

UNCLAIMED PROPERTY APPEALS PROCESS

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House Bill 4703

Sponsor: Rep. Jeff Farrington

Committee: Tax Policy

Complete to 6-10-13

A SUMMARY OF HOUSE BILL 4703 AS INTRODUCED 5-7-13

House Bill 4703 would amend the Uniform Unclaimed Property Act (1995 PA 29) to create an administrative process for a holder of unclaimed property to appeal a determination by the unclaimed property administrator (generally, the Department of Treasury) that the holder under-reported unclaimed or abandoned property.¹

The entire appeals process could last 16-21 months, if each step of the process takes the entire time allotted and the time for certain steps is extended as provided in the bill.²

Current law (MCL 567.247) provides that a person aggrieved by a decision of the department may bring an action in circuit court within 90 days of the decision by the department. Under the bill, an aggrieved person could, after going through the new appeals process established in the bill, still bring an action in circuit court.

Notice to Holders – Statement of Findings

The bill provides that if, after examining any unclaimed property report filed by (on behalf of) a holder, the administrator determines that a holder underreported unclaimed property due under the act, the administrator would have to mail a statement of findings and request for payment to the holder. This statement of findings would constitute a final determination 60 days after the date the notice is mailed to the holder, unless the holder protests the determination within that 60 day period.

Protesting the Statement of Findings (60 days)

The holder of unclaimed property would have 60 days from the date the statement of findings is mailed to file a written protest. The protest would have to state the amount and type of property being protested and the reasons for the protest. If a holder files a written protest, the holder would have to exhaust the appeals process established in the bill before bringing an action in circuit court. The holder would have to file any

¹ Section 2 of the act (MCL 267.222) defines "administrator" as the state treasurer. As a matter of practice, however, the act is administered by the Department of Treasury, Office of Departmental Services, Unclaimed Property Division. Certain provisions of the bill give authority to the state treasurer that is separate and distinct from the state treasurer's general role as the "administrator" under the act.

² The bill is modeled after recent changes to the unclaimed property law of Delaware which, because many companies incorporate in the state, has a very active unclaimed property program. See Chapter 417 of the 145th General Assembly (2009-10) session laws, <http://delcode.delaware.gov/sessionlaws/ga145/Chp417.pdf>. Final regulations implementing the appeals process were promulgated by the Department of Finance on March 1, 2012, <http://regulations.delaware.gov/register/march2012/final/15%20DE%20Reg%201323%2003-01-12.pdf>.

additional documentation in support of its protest within 60 days of the administrator receiving the protest.

At the time the holder submits a written protest, the holder would also have to remit the unclaimed property that is the subject of the statement of findings that the holder is not protesting, and the unclaimed property that is the subject of the statement of findings and the subject of the protest that the holder believes to be owed. (The holder, then, would not remit the incremental amount of property that it is protesting.) Interest would still accrue on the amount of property not remitted.

Holders could remit the entire amount of property due, including the amount subject to the protest, with any amount refunded to the holder subject to statutory interest from the date of payment. If a holder does not remit unclaimed property as required by the bill, the written protest would be terminated, and the department would enforce the final determination.

Administrator Review of the Protest (60-183 days)

The administrator's review of the written protest would be limited to the property type and amount, and the other issues that are specifically raised in the written protest by the holder. The holder would have 60 days from receiving the protest to make a written determination. If the holder provides supporting documentation within the 60-day time period, the administrator would have 120 days from receiving the protest to make a written determination. The administrator would extend the time allotted to make a written determination for good cause, although the extension could not exceed 183 days from receiving the protest. The written determination of the administrator would be a final determination 30 days after it is mailed to the holder, unless a timely appeal is filed by the holder.

Appeal to the State Treasurer (30 days)

The holder would have 30 days after receiving the written determination of the administrator to appeal the determination to the state treasurer. The appeal would have to include the contact information of the holder and their representatives, and a discussion of the matters in which the holder disagrees with the administrator's determination.

Appointment of an Independent Reviewer (90 days)

After the receiving the holder's appeal of the administrator's determination, the state treasurer would have to appoint an independent reviewer to consider the appeal and report to the treasurer. This appointment would have to occur "as soon as practicable" but not later than 90 days from the receiving the appeal.

The independent reviewer could not be a current Department of Treasury employee, and would have to be a former member of the judiciary or an attorney who is licensed in the state and qualified by experience or training.

Independent Reviewer Hearing (90 days) and Decision (90+ days)

The appeal to the independent review would be considered *de novo* (anew) on the record, with the decision of the independent reviewer based on documentation, evidence, and other non-privileged material generated in the course of the examination by the administrator and the protest.

