties, and interest.

Unfortunately, the Office of Unclaimed Funds' guidance materials are lengthy and often refer readers to the statute or regulations. If a business decides to comply voluntarily, the Comptroller purports to be strict about compliance with its procedures, such as the form of the mandatory report, and may not accept incorrect reports. Every effort should be made to ensure a compliant and accurate report is filed.

If you need guidance on how to comply with the APL and deciding whether it applies to your business, we have attorneys who can assist you.

This Legal Briefing is intended for general informational and educational purposes only and should not be considered legal advice or counsel. The substance of this Legal Briefing is not intended to cover all legal issues or developments regarding the matter. Please consult with an attorney to ascertain how these new developments may relate to you or your business.

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