

Reporting Unclaimed Property

January 31, 2012

The Michigan Department of Treasury has sent Unclaimed Property Notices to businesses and individuals that have not reported or remitted unclaimed property to the state. Typically these notices advise the recipient that the recipient has until January 31, 2012 to file a Voluntary Disclosure Agreement or a form, Form 4305, attesting that they have no unclaimed property tax to report. The notice advises of the potential for audits and assessments of interest and penalties if the recipient does not comply with the law.

The notice has caused some alarm. The State Bar of Michigan has recently requested clarification from the Michigan Department of Treasury regarding these notices. Within the State Bar, there may be differing views regarding the notices. The Tax Section of the State Bar, however, has advised that recipients should respond to the notices by filing the appropriate paperwork.

What is unclaimed property and am I required to file an unclaimed property report? Unclaimed property is property that belongs to someone else and has not been claimed by the true owner over the last three years. Someone holding "unclaimed property," called a "holder," must report the property to the State of Michigan and remit the property to the State. The owner must obtain the property from the State. If a person does not own unclaimed property, then no report is required.

Do I have unclaimed property? Businesses that purchase or sell property frequently have property that is unclaimed. You may imagine that banks, businesses that have been sold or redeemed stock, may have property that is unclaimed. Most of these obvious holders have already been contacted by the Michigan Department of Treasury. The recent notices appear to have been sent to service providers, individuals and small businesses. Unclaimed property for these businesses may involve uncashed payroll or vendor checks, escrow refunds or benefit payments. Generally, property that is less than \$50 is not reportable.

What to do with the notice? Everyone's situation is different. For many businesses, it will make sense to file the Voluntary Disclosure Agreement and then report unclaimed property or, after review, file Form 4305, attesting that no unclaimed property exists. The unclaimed property report must be filed by July 12, 2012. For some businesses or individuals, it will be obvious that they have no unclaimed property and it makes sense to file Form 4305.

Will I be audited? Anyone can be audited, regardless of whether they have filed the Voluntary Disclosure Agreement, Form 4305 or file nothing. However, the Department has acknowledged that its audits are targeted to those businesses and individuals that are likely noncompliant holders – either not reporting or underreporting. Some service providers may be less likely to be audited than retailers or manufacturers. Some individuals may be less likely to be audited than businesses.

What benefit is the Voluntary Disclosure Agreement? The agreement waives interest and penalties for any property that was reported and should have been earlier reported. For more information, please contact your Miller Canfield State and Local Tax attorney or the author.