The independent reviewer would have to hold an oral hearing within 90 days from the date appointed by the state treasurer. At least 7 days before the oral hearing (or at other times ordered by the independent reviewer), the holder and the administrator would have to submit briefs arguing their position. The independent reviewer would have 90 days from the oral hearing or the submission of any post-hearing briefs, whichever is later, to issue a written decision to the state treasurer stating a finding of facts and conclusions of law.³ The independent reviewer would assess costs, including the reviewer's fee, against a party or between the two parties.

State Treasurer Review of Independent Reviewer Decision (60 days)

The state treasurer could adopt, reject, or modify the determination of the independent reviewer in whole or in part. The state treasurer would have to issue a decision setting forth the reasons for any rejection or modification. The state treasurer's decision (and the original decision of the independent reviewer) would have to be provided to the holder within 60 days from the date the state treasurer receives the independent reviewer's decision.

Circuit Court Review (30 days)

The holder would have 30 days from the date the state treasurer's decision is mailed to appeal the decision to the circuit court. The court's review would be limited to whether the treasurer's decision was supported by substantial evidence on the record. If the record is insufficient, the court would have to remand the case to the department [administrator] for further proceedings on the record.

Circuit Court Action Related to Payments, Penalties, and Interest

If a person fails to pay or deliver property, including applicable penalties and interest, as required under the act, the administrator could bring an action in circuit court where the holder resides or maintains a principal place of business (or, if none, the Ingham County circuit court) to enforce payment.

A holder could bring an action in circuit court whenever the holder disputes whether reasonable cause exists for abating a penalty or interest determination by the administrator, with the purpose of the circuit court action to show an abuse of discretion by the administrator in making a determination that penalties and interest are due.⁴

BACKGROUND INFORMATION:

The Uniform Unclaimed Property Act provides for the reversion to state custody of any unclaimed property, including money orders, travelers checks, personal checks, gift certificates, wages, bank accounts, and the contents of safe deposit boxes. Generally speaking, property that remains unclaimed or dormant for a certain number of years, as

³ The bill does not specify the time by which any post-hearing briefs must be submitted. Delaware regulations provide that post-hearing briefs must be filed within 30 days of the hearing, unless the independent reviewer allows for a longer period of time.

⁴ Section 35 of the act (MCL 567.255) provides that a person who fails to pay or deliver property within the time prescribed shall pay interest at the current monthly rate of 1 percentage point above the adjusted prime rate per annum per month on the property or value of the property from the date the property should have been paid or delivered and imposes civil penalties (fines) for willfully failing to file reports or pay amounts owed when due. The act permits the administrator to waive these penalties and interest.

provided in the act, will be transferred to the state (that is, "escheated"). Once property is escheated, the value of the property reverts to the state's General Fund, less a portion set aside to meet expected claims and related administrative expenses. Unclaimed property (or its equivalent value) is maintained by the state for property owners in perpetuity. There is no time limit on when a claim for abandoned or unclaimed property must be made; a person or his or her heirs always has the right to claim the property.

The act requires that individuals, businesses, and other commercial entities ("holders") of presumably abandoned and unclaimed property file an annual unclaimed property report to the Department of Treasury by July 1, and also requires them to pay or deliver the abandoned property to the department.

To ensure compliance with the act, the department (or its authorized agents) may examine (audit) the records of persons and holders of property, including persons believing that they do not hold any reportable property. The Department of Treasury utilizes the services of third-party contractors to conduct those examinations.

FISCAL IMPACT:

House Bill 4703 would have an indeterminate fiscal impact on the Department of Treasury and Michigan circuit courts. Presumably, creating a new administrative appeals process would increase the costs for the department and would lower costs for the circuit courts when compared to current law. The bill would create certain requirements for the department throughout the appeals process. These provisions would increase administrative costs to the department. Any fiscal impact would be directly related to the number, length, and scope of appeals the department was involved in.

Conversely, the creation of the administrative appeals process would likely limit the department's exposure to the circuit court appeals process. While a person could still bring an action in circuit court, they would have to go through the entire administrative appeals process before doing so.

A fiscal comparison of the costs of an administrative appeals process (established under the bill) as opposed to an immediate appeal to the circuit court (current law) is not available. An appeal that followed the entire appeals process under the provisions of the bill would increase administrative costs to the department as compared to current law.

It is anticipated that current appropriation levels would cover the cost of the changes under the provisions of the bill.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.