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California: Unclaimed property voluntary compliance program legislation enacted

California Assembly Bill 2280, which authorizes the California Controller to establish an unclaimed property voluntary compliance program (VCP), was signed into law on September 13, 2022.

The new program will enable voluntary compliance by businesses holding past-due unclaimed property that has not been reported to the Controller.

KPMG observation

California has not had an amnesty program for unclaimed property in almost 20 years, and the creation of a permanent program for the remittance of past-due unclaimed property is a significant development.

The new program

Under the legislation, the Controller is required to waive interest on past-due unclaimed property for businesses that participate in and complete the requirements of the program.

Newly amended Cal. Civ. Proc. section 1557.5 sets forth the parameters for the new program. A business holding past-due unclaimed property may request to enroll in the program. A holder is ineligible to participate in the VCP if the business:

- Is currently undergoing a California unclaimed property examination or has been notified that such an examination will occur
- Is the subject of a civil or criminal prosecution involving unclaimed property compliance
- Has been notified by the Controller of an interest assessment within the past five years, and the assessment is unpaid

A holder also would be ineligible to participate in the program if the business has had interest waived under the program in the past five years, unless the past-due amounts for which relief is sought are the result of a merger or acquisition with another entity.

The major timeframes and tasks associated with participation in the program are outlined in the legislation, including that the business will be required to participate in a training program provided by the Controller within three months after the date the Controller notifies the business of its enrollment in the program. Further, an enrolled business will be required to review its books and records for at least the previous 10 years and then make reasonable efforts to notify owners of reportable property not later than 30 days prior to submitting the required unclaimed property report to the Controller. A business has six months from the date of enrollment to provide an initial unclaimed property report to the Controller. Thereafter, the business will be required to submit an updated report and remit the property to the Controller within seven months and 15 days after the initial report is filed. The Controller may reinstate interest waived under the program if the holder does not pay or deliver all escheated property specified in the report within the timeframe prescribed by the revised law.

KPMG observation

The enactment of the bill is particularly compelling given that certain 2021 California income tax forms (e.g., Form 100, Form 100W, Form 565, Form 568) include new questions seeking information related to a company's California unclaimed property filings. Specifically, taxpayers are required to indicate on their income tax forms whether they previously filed an unclaimed property report with the Controller's office. If the taxpayer responds "yes" there are two additional questions that must be answered—when the last report was filed and the amount that was remitted. The answers to these questions may be shared with the Controller's office.

A key question for businesses interested in participating in the new program is when it is expected to be implemented. There is no specific effective date in the bill for the program to commence. Cal. Civ. Proc. section 1577.5(h) provides that "this section shall become operative only upon an appropriation by the Legislature in the annual Budget Act for this purpose." It is unclear at this time whether that appropriation will be included in the FY 2023-2024 budget, or whether it has already occurred. However, because the new program requires companies to review an expansive lookback period of financial records and further allows for only six months between enrollment and completion, candidates for the potential program should begin to review the potential benefits of the program based on their individual facts and circumstances.

Next steps

It is expected that additional guidance on the new program, including information on when it is expected to be implemented, will be provided. In the meantime, related upcoming California deadlines include:

- October 31: the regular deadline for filing unclaimed property notice reports with the Controller
- November 15: the deadline to report unclaimed property compliance status on certain Corporate Franchise Tax Board forms

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