

# Client Alert

November 2019

## Texas Revises Unclaimed Property Law to Require Combined Reporting

Texas recently amended its unclaimed property law (also referred to as abandoned property or escheatment law). House Bill 3598 was signed by Governor Abbott and became effective on June 10, 2019. The new law makes several changes to the annual unclaimed property reporting process in Texas, including a new requirement that holders file a consolidated report that includes unclaimed property owed to Texas by all members of an affiliated group. Despite the 2019 effective date, the Texas Comptroller has indicated that it will not enforce compliance with the new reporting rules until the 2020 Property Reports that are due on or before July 1, 2020. For businesses that do not file unclaimed property reports on a centralized basis, this is going to require coordination among affiliated unclaimed property holders that was not previously necessary.

Another new reporting rule requires a company that files a Texas Property Report to continue filing annually, whether or not it has any unclaimed property to report. If a company does not hold any unclaimed property, it must certify that fact on its Property Report. The new law also expands record maintenance requirements. Holders are now required to keep records of each item of unclaimed property for 10 years from the filing date of the Texas Property Report that included the property.\*

In one respect, House Bill 3598 narrows holders' unclaimed property liability by adding a seven-year statute of limitations, commencing on the date the Property Report for the year was filed. Since the statute of limitations is based off the filing date, there is no limitation period unless a Property Report was filed. The limitation period also does not apply if the Property Report was fraudulent or if it understated the unclaimed property in the holder's custody by 25 percent or more (or if a court order is required to compel the holder to respond to an audit). The new statute of limitations does not apply to ongoing or previously conducted audits.

### Hunton Andrews Kurth Observations

The apparent purpose of the legislation is to capture unclaimed property owed to Texas by a company that has not historically filed Texas unclaimed property reports but is a member of an affiliated group that includes one or more members whose primary unclaimed property obligations are to Texas.

The Texas Comptroller has not published any guidance on the new reporting requirements but has informed us that they intend to release guidance before the new reporting year starts in March 2020.

#### *Voluntary Disclosure Program*

If a company has not complied with its Texas unclaimed property reporting obligations, consideration should be given to the Texas Voluntary Disclosure Program, under which penalties and interest may be waived if the holder voluntarily reports and remits all past-due unclaimed property it is holding. The typical voluntary disclosure agreement requires a 10-year lookback period, which can limit exposure for a company with a long history of noncompliance. The Texas Comptroller does not allow companies to apply anonymously to the Voluntary Disclosure Program, so holders seeking interest and penalty relief will have to identify themselves in the application for relief.

## *Unclaimed Property Priority Rules*

The US Supreme Court has delineated a priority scheme under which items of unclaimed property are payable first to the state in which the last known address of the payee is located. If the holder cannot tie the unclaimed property to a known payee, or does not have any last known address for the payee, the unclaimed property is payable to the state under whose law the holder was formed or incorporated. Thus, an affiliated group must report to Texas all unclaimed property (i) that is owed by any member of the affiliated group to a payee with a last known address in Texas or (ii) that is owed to an unknown or foreign payee, or to a payee whose address is unknown, in each case by a member of the affiliated group that was formed or incorporated under the laws of Texas.

If you have any questions about the Texas Unclaimed Property reporting process, please contact one of the authors listed below.

## **About Us**

Hunton Andrews Kurth LLP's unclaimed property lawyers include tax, regulatory, litigation and technology attorneys with experience representing holders in unclaimed property audits and litigation and representing the state in unclaimed property litigation. We have counseled clients in a wide range of industries on unclaimed property compliance, planning, audit and litigation defense, multistate audit defense, representation at regulatory and court proceedings and assisting in settlement negotiations.

\*If the Property Report is filed early, the record maintenance rule requires extending the record maintenance requirement until 10 years from the date the property first became reportable.

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