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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2019 Senate Bill 756**

**Senate Amendment 1**

### 2019 SENATE BILL 756

Very generally, Senate Bill 756 incorporates several provisions of the Revised Uniform Unclaimed Property Act (RUUPA) into Wisconsin unclaimed property law [ch. 177, Stats.], makes additional modifications to unclaimed property law that are not directly derived from RUUPA, and reorganizes the chapter into subchapters. More specifically, major provisions of the bill do the following:

- Define several items, including gift cards, game-related digital content, and virtual currency and specify whether such items are property subject to unclaimed property law.
- Modify when certain property is presumed abandoned, including money orders, certain insurance payouts, and tax-deferred accounts.
- Create recordkeeping requirements for unclaimed property holders, require that holders file reports electronically, and establish confidentiality provisions regarding unclaimed property-related records and reports received by the Department of Revenue (DOR).
- Require that reports filed by an unclaimed property holder include the apparent owner's Social Security number or tax ID number and date of birth, if known or readily ascertainable by the holder.
- Establish an appeal process for unclaimed property holders whose records are examined by DOR. Under the bill, a holder may appeal a DOR audit determination of the holder's liability for unclaimed property.
- Modify the regulation of unclaimed property locator services by reducing the maximum fee that a locator service may charge, modify what must be included in an agreement between an unclaimed property owner and a locator service, and extend the permissible term of an agreement from 12 to 24 months.
- Create a voluntary disclosure program under which DOR and an unclaimed property holder may enter into an agreement for the voluntary disclosure of unclaimed property in exchange for a waiver of penalties.
- Allow DOR to use any information available, including estimates if the holder's records are inadequate, to determine the amount of unclaimed property that is to be remitted to DOR and authorize DOR to collect unpaid balances from holders.
- Allow DOR to use tax records to identify owners of unclaimed property and to process claims and permit DOR to collect amounts paid to a wrongful owner and to use unclaimed property to set off other certain public debts that are certified to DOR for collection.
- Clarify that property held by Wisconsin state agencies is exempt from unclaimed property provisions. Likewise, any payment or credit shown on the books and records of a business association to another business association in the ordinary course of business is not reportable to the state as unclaimed property.

- Eliminate the requirement that a penalty for failure to timely pay or deliver property to DOR include interest. Instead, anyone who fails to timely pay or deliver property must pay a penalty of 15 percent of the value of the property and, potentially, an additional \$100 per day that the property is not paid or delivered.

## **SENATE AMENDMENT 1**

Senate Amendment 1 makes several technical changes to the bill to address incorrect word choices and cross-references. The amendment also makes the following changes:

### **Tax-Deferred Retirement Accounts**

The amendment modifies the provision addressing when a tax-deferred retirement account is presumed abandoned to more closely align with RUUPA language, so that, instead of being presumed abandoned three years after only the earlier of certain dates, a tax-deferred retirement account is presumed abandoned three years after the later of certain dates.

### **Custodial Accounts for Minors**

The amendment modifies the provision addressing when a custodial account for a minor is presumed abandoned to ensure that a minor's account may not be presumed abandoned until after the minor has reached the age of majority.

### **Notice Requirements**

The amendment reinstates current law provisions that: (1) prescribe the contents of the notice that DOR must publish regarding owners of unclaimed property; and (2) provide that DOR is not required to publish notice of any item with a value of less than \$50 unless the unclaimed property administrator determines that publication is in the public interest.

### **Public Records Law**

The amendment repeals a provision that protects various unclaimed property-related records from inspection or copying under the Wisconsin public records law until 12 months after payment or delivery of the property is due. Under a separate provision of the bill, such information would generally remain confidential and exempt from public inspection or disclosure.

The amendment also clarifies that reports and records of a claimant are confidential and exempt from public inspection or disclosure.

### **Contract Auditors**

Regarding the use of contract auditors in the unclaimed property program, the amendment requires that DOR do the following:

- Beginning in fiscal year 2019-20 through fiscal year 2023-24, annually submit a report to the Joint Committee on Finance regarding the use of contract auditors in the unclaimed property program, including auditor performance results and comments and concerns from those audited.
- Before allowing any person to engage in an audit under the unclaimed property program, post the auditing contract or agreement to its website and leave it there until the contract or agreement is no longer in effect, is no longer valid, or is superseded or otherwise rescinded.

- Certify that an auditor will proceed in accordance with Wisconsin statutes, rules, and guidance documents, and conclude that there is a reasonable justification for using the person to engage in the audit.
- Actively monitor an auditor for compliance with Wisconsin statutes, rules, and guidance documents, and immediately take corrective action for noncompliance.

## **Business Association Debts**

The amendment clarifies that only those business association debts owed to an individual are property that is subject to the unclaimed property program and is presumed abandoned three years after an obligation to pay arises.

## **Voluntary Disclosure Program**

The amendment modifies the voluntary disclosure program created under the bill by increasing the time period during which a property holder may submit an application to enter into a voluntary disclosure agreement. Under the bill, a holder must submit an application between the third month and the 12th month after the bill takes effect.

Senate Amendment 1 provides that an application must be submitted between the third month and the 15th month after the bill takes effect. The amendment also requires that DOR make efforts to provide information about the voluntary disclosure period to interested parties.

## **Failure to Maintain Records or File a Report**

Regarding consequences for a holder's **failure to maintain required records**, the amendment repeals power granted to DOR under the bill to determine the value of unclaimed property due to DOR by using a reasonable method of estimation. Instead, the amendment restores a current law provision that authorizes a court to determine the liability of a holder that fails to maintain sufficient records based on the court's findings as to a reasonable estimate of the amount due.

Likewise, regarding consequences for a holder's **failure to file a report** by the deadline, the amendment repeals power granted to DOR under the bill to determine the amount of property that should have been reported and remitted and to assess that amount against the holder. Instead, the amendment provides that when a holder fails, neglects, or refuses to file a report by the deadline, DOR may petition a court to determine the holder's liability based on the court's findings as to a reasonable estimate of the amount due.

## **Records Examinations**

Finally, the amendment modifies the consequences resulting from the discovery of reportable and deliverable unclaimed property via a records examination. Under current law, if DOR conducts an examination and discovers property that is reportable and deliverable, then it may assess the cost of the examination against the holder at the rate of \$150 per day for each examiner, up to value of the identified property. In addition to the cost of the examination, the bill provides that DOR may also assess the total value of the property owed against the holder.

Instead of assessing the cost of the examination against the holder, the amendment provides that if a records examination results in the discovery of reportable and deliverable unclaimed property, the holder must file a report and deliver the property to DOR. Only if the holder does not report and deliver the identified property may DOR assess the holder for the value of the property.

## **BILL HISTORY**

Senate Amendment 1 was offered by Senator Petrowski on February 20, 2020. On March 16, 2020, the Senate Committee on Agriculture, Revenue and Financial Institutions recommended adoption of Senate Amendment 1 and passage of Senate Bill 756, as amended, both by votes of Ayes 9, Noes 0.

DWS:ksm