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House Bill 4703 (as passed by the House)
Sponsor: Representative Jeff Farrington
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 1-14-14

CONTENT

The bill would amend the Uniform Unclaimed Property Act to establish procedures for an internal reconsideration and independent review of the State Treasurer's determination of a holder's liability, as follows:

- **The State Treasurer would have to mail a statement of findings and request for payment to a holder, upon determining that the holder had underreported abandoned or unclaimed property due and owing under the Act.**
- **The holder could file a protest of the determination, which would lead to an internal reconsideration within the Department of Treasury.**
- **The State Treasurer would have to make a determination on the protest, and the holder then could appeal for an independent review of the determination.**
- **The Treasurer would have to appoint an independent reviewer if the holder appealed.**
- **The independent reviewer would have to hold a hearing and submit a decision.**
- **The State Treasurer could modify or reject the reviewer's decision, and would have to issue a determination, which the holder could appeal to the circuit court.**

The bill also would authorize the State Treasurer to file a circuit court action to enforce the payment or delivery of property as required by the Act, and authorize a holder to bring a circuit court action when the holder disputed the Treasurer's determination that penalty or interest was due.

Overview of the Act

The Act specifies the conditions under which property is considered abandoned, and provides for the disposition, sale, reclaiming, and reimbursement for sale of abandoned property. A person holding property that is presumed abandoned and subject to the State's custody as unclaimed property must report annually to the State Treasurer (the "administrator") concerning the property, and must pay or deliver all abandoned property at the time of filing the report. A holder also is subject to record-keeping requirements concerning the name and last-known address of a property owner. (A holder is a person who is one or more of the following: in possession of property belonging to another; a trustee; and/or indebted to another on an obligation.)

In addition, the Act provides for the examination and verification of the records of a person who has not filed a report or who has filed a report that the State Treasurer believes is inactive, incomplete, or false. (These provisions were amended by Public Act 148 of 2013,

which will take effect on March 30, 2014.) If a holder fails to maintain the required records, the State Treasurer may require the holder to report and pay an amount reasonably estimated from available records.

Statement of Findings; Filing of Protest

Under the bill, if the State Treasurer determined that a holder had underreported abandoned or unclaimed property due and owing under the Act, after examining any required report filed by or on behalf of a holder or after the conclusion of an examination of a holder, the Treasurer would have to mail a statement of findings and request for payment to the holder. Sixty days after the mailing, the statement of findings would constitute the Treasurer's final determination of the amount of the holder's liability, including any interest and penalties, for the abandoned or unclaimed property specified in the statement of findings and request for payment, except for property types and amounts as to which the holder filed a timely protest with the Treasurer. The Treasurer could enforce any final determination as provided in the Act.

Within 60 days after a statement of findings and request for payment were mailed, the holder could file with the State Treasurer a written protest of the statement and request. In the protest, the holder would have to set forth the property type or types and amount of abandoned or unclaimed property protested, and the specific grounds upon which the protest was based. The protest would allow the holder to have his or her objections to the final request for payment reconsidered internally within the Department of Treasury by the State Treasurer as a means of expediting resolution of any dispute. A holder who elected to file a protest would have to exhaust the proposed administrative remedies before initiating any proceedings in a circuit court.

The only matters for the State Treasurer to reconsider on a protest would be the property types, amounts, and issues related to the examination that were set forth in the holder's protest. The holder would have to remit with the protest any abandoned or unclaimed property liability attributable to property types for which payment was requested in the statement of findings and request for payment that were not protested, as well as the amount of abandoned or unclaimed abandoned property liability, if any, that the holder believed to be due and owing with respect to the property types or liability that was the subject of the protest. The failure to remit required amounts would terminate the protest, and the State Treasurer could enforce any final determination in a circuit court action.

The pendency of a protest would not prevent interest from accruing on any protested amount finally found to be due and owing. To prevent interest from accruing, the holder could remit the entire amount in the statement of findings and request for payment without waiving any rights for reconsideration or review of protested amounts. That remittance would be subject to refund from the date of payment, with statutory interest, to the extent not finally determined to be due and owing.

A holder could submit additional documentation and written submissions to the State Treasurer in support of a protest, within 60 days after it was received. The Treasurer could convene meetings with the holder to facilitate review of the statement of findings and request for payment and the protest.

Treasurer's Determination; Appeal for Independent Review

Within 60 days of receiving a protest, or within 120 days receiving a protest if additional documentation were submitted, the State Treasurer would have to make a written determination on the protest, setting forth his or her basis of any determination that was adverse, in whole or in part, to the holder. The Treasurer could extend these time periods

for good cause, but not beyond 183 days from the date he or she received the protest. The Treasurer would have to mail the determination to the holder by certified or registered mail.

Thirty days after it was mailed, the determination would be final unless, within that time frame, the holder filed a notice of appeal with the Treasurer. If the holder did not do so, the Treasurer could enforce any final determination in a circuit court action. A notice of appeal would have to set forth the matters in which the holder asserted that the Treasurer erred in the determination of the protest.

As soon as possible after receiving a notice of appeal, but not later than 90 days after receipt, the Treasurer would have to appoint a person who was not otherwise employed by the Department of Treasury to act as an independent reviewer to consider the appeal and make a written report to the Treasurer. The independent reviewer would have to be a former member of the judiciary or an attorney licensed in Michigan who was qualified by experience or training to serve.

The appeal to an independent reviewer would be de novo on the record. The record on the appeal would have to be based solely upon documents submitted during the course of the examination on the State Treasurer's behalf, other nonprivileged materials prepared by or for the Treasurer during an examination, expert reports submitted to the Treasurer by the person filing the protest, other nonprivileged materