

The background of the document is a repeating pattern of white puzzle pieces with soft shadows, creating a 3D effect. A dark blue diagonal band runs from the top right towards the bottom left, containing the text. To the right of this band, there are several horizontal blue stripes of varying shades.

[www.alston.com](http://www.alston.com)

**ALSTON & BIRD**

# Unclaimed Property Law

*“Cheat Sheet” – 2023 Edition*

## Unclaimed Property Law Contacts:

Matt Hedstrom | +1 212.210.9533 | matt.hedstrom@alston.com | [NEW YORK](#)

Ethan D. Millar | +1 213.293.7258 | ethan.millar@alston.com | [LOS ANGELES](#)

Kendall L. Houghton | +1 202.239.3673 | kendall.houghton@alston.com | [WASHINGTON, DC](#)

Michael Giovannini | +1 704.444.1189 | michael.giovannini@alston.com | [CHARLOTTE](#)

**DISCLAIMER:** The information provided herein is for general information and to assist in identification and discussion of issues, but may not be completely updated or accurate, does not constitute legal advice, and should not be relied upon without consulting with legal counsel experienced in this area of law.

### GENERAL PRINCIPLES

- **Derivative Rights Doctrine:** The state derives its right to claim unclaimed property from the owner and therefore generally has no greater right to claim the property than the owner.
- **Unqualified and Liquidated Obligation:** A state may only claim unclaimed property when the owner has an unqualified right to the property and the amount of the property is liquidated.

### JURISDICTION TO ESCHEAT

- **Primary Rule:** If the holder has a record of the last known address of the owner of the property, then the state in which the address is located has the primary right to claim the property. (*Texas v. New Jersey*, 379 U.S. 674 (1965))
- **Secondary Rule:** If the holder has no record of the owner’s address or the address is in a state that does not provide for escheat of the property, then the state in which the holder is domiciled has the secondary right to claim the property. (*Texas v. New Jersey*, 379 U.S. 674 (1965))
- **Tertiary Rule:** A state may claim property if (1) the holder’s state of domicile does not provide for escheat of the property (or its laws are not applicable to the property); and (2) the transaction giving rise to the property occurred in the claiming state. Adopted by: AL, AK, AZ, AR, CO, CT, DC, FL, GA, HI, ID, IL, IN, KS, KY, LA, ME, MD, MI, MT, NV, NH, NJ, NM, ND, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, and WY. **Rule is likely unconstitutional.** Under RUUPA, the rule does not apply if property is specifically exempt in the primary or secondary state.

- **Federal Disposition of Abandoned Money Orders and Traveler’s Checks Act (FDA):** Congress has overridden the Supreme Court’s common-law rules for a “money order, traveler’s check, or other similar written instrument (other than a third-party bank check) on which a banking or financial organization or a business association is directly liable.” These items are escheatable first to the state where the instrument was purchased, and next to the state of the holder’s principal place of business. The Supreme Court recently interpreted the scope of the FDA in *Delaware v. Pennsylvania and Wisconsin* and *Arkansas v. Delaware* (the MoneyGram cases).

### DEFINITION OF HOLDER

- **1981 Uniform Act:** A “person, wherever organized or domiciled, who is: (i) in possession of property belonging to another, (ii) a trustee, or (iii) indebted to another on an obligation.” (Sec. 1(8))
- **1995 Uniform Act:** A “person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this [Act].” (Sec. 1(6))
- **2016 RUUPA:** A “person obligated to hold for the account of, or to deliver or pay to, the owner, property subject to this [Act].” (Sec. 102(12))
- **Delaware v. New York:** The holder is the “debtor” under state law (i.e., the person with the legal obligation to the owner). (507 U.S. 490 (1993))

