

UPdate

LINKING ASSETS INC.






A Jaisan Recovery Corp.

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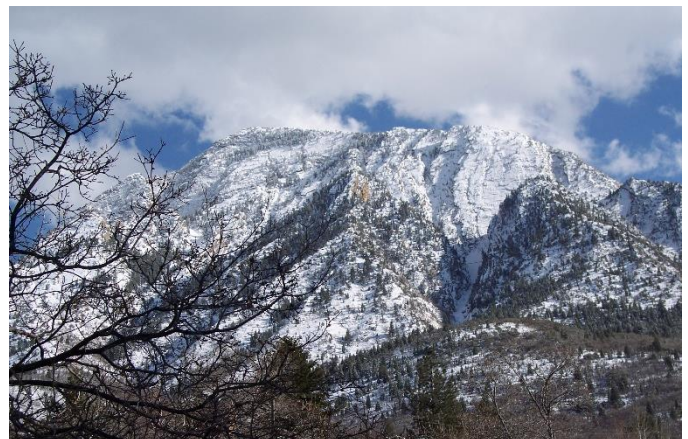
Linking Assets Inc. UPdate periodically provides articles and information regarding legislative, regulatory, compliance, and associated developments. Keeping you informed about unclaimed property, search and location, owner outreach, and related areas of interest.

A Message from Our CEO

By Peter Quinn, CPA

With the 2018 year coming to an end, there is much to reflect on in the unclaimed property industry. Numerous legislative, regulatory, and compliance updates have occurred. These have affected and will continue to affect all parties involved in the unclaimed property world. With the addition of Christa DeOliveira, CIA, CCEP to our Linking Assets Inc. family in February 2018, our company has ensured that we are ahead of all

industry-wide compliance updates and continue to be on the forefront of best practices. Aside from this *UPdate*, for tracking of developments throughout this past year, please refer to previous editions of *Linking Assets Inc. UPdates* and other News on our website: <http://linkingassets.com/news/>.



We are looking forward to a successful 2019 and wish you success in your endeavors. Happy Holidays and have a healthy and prosperous New Year.

A Year in Review

By Christa DeOliveira, CIA, CCEP

It has been another busy year in the unclaimed property arena. (Yes, we do indeed seem to find ourselves saying this at the conclusion of every year.) The nature and scope of the changes is far ranging: from new legislation and regulations, to a new IRS rule for traditional IRAs, to privacy requirements, to audits, to the National Association of Unclaimed Property Administrators' (NAUPA) activities and plans. Due to the volume of the changes, only highlights are included in this article.

As always new unclaimed property and related legislation was introduced and some of it was enacted.

Naturally, we anticipate the same for the new year. Highlights of key legislative updates are in the Legislation Update section of this and each of our *Linking Assets Inc. Updates*.

In July, the Thrivent Financial for Lutherans vs. Betty Yee et al. California Superior Court case decided that guidance does not equal regulation. Ultimately, this case has implications for unclaimed property and beyond. The judge granted Thrivent Financial for Lutherans' motion for summary judgement. California's Office of State Controller had adopted two regulations: "External Database Regulation" and the "Dormancy Trigger Regulation". These regulations were implemented without following the California Administrative Procedure Act process. Therefore, the judge ruled they are invalid. Based on this ruling, life insurers are not required to verify if California insureds are deceased using the Death Master File. Also, life insurers are not required to use the date of death as the dormancy trigger; instead, they are able to use the date they receive notice of death. For the full ruling refer to: <https://images.thinkadvisor.com/contrib/content/uploads/documents/415/302510/2018-7-23-thrivent-v-yee-SuperiorCourtSF.pdf>.

On another front, the compliance date for IRS, Rev. Ruling 2018-17: Withholding and Reporting with Respect to Payments from IRAs to State Unclaimed Property Funds was extended through Notice 2018-90: Extension of Transition Relief Under Rev. Rul. 2018-17 on Withholding and Reporting with Respect to Payments from IRAs to State Unclaimed Property Funds to be January 1, 2020. More information is available in the Regulatory, Compliance, and Legal News section of this *Update*.

