



# State of Wisconsin

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RICHARD CHAMPAGNE  
CHIEF

February 8, 2016

## MEMORANDUM

**To:** Representative Katsma

**From:** Krista Pleviak, Legislative Attorney, (608) 266-7290

Joseph T. Kreye, Legal Section Administrator, (608) 266-2263

**Subject:** Technical Memorandum to **2015 AB 721** (LRB-3823/1) by **DOR**

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We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

## MEMORANDUM

February 5, 2016

**TO:** Krista Pleviak  
Legislative Reference Bureau

**FROM:** Bob Schmidt  
Department of Revenue

**SUBJECT:** Technical Memorandum on Assembly Bill 721, relating to: escheat of abandoned U.S. savings bonds.

The department has the following concerns with the bill.

**A. Page 2, Line 6, the phrase: "*Except as provided in s. 177.135*,".** DOR believes this language, proposed as an amendment to existing sec. 177.12 (1), Stats., is not needed nor desired.

Section 177.12 (1), Stats., is an exception to the general rule of abandonment found in sec. 177.02, Stats. DOR believes a savings bond, held by a fiduciary for the benefit of another person, is "*payable or distributable*" within the meaning of existing sec. 177.12 (1), Stats., when the terms of the agreement (e.g., trust agreement) provides that the fiduciary must or is able to distribute the savings bond or the proceeds from a savings bonds previously cashed in by the fiduciary, to the beneficiary.

It becomes problematic for a fiduciary if the state requires the fiduciary to report an unredeemed, matured savings bond as unclaimed property under proposed sec. 177.135 when the fiduciary has no obligation to do so under existing sec. 177.12(1), Stats., since requiring the fiduciary to report the savings bond under proposed sec. 177.135 may be contrary to the fiduciary's duties with respect to holding the bond in the first place:

- If the fiduciary is aware it is holding an uncashed savings bond that is more than 5 years past its maturity, it would be required under proposed sec. 177.135 to report the savings bond as abandoned property even though the fiduciary must have a reason for not cashing it (e.g., there may be federal income tax advantages that apply by waiting to cash the bond until past the bond is maturity date).
- If the fiduciary is not aware it is holding an unredeemed matured savings bond, it would not report it as abandoned property since the fiduciary is not aware of it.
- If the fiduciary becomes aware it is holding an unredeemed mature savings bond and has no reason not to cash it, then the fiduciary would ordinarily present the bond to the U.S. Treasury for payment.

For these reasons, DOR believes that a fiduciary should only be required to report a U.S. savings bond described in proposed sec. 177.135 as unclaimed property when the conditions of sec. 177.12(1), Stats., also apply.

In addition, once a fiduciary is subject to existing sec. 177.12(1), Stats., the proposal creates an exception for a savings bond that has not yet matured, apparently requiring the fiduciary to continue to hold the bond even though the fiduciary has already lost contact with the beneficiary for the past 5 years, and must report (as unclaimed property) all other property held by the fiduciary. In this case, DOR believes it is in the best interest of the state to have the fiduciary go ahead and report the unmatured and unredeemed savings bond

over the state as unclaimed property as soon as the abandonment requirements of existing sec. 177.12(1), Stats., are met, rather than waiting until a later date when the conditions of proposed sec. 177.135 are also satisfied.

**(See suggested changes to proposed sec. 177.135 under B., fourth bullet point)**

**B. Page 3, proposed sec. 177.135.**

- Page 3, Line 1, the phrase "*Notwithstanding s. 177.02 (1)*,". DOR believes this language, included as part of creating sec. 177.135 under the bill, is not needed.

Existing sec. 177.02, Stats., already provides that its general rule for the presumption of abandonment of property applies "*Except as otherwise provided in this chapter...*". DOR believes it to be clear that the proposed special rule for the abandonment of U.S. savings bonds would apply notwithstanding the general rule of abandonment in sec. 177.02 (1), Stats. No other existing exception to sec. 177.02 (1), Stats., (see secs. 177.04 to 177.165, Stats.), is prefaced with the words "*Notwithstanding s. 177.02 (1)*".