### GENERAL TYPES OF UNCLAIMED PROPERTY (ESCHEATABLE IN MOST/ALL STATES)

- |                      |                       |
|----------------------|-----------------------|
| ▪ Bank accounts      | ▪ Wages               |
| ▪ Dividends          | ▪ Customer credits    |
| ▪ Interest           | ▪ Retirement accounts |
| ▪ Insurance proceeds | ▪ Stock               |
| ▪ Cash rebates       | ▪ Deposits            |
| ▪ Traveler’s checks  | ▪ Credit balances     |
| ▪ Brokerage accounts | ▪ Refunds             |
| ▪ Accounts payable   |                       |
| ▪ Employee benefits  |                       |
| ▪ Money orders       |                       |

## CONTROVERSIAL TYPES OF UNCLAIMED PROPERTY (NOT ESCHEATABLE IN MANY/ALL STATES)

- Gift cards
- Promotional cards
- Loyalty/rewards Instruments
- U.S. savings bonds
- Nonrefundable tickets
- Telephone cards
- Prepaid products/services
- Merchandise return cards/credits
- Class action settlement proceeds
- Uninvoiced receivables (GR/IR)
- Virtual currency/cryptocurrency

## DORMANCY PERIODS

- Generally, 3 or 5 years for most types of property
- Exception: Unclaimed wages generally escheat after 6 months – 1 year
- Dormancy period should be “reset” by any owner contact reflecting awareness of the property (consider applying account linkage principles)
  - **WATCH OUT** for whether the state requires recognition of recurring/automatic activity
  - **WATCH OUT** for ambiguous property types (e.g., payroll cards, tax-deferred accounts, etc.)
  - **WATCH OUT** for states reducing dormancy periods

## GENERALLY APPLICABLE DEFENSES TO ESCHEAT

- No consideration paid for the property
- No obligation to pay cash to the owner
  - **WATCH OUT** for statutory exceptions (e.g., gift cards, loyalty cards)
- Owner has failed to satisfy a condition precedent to receiving the property (including expiration dates)
  - **WATCH OUT** for contractual “anti-limitation” provisions: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, KS, KY, LA, ME, MI, MN, MT, NV, NH, NJ, NM, NC, ND, OH, OK, RI, SC, SD, TN, TX, UT, VT, WA, WV, WI, and WY
  - **WATCH OUT** for “private escheat” cases

## STATUTORY DEFENSES TO ESCHEAT

- Statute of limitations
  - **WATCH OUT** for statutory “anti-limitations” provisions
- Business-to-business (B2B) exemptions: AZ, IN, IA, KS, MD, MA, MI, MO, NV, NC, OH, TN, VA, and WI (TX also has an administrative exemption)
  - **WATCH OUT** for “exemptions” that only defer the liability

- **WATCH OUT** for narrow (or narrowly construed) exemptions
- **WATCH OUT** for states repealing their exemptions upon enactment of RUUPA and applying repeal retroactively
- Gift card exemptions: AL, AZ, AR, CA, CO (holders with annual gift card sales of \$200K or less), CT, FL, HI, ID, IL, IN, IA, KS, KY, MD, ME (escheatable % gradually reduced to 0% in 2022), MA, MI, MN, NE, NV, NH, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, and WY
  - **WATCH OUT** for exclusions for certain types of cards, such as cards with fees or expiration dates, high-balance cards, and open-loop cards
- De minimis property exemptions: AZ (B2B only), FL, ID, and MI
- Foreign transaction exemptions
- Rebates and/or promotional card exemptions
- Property not held or owed in the (ordinary) course of business
- Amount escheatable may generally be reduced by lawful charges imposed on the property
  - **WATCH OUT** for waiver doctrine and other possible exceptions

## COMMON LAW DEFENSES TO ESCHEAT

- Right of setoff
- Accord and satisfaction
- Account stated
- Laches/acquiescence
- Voluntary payment doctrine
- Estoppel

## CONSTITUTIONAL DEFENSES TO ESCHEAT

- Lack of jurisdiction
- Due Process Clause
- Takings Clause
- Contracts Clause
- Federal preemption: Federal common law, ERISA, National Bank Act, Bankruptcy Code, Airline Deregulation Act, Motor Carrier Act, Federal Rules of Civil Procedure, etc.

