TaxNewsFlash

United States

No. 2019-233
May 10, 2019

Colorado: New unclaimed property law; new rules for life insurance companies

Colorado's governor on April 16, 2019, signed into law Senate Bill 88 that repealed the existing Colorado unclaimed property law and replaced it with a modified version of the 2016 Uniform Unclaimed Property Act.

Senate Bill 88 also contains a new "Unclaimed Life Insurance Benefits Act" (ULIBA) that requires life insurers to semi-annually compare their in-force policies, annuity contracts, and retained asset accounts against a "death master file" to identify insureds/owners that may be deceased.

The effective date of the new law is July 1, 2020.

KPMG observation

Given the July 2020 effective date, the new provisions will not change a business' unclaimed property due diligence and reporting obligations or a life insurer's obligations with regard to death master file comparisons for the next 14 months. However, the delayed effective date provides businesses with an opportunity to consider the implications of these new provisions and, if needed, to modify policies, procedures, and systems to allow for compliance with the new statutory provisions.

Changes to Colorado unclaimed property law affecting businesses

Reduced dormancy periods

Dormancy periods are reduced from five years to three years for mineral interests, outstanding vendor checks, insurance proceeds, and securities. As a result, the first report filed after the effective date of the new law will include more than one year of unclaimed property liabilities to "catch up" with the reduction in dormancy periods.

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$25 deduction eliminated and retroactive “transition” provision

The new law eliminates the “more or less deduction” which currently permits a holder to reduce its reportable property by the greater of 2% of the value or $25 for each item of property (other than for banking and financial organizations for certain types of property, for which the factor is the lesser of those two amounts).

In addition, the new law includes a “transition” provision requiring the first report filed under the new law to include property that was not required to be reported during the five years prior to July 1, 2020. Therefore, businesses that took advantage of the “more or less” deduction in their filings for the prior five report-years must consider if the transition provision requires reporting and remitting of such items if the items’ deductions were not reflected on a report (i.e., if the result of the deduction was $0 or less).

Expanded individual retirement account (IRA) triggers and death confirmation requirements

The new law prescribes specific circumstances that “trigger” the running of the three-year dormancy period for IRAs. Generally, the trigger is the later of:

- Two consecutive returned-from-the-post-office mailings (RPOs), or
- The earlier of:
    - The owner reaching the mandatory distribution age (70.5 years of age), or
    - If the Internal Revenue Code (IRC) requires a distribution to avoid a tax penalty, two years after the date the holder receives confirmation of the owner’s death or confirms the death of the owner.

Also, the new law requires the holder to confirm the death of the owner within 90 days of receipt of an indication or a notice to confirm the death of an IRA owner when, in the ordinary course of its business, a holder receives notice or an indication of the death of the owner, and the owner has reached mandatory distribution age or the IRC requires IRA distributions to avoid a tax penalty.

“Current-to-pay” imposed

The new law includes a provision that once property is presumed abandoned, any other property or interest accruing from that property (and not previously presumed abandoned) is also presumed abandoned. For example, owners of mineral interests typically hold an account where royalties and other earnings are credited and production costs are debited related to that mineral interest. If one royalty payment in the mineral interest owner’s account meets the applicable dormancy requirements, all property within the account would also be reportable under the new law regardless of whether it has met the applicable dormancy period.

Liability release contingent upon due diligence

A business is released from liability under the new statute for property remitted to the state. This release is contingent upon the business’ compliance with the new modified due diligence notice requirements that include:

- Requiring a notice to be issued between 60 and 180 days prior to filing the unclaimed property report (in contrast to the prior law’s requirements for notice to occur no more than 120 days prior to filing the report)

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- Changing the dollar threshold for property requiring due diligence notices from $50 or more, to $25 or more

- Allowing the holder to send notice by either electronic mail (if the owner has consented to receiving communications in this manner) or United States mail

- Requiring specific notice attributes

Unclaimed Life Insurance Benefits Act

Senate Bill 88 also contains the "Unclaimed Life Insurance Benefits Act" (ULIBA). Patterned after the National Council of Insurance Legislators' Model Unclaimed Life Insurance Benefits Act, the new Colorado ULIBA requires life insurers to semi-annually compare in-force policies, annuity contracts, and retained asset accounts against the Social Security Death Master File to determine if the owners are deceased.

If a match is found, the insurer must make a good faith effort to confirm the death of the insured (which must be documented) and determine if benefits are due under the policy or contract. If benefits are due, the insurer is then required to make documented good faith efforts to locate the beneficiaries and provide them with claim forms and other claim information. Failure to comply with the new law subjects the insurer to civil penalties.

KPMG observation

To address the changes to dormancy periods, dormancy triggers (such as those for IRAs), the "current to pay" provision, and incorporation of death master file matching, businesses need to consider reviewing their existing procedures for identifying reportable property to determine that all property now covered by the new law would be identified, reported, and remitted appropriately and in a timely manner. The July 2020 effective date provides companies with a limited time to identify areas of compliance risk and to develop a comprehensive plan to address them.

For more information, contact a professional with KPMG's National Unclaimed Property Team:

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