- Page 3, Line 4-5, the phrase: "*...upon reaching its final extended maturity date.*" The term "*final extended maturity date*" is not defined and it is not clear what this term is referring to. DOR recommends deleting this phrase. **See suggested language for proposed sec. 177.135 (1), after the next bullet point.**
- DOR believes that additional language is needed to coordinate the administrator receiving physical possession of U.S. savings bonds that have been deemed abandoned under sec. 177.12 or 177.16, Stats., and when such bonds are abandoned for purposes of proposed secs. 177.135 and 177.225. DOR believes that fiduciaries and safe deposit box providers should only report savings bonds when the conditions under s. 177.12 or 177.16 are met, notwithstanding s. 177.135.
- DOR suggests the following language for proposed sec. 177.135:
  - "(1) *Any U.S. savings bond that remains unredeemed by the owner for more than 5 years after the date the bond has matured is presumed abandoned and subject to sec. 177.225, subs. (2) and (3) notwithstanding. For purposes of this section, a U.S. savings bond has "matured" when it has not been redeemed and no longer earns or accrues interest.*"
  - (2) *For purposes of this chapter, a U.S. savings bond not yet presumed abandoned under sub. (1), but subject to abandonment under s. 177.12 or 177.16, shall be deemed abandoned and reportable to the administrator by the holder as prescribed under s. 177.12 or 177.16, notwithstanding that the savings bond has not yet matured as provided in sub. (1). Such bonds are not presumed abandoned for purposes of s. 177.225 until the bond has been presumed abandoned as prescribed in sub. (1).*
  - (3) *Any holder in possession of a U.S. savings bond described in sub. (1) who is also subject to s. 177.12 or 177.16 with respect to such bond, shall deem the savings bond abandoned when the conditions for abandonment under s. 177.12 or 177.16, are also met, and such bonds shall be reportable by the holder to the administrator as prescribed under s. 177.12 or 177.16. Such bonds are presumed abandoned for purposes of s. 177.225 (1) (a), as soon as the bond is presumed abandoned under sub. (1).*

**(Note that, due the changes suggested for proposed sec. 177.135, proposed sec. 177.225 (1) (a), will need to be modified to reference s. 177.135 (1), and the proposed amendment to sec. 177.13, Stats., will need to be modified to reference s. 177.135 (1)).**

**C. Page 3, Line 8, the phrase: "Except as provided in s. 177.135".** DOR believes this phrase is not needed nor desired.

This exception will create undue burdens on banks and others providing safe deposit box services by requiring them to sort through the contents of abandoned safe deposit boxes, determine which savings bonds are deemed abandoned under proposed sec. 177.135 and those that are not, and remit only those physical U.S. savings bonds to the administrator when the bonds are at least 5 years past maturity while continuing to hold onto the remaining bonds on behalf of the owner until the owner claims the bond or it reaches maturity.

DOR recommends that existing law continue to be followed with respect to the contents of abandoned safe deposit boxes. That is, all contents are to be remitted to the administrator upon the presumption of abandonment under existing sec. 177.16, Stats.

**(3)) (See suggested changes to proposed sec. 177.135 under B., fourth bullet point, sec. 177.135 (2) and**

**D. Pages 3 and 4, amendments to existing sec. 177.17(5) (intro) and (a) and (b), Stats.** DOR believes these amendments are not needed nor desired.

As noted in **Part C.**, above, the proposal puts additional burdens on banks and others who provide safe deposit box services to sort through the contents of the safe deposit box and determine which bonds are abandoned and which are not. This specific provision then requires the holder to notify not only the safe deposit box renter, but also, if different, the persons whose names appear on the abandoned savings bond, as well as keep the bonds that are not abandoned until such time as the bonds reach maturity.

In addition, the holder, if not the U.S. Treasury, does not necessarily know who the "owner" of a mature U.S. Savings bond actually is. The existing language in sec. 177.15, Stats., refers to notifying the "apparent owner," which is a defined term in sec. 177.01(2), Stats. "Owner" is also a defined term in sec. 177.01(12), Stats. In the case of the contents of a safe deposit box being abandoned property, DOR believes a holder should only be required to attempt to notify the "apparent owner" of a U.S. savings bond. In most, but not necessarily all cases, the apparent owner will be the same person as the person in whose name the bond is issued. As an example of an exception, a parent may buy savings bonds issued in the name of their child. The parent stores the bonds in a safe deposit box that the parent forgets about. The contents are turned over to DOR as unclaimed property, with the parent as the "apparent owner" of the contents, including the bonds in the name of the child. If the bonds are described in proposed sec. 177.135, the U.S. Treasury is the actual holder of the unclaimed proceeds of the savings bonds, not the provider of the safe deposit box service. Also, if the parent, having "lost" the bonds, applied for and was issued replacement bonds on behalf of their minor child, the actual owner of the "lost" physical bonds in the safe deposit box is the U.S. Treasury, not the person whose name is on the bond, and only the replacement bond is eligible to be redeemed by the U.S. Treasury. Under such facts, the person whose name is on the bond is only someone who appears to be the owner, but is not the actual owner.

