

A NEW TRAP FOR THE UNWARY: HOW MICHIGAN'S UNCLAIMED PROPERTY REQUIREMENTS COULD AFFECT YOUR BUSINESS

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Changes to the Michigan Department of Treasury's unclaimed property filing requirements and promised stricter enforcement begin this year. **On or before July 2, 2018, all business entities operating in Michigan are required to file a Report of Unclaimed Property, regardless of whether they hold unclaimed property or not.** The most common form of unclaimed property for most businesses is uncashed checks. While reporting is a minor inconvenience, entities that have previously ignored the Act's requirements may now find themselves facing significant penalties if they fail to comply.

The Michigan Uniform Unclaimed Property Act

In 1995, our Legislature adopted the Michigan Uniform Unclaimed Property Act to provide for reporting and disposition of abandoned property. The Act requires Michigan entities to report and tender any abandoned property in their possession to the Department of Treasury. It also gave the Department the power to audit entities for unreported property and created a system for individuals to locate their property, now done through the Department's website.

Simply put, abandoned property is any property owned by another and left in a business's possession for a period of time. Property usually becomes abandoned after three years, with some exceptions for items such as payroll checks and child support. Because the abandonment periods vary from one to fifteen years, Michigan businesses must monitor the type of property they hold for others and when it may become legally abandoned. The most common form of abandoned property for most business entities is uncashed checks. If your business sends someone a check and it remains uncashed after three years (one year for payroll checks), it is considered "abandoned" or "unclaimed" property, and you may be responsible to report the information and pay the uncashed check amount to the State of Michigan.

Recent Changes and the 2018 Requirement

Until now, the Department enforced the Act's reporting requirements only against Michigan entities that actually held abandoned property. Reporting was not mandatory and the Act was enforced through audits conducted by the Department. Recently, however, the Department has taken a more aggressive enforcement approach. In early 2016, the Department released a new set of rules and standards for its auditing procedures. Notably, the Department may consider an entity's lack of reporting history when determining whether to conduct an audit.

Around this time, the Department began "strongly encouraging" all Michigan entities to report in 2017, regardless of whether they held abandoned property. Now, in 2018, the Department has made reporting a clear requirement for all Michigan business entities, regardless of whether they hold any unclaimed property or not. As a result, all Michigan business entities must file an Annual Report of Unclaimed Property (Form 2011) on or before July 2, 2018. Businesses with no unclaimed property still must file a "zero" report. Additional reporting requirements apply for entities that have unclaimed property to report. The Department's forms are available online [here](#).

Implications for Michigan Businesses

These changes have important implications for Michigan entities, whether they hold unclaimed property or not. First, failing to file a “negative” or “zero” report can lead to serious penalties under the Act. Non-complying entities can be fined \$100 per day, up to \$5,000 per year. Furthermore, simply because a business has not filed in the past, does not mean that they should blindly complete a negative filing for 2018. Businesses that fail to properly report and tender abandoned property may be subject to a yearly percentage penalty or a penalty of twenty five percent of the property’s value. Best practices would call for all Michigan entities to perform a complete audit of any unclaimed property they may hold. Special attention should be given to uncashed checks.

Failure to Report in the Past

Now that the requirements are in the spotlight, businesses may come to realize that they previously failed to report abandoned property. If this is the case, they may still avoid the Act’s harsh penalties. The Department allows those in non-compliance for previous years to file a Voluntary Disclosure Agreement. Businesses may then report and tender abandoned property from the last four years, without penalty.

Reporting Deadlines

All property that has been abandoned by March 31, 2018, must be reported before July 2, 2018. There is a series of requirements, such as diligently attempting to contact the owners, for entities that hold abandoned property. Entities with no abandoned property to report must “zero” report by July 2, 2018, to avoid penalties as well.

Requiring businesses to report regardless of whether they held abandoned property was always within the Department’s powers. Unfortunately, its lack of enforcement may have caused many businesses to ignore the Act entirely, possibly exposing them to penalties in 2018. These recent actions by the Department seem to indicate a shift toward a new regime of stricter enforcement and increased auditing. In light of this, all Michigan entities should take steps to adequately ensure they are in compliance for 2018 and beyond.

Questions?

The Department’s new regulations make reporting unclaimed property a significant new requirement for Michigan business entities, and creates a potential trap for the unwary. Loomis’ experienced and knowledgeable Business, Corporate and Tax Planning attorneys will answer your questions and provide you with expert guidance and advice in complying with these new requirements. Please feel free to [contact](#) us, or the author directly:

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