Data privacy and security remain significant concerns. The European Union's Global Data Protection Regulation (GDPR) while originally adopted on April 14, 2016, it went into effect on May 25, 2018. The California Consumer Privacy Act (CCPA) was enacted in June. California's legislature moved swiftly to enact this legislation to avoid an even more stringent law that would have appeared as a ballot initiative in November. Due to the CCPA's hasty enactment there were significant outstanding concerns about the initial provisions. An amendatory bill was enacted on September 23, 2018. A variety of stakeholders continue to seek additional changes. Part of the impetus for the

GDPR was to harmonize privacy law across the EU. There is a push stateside to avoid a patchwork of disparate privacy rules across states and a call for comprehensive federal privacy law.

Earlier this year, Delaware's Department of State updated its website multiple times, related the unclaimed property voluntary disclosure program. The "SOS VDA Program Guidelines" have been updated. Refer to <https://vda.delaware.gov/forms/> for current guidelines and forms.

Additionally, Delaware continues to send out VDA invitation and audit letters. According to recently sent VDA invitation letters, if a company receives an invitation and does not respond within 60 days, the company will then be referred to Delaware's Department of Finance for audit by the State Escheator.

The alluring prospect of California launching an unclaimed property (VDA) program through the passage of AB 2773 did not materialize. The legislation failed. There is a possible silver lining: important discussions occurred, and ground work was laid for the potential of a future California VDA program.

NAUPA and its members have been active on multiple initiatives: its strategic plan, best practices for claims, combating fraud, emerging financial instruments, RUUPA, audits and alternatives to audits, leveraging earned (free) media. For more details on what was covered in May at the NAUPA track during the National Association of State Treasurers' Treasury Management Symposium, refer to our July 2018 *Linking Assets Inc. Update* article, *Priorities, Trends, News, and Insights from NAUPA*, <http://linkingassets.com/news/wp-content/uploads/2018/07/Linking-Assets-Inc.-Update-July-2018.pdf>.

Also, NAUPA published its 2018- 2022 strategic plan: <https://www.unclaimed.org/uploads/resources/355/naupa-2018-2022-strategic-plan-approved.pdf>. The top priorities were identified as: 1) Creating and implementing a communication and multitiered educational plan; 2) Enabling NAUPA to proactively support states' efforts to address legislative challenges and emerging issues; 3) Revising the reporting format; and 4) Developing and launching a new NAUPA website. The new NAUPA format continues to be developed, but as of yet a draft has not been published for comment.

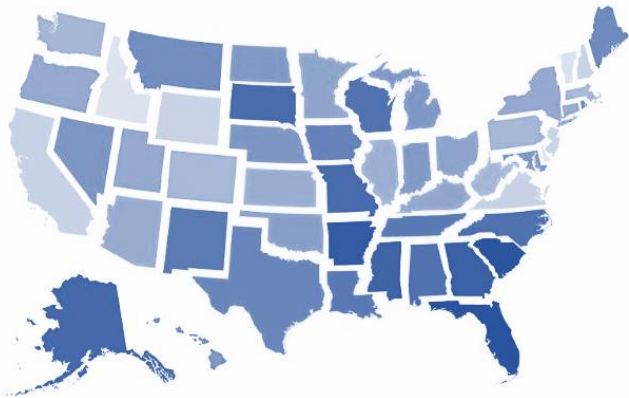
Documentation is currently being drafted. The forthcoming unveiling of a modernized format and the ability to report more owner and property data is much anticipated.

In conclusion, we have seen many changes during 2018. Staying current with pertinent developments is critical to maintain compliance in this evolving environment. *Linking Assets Inc. UPdate* will continue to offer our readers information on legislative, regulatory, compliance, legal and related news and information.

Legislation Updates

Linking Assets Inc. monitors the progress of legislation effecting unclaimed property related topics. Highlights for 2018 are provided here.

Linking Assets Inc. is not a law firm and does not render legal services or advice. The information in this UPdate is not intended to be substituted for legal advice, which can only be provided by an attorney.



AZ SB 1097 effective July 20, 2018

Established a claim filing time limit; owner claims must be filed within 35 years from the end of the fiscal year when the property was reported and remitted.