The primary holder of any unredeemed U.S. savings bond is the U.S Treasury. Anyone who feels they may have unredeemed saving bonds is free to contact the U.S. Treasury directly to establish this fact.

DOR's understanding of the proposal is that the goal is for the state to be able to obtain the proceeds from matured unredeemed U.S. savings bonds as property that has escheated to the state, with the condition that, if the original owner subsequently claims the proceeds, the state will return the proceeds to them. Other provisions in the proposal ensure that owners are notified of abandoned bonds prior to the state obtaining ownership of the bonds through the escheatment process.

**E. Page 5, sec. 177.225 (1) (c), of the bill.**

DOR is recommending that safe deposit box providers not indicate the names of apparent owners of U.S. savings bonds based on the name on the physical savings bonds recovered for the safe deposit box (see Comment D.). As such, the notice in sec. 177.18 will refer to the name of the person who rented the safe deposit box, and not necessarily the name of the person on the bonds found in the safe deposit box. If it is desired that DOR actually publish the names of the persons who appear to be the owners based on the names on the bonds themselves, and have them posted for at least one year before escheatment proceeding begin, a special provision will need to be added to sec. 177.18 to ensure this will happen. The following is suggested:

**Create sec. 177.18 (5):**

With respect to U.S. savings bonds transferred to the administrator under s. 177.16, the one year period for purposes of s. 177.225 (1) (c), begins on the date of the first notice provided under sub. (1), if such notice provided the name and last known address of the person whose name appears on a savings bond in possession of the administrator. If no notice provided under sub. (1) reflected the name and last-known address of the person whose name appears on the savings bond, the administrator shall provide the name and last-known address of the person whose name appears on the savings bond in the manner provided in sub. (1) at least one year before the savings bond is subject to escheatment proceedings under s. 177.225.

**F. Page 5, sec. 177.225 (2) and (3), of the bill.**

Section 801.11 (1) (d), Stats., provides that service may be made by: "*In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.*"

The bill proposes, under sec. 177.255 (2), to specify that notice may be made under s. 801.11 (1) (c), Stats., by publication of a notice published as a class 3 notice under sec. 985, Stats. DOR believes that, by specifying the manner of notice in proposed sec. 177.225 (2) pursuant to sec. 801.11 (d), Stats., DOR is not required to first show that it is unable, with reasonable diligence, to serve notice as prescribed in sec. 801.11 (1) (a) or (b), Stats. As such, DOR believes the provisions in sec. 177.225 (3) of the bill are not needed.

**G. Page 7, Lines 14-17.** The language appears to indicate that, once a savings bond has escheated to the state under proposed sec. 177.225, the only way the owner of the bond can file a claim for the bond or the proceeds from the bond is if they had already claimed an interest in the bond before it escheated to the state. DOR's existing understanding for the proposal is that the bond owner should be able to file a claim for property, either before or after it has escheated to the state, without any qualifications.

DOR suggests the phrase on page 7, Line 14: "*any person who claimed an interest*" be "*any person who could have claimed an interest*".

**H. Page 7, Lines 18-22.** Once the bond has escheated to the state, DOR suggests that any claim by an owner with respect to the bond be payable only from the proceeds the state has or will receive from redeeming the bond, with such proceeds being reduced by the administrative expenses under sec. 177.23(2). It is expensive and time consuming for DOR to retitle savings bonds back into the claimant's name. Also, once the bond has escheated, the amount payable to the state with respect to the bond should be known, with future payment to the state guaranteed by the federal government. This permits the state to pay a claim subsequent to escheatment but prior to it actually redeeming the bond.

If you have any questions regarding this technical memorandum, please contact Craig Steinfeldt at (608) 266-5705.

cc: Representative Katsma