## DUE DILIGENCE REQUIREMENT

- In most states, should be conducted 60 to 120 days before filing a report
- Common exceptions to due diligence requirement:
  - De minimis amounts – \$50 threshold in most states with certain exceptions:
    - No de minimis exception in CT, MS, NE, or NY
    - Less than \$25 in CO

- Less than \$75 in WA
- Less than \$100 (or \$100 or less) in AK, KS, MD, MA, MN, OR, and VA
- \$250 or less in TX
- Statute of limitations has run
- Holder has no record (or inaccurate record) of owner's address
- Mail sent to last known address was returned undeliverable
- **WATCH OUT** for special mailing requirements in certain states (e.g., certified mail)
- **WATCH OUT** for TX rules regarding the designation of a representative for notice for deposit accounts and mutual fund shares
- **WATCH OUT** for different rules applicable to non-cash property types (e.g., gift cards, mutual funds) in TX, securities in CA and DE (no threshold), securities greater than \$1,000 in IL and ME (certified mail requirement), and securities in NC (\$25 threshold)
- **WATCH OUT** for states that require electronic due diligence in addition to or in place of first-class mail (e.g., RUUPA, CA, NV, and PA)
- **WATCH OUT** for states that specify headings/content to be included (e.g., RUUPA and CA)

## REPORTING REQUIREMENT

- In most states, unclaimed property is reportable by October 31 or November 1 for property that was presumed abandoned as of June 30 of that year
- In many states, property below a certain value can be reported in the aggregate (i.e., without owner information)
  - Typically, this aggregation threshold is the same as the threshold for due diligence
  - **WATCH OUT** for states that have a different threshold (CA, IL, LA, MS, OR, SD, TN, TX, and WA)
  - Note that states without a de minimis due diligence exception have an aggregation threshold (MS and NY)
  - **TAKE NOTE:** the recent trend is for states to reduce or eliminate the aggregation threshold; e.g., CT (eff. 1/1/2023), NE (eff. 9/11/2021), TN (eff. 5/4/2021)
- Exceptions:
  - March 1 reporting deadline: DE (for property presumed abandoned as of 12/31 preceding)
  - March 10 reporting deadline: NY (for property presumed abandoned as of 12/31 preceding), other than for banks (November 10 deadline)
  - March 31 reporting deadline: CT (for property presumed abandoned as of 12/31 preceding)

- April 15 reporting deadline: PA (for property presumed abandoned as of 12/31 preceding)
- May 1 reporting deadline: FL, IL (except for financial organizations), and VT (for property presumed abandoned as of 12/31 preceding)
- July 1 reporting deadline: MI (for property presumed abandoned as of 3/31 preceding) and TX (for property presumed abandoned as of 3/1 preceding)
- **WATCH OUT:** TX requires affiliated companies to file combined reports; other states reject combined reports as an administrative matter (e.g., NV)
- **WATCH OUT:** CA requires holders to file a "notice report" before November 1 followed by a "remit report" between June 1 and June 15 of the following year

## KEY ORGANIZATIONS

- Unclaimed Property Professionals Organization ([www.uppo.org](http://www.uppo.org))
- National Association of Unclaimed Property Administrators ([www.naupa.org](http://www.naupa.org))
- Uniform Law Commission ([www.uniformlaws.org](http://www.uniformlaws.org))
- American Bar Association Unclaimed Property Subcommittee ([www.americanbar.org/groups/business\\_law/committees/taxation/](http://www.americanbar.org/groups/business_law/committees/taxation/))
- Council on State Taxation Unclaimed Property Task Force ([www.cost.org](http://www.cost.org))
- SIFMA Unclaimed Property Task Force ([www.sifma.org](http://www.sifma.org))
- Investment Company Institute ([www.ici.org](http://www.ici.org))

# ALSTON & BIRD

ATLANTA | BEIJING | BRUSSELS | CHARLOTTE | DALLAS | FORT WORTH | LONDON | LOS ANGELES | NEW YORK | RALEIGH | SAN FRANCISCO | SILICON VALLEY | WASHINGTON, D.C.