CA AB 2350 effective January 1, 2019

Created an Unclaimed Property Offset Account for payments to state or local governmental entities to offset amounts owed to claimants of unclaimed property. Also amends the law relating to Interest on Lawyers' Trust Accounts (IOLTA); establishing an IOLTA Claims Reserve Subaccount with continuous

appropriation, designating the moneys to be used for general costs related to escheated IOLTA funds.

DE SB 235 effective July 1, 2018

This appropriation legislation allows for the Secretary of Finance (or designee) to enter into contingency and other fees agreements with persons locating or substantiating property to be reported and remitted to Delaware through audits or other means of identifying abandoned property.

HI SB 208 effective July 10, 2018

Established the Unclaimed Life Insurance Benefit Act, requiring an insurer to conduct comparisons of policies, contract, and retained asset accounts to the Death Master File to identify potential matches. If a DMF match is found, certain steps are then required.

KY HB 394 effective July 12, 2018

Enacted Kentucky's version of the Revised Uniform Unclaimed Property Act (RUUPA).

MO SB 644 effective August 28, 2018

This bill created a class A misdemeanor for persons not registered with the State Treasurer that are being compensated for claiming property on behalf of others. The bill also specifies authority of the treasurer related to such agreements.

MO HB 1879, MO SB 769 effective August 28, 2018

When accounts at a banking organization are inactive for 12 months or greater and inactivity fees are assessed, the financial organization must provide notice to the depositor of inactivity. The notice may be sent by first class mail and marked "Address Correction Requested" or by electronic notice, if the depositor has previously consented to receiving electronic disclosures. Banks must send annual statements for these accounts and can deduct up to a \$5 from each account for sending them.

PA HB 152 effective December 25, 2018

This bill directs all life insurers to participate in the life policy locator service adopted by the National Association of Insurance Commissioners (NAIC) for in force life insurance policies and annuities.

PA HB 1929 effective June 22, 2018

Stock or participating right in a business association, dividend, profit, distribution, payment or distributive

share of principal held or owing by a business association, where there has not been owner activity, is reportable three years after the holder has lost contact with the owner. Lost contact is based on returned mail. It is either the first date of returned first class mail or it can be delayed to the second date, when a second mailing has been sent within 30 days of the first mailing and it is also returned.

The holder shall attempt to confirm the owner's interest in the property by sending the owner an email not later than two years after the owner's last indication of interest in the property, if the owner does not receive communications from the holder by mail. If notification is received that the email address is no longer valid or if the owner does not respond within 30 days, the holder shall send a first-class letter to the owner. If the first-class mail is returned, the holder shall be deemed to have lost contact on the date of the owner's last indication of interest in the property.

SD SB 45 effective July 01, 2018

This bill extended the time period from 90 to 180 days for all stocks, bonds, and other negotiable instruments to be sold; specifying the state treasurer is not liable for any loss or gain in the value that the instrument would have obtained had the instrument been held instead of being sold.

TN HB 2278 effective 04/28/18

Shifted report due dates: the report due date for unclaimed property for the period of January 1, 2018, through June 30, 2019, is before November 1, 2019. After which, reports need to be filed before November 1 each year and include property from the previous July 1 through the current year's June 30.

WI AB 773 effective April 5, 2018

Narrowed the ban on contingent fee audits to apply only to audits for businesses domiciled in Wisconsin. For entities not domiciled in Wisconsin contingent fee audits are permitted if the fee is 12% or less. Includes language prohibiting audit agreements using statistical sampling to estimate unclaimed property liability, in the absence of consent from the auditee.

WI SB 274 effective May 1, 2019

Established the Unclaimed Life Insurance Benefit Act, requiring an insurer to conduct comparisons of policies, contract, and retained asset accounts to the Death

Master File to identify potential matches. If a DMF match is found, certain requirements are then required.

Compliance, Regulatory, and Legal News

Illinois Administrative Rules- In July 2017, Illinois' version of the Revised Uniform Unclaimed Property Act was enacted. This legislation required for corresponding new administrative rules to be promulgated. The long-awaited draft rules ended up being unusually comprehensive, relative to other states. A hearing was held on October 18, 2018 and there was a comment period, which has since expired. It is anticipated final rules will be issued in early 2019. The full draft rules can be reviewed online: <https://illinoistreasurer.gov/TWOCMS/media/doc/ProposedRulesAndNoticePage.pdf>.



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IRS publishes Notice 2018-90: Extension of Transition Relief Under Rev. Rul. 2018-17 on Withholding and Reporting with Respect to Payments from IRAs to State Unclaimed Property Funds. This ties to Rev. Rul. 2018-17 Withholding and Reporting with Respect to Payments from IRAs to State Unclaimed Property Funds. The effective date has been delayed, “Relief is extended to payments made before the earlier of January 1, 2020, or the date it becomes reasonably practicable to comply with the withholding and reporting requirements described in Rev. Rul. 2018-17.” Unfortunately, the original ruling and the subsequent notice do not answer all of the legal, operational, compliance, and tax questions surrounding this new withholding requirement.

The IRS has published a new Form W-9 and updated Publication 1281. Publication 1281 reflects the reduced backup withholding from 28 percent down to 24 percent: see <https://www.irs.gov/pub/irs-pdf/fw9.pdf> and <https://www.irs.gov/pub/irs-pdf/p1281.pdf>.

Univar, Inc. v. Geisenberger, et al. was filed in the U.S. District Court for the District of Delaware on December 3, 2018. Univar, Inc. is a Delaware corporation and seeks declaratory and injunctive relief. The unclaimed property audit in question was initiated on December 11, 2015 and led by Kelmar Associates, LLC (Kelmar).

The complaint lays out that a Delaware unclaimed property audit conducted by Kelmar 1) infringes on Univar's right to be free from unreasonable searches and seizures; 2) deprives Univar of its substantive due process rights; 3) deprives Univar of its procedural due process rights; 4) has subjected Univar to an unconstitutional taking of private property for public use without just compensation; and 5) has violated Univar's right to equal protection of the laws.

Also, Univar seeks a declaration that:

- The estimation methodology codified in Section 2.18 of 12 DE Admin. Code § 104 violates the Due Process Clause since it is not based on the holder's actual records as required by *Texas v. New Jersey*, (379 U.S. 674 (1965)) and leads to significantly misleading results.
- Delaware's use of an external auditor in a multistate audit, where the auditor is concurrently representing numerous states in an audit of the same

audit subject, constitutes a Due Process violation since it exposes both confidential and proprietary records to public inspection resulting from the conflicting public records laws of the participating states. As well as violating the unclaimed property laws of participating states, as they apply to the confidentiality of records produced as part of an examination.

- Delaware's contingent-fee compensation with Kelmar is a violation of Univar's due process rights. This is based on the external auditor being the real party in interest, selecting the audit subjects, and performing all the legally significant audit tasks and subsequent assessments. Univar asserts this would result in submitting disputes to a self-interested party.
- Finally, Univar seeks a temporary and permanent injunction, enjoining both the defendants and Kelmar from further violation of its constitutional rights.

There are clear parallels to this case and *Temple-Inland v. Cook* (192 F.Supp.3d 527 (2016)). Not surprisingly, the Temple Inland case is cited several times in Univar's complaint. As we know with Temple Inland the case settled. Therefore, the question of the legality of Delaware's approach to estimations and the other issues cited in both cases remains unresolved.

This latest challenge to the audit and estimation practices used by Delaware will be closely watched by many. We will closely monitor developments in this case and report on them in upcoming *Linking Assets Inc. UPdate* editions

To subscribe, submit topic suggestions, or for more details on the information in this UPdate, please send an email to the Editor, christa.deoliveira@linkingassets.com.

Contact Us

535 5th Avenue, 26th Floor
New York, New York 10017
(212) 256-1155 | www.linkingassets.com



PETER QUINN, CPA
Chief Executive Officer, Co-founder
peter.quinn@linkingassets.com
(914) 498-5600



RUDY QUINN
President, Co-founder
rudy.quinn@linkingassets.com
(914) 498-8600



RICHARD J. AMODEO
Co-founder
rich.amodeo@linkingassets.com
(917) 363-8040



CHRISTA DEOLIVEIRA, CIA, CCEP
Chief Compliance Officer
christa.deoliveira@linkingassets.com
(801) 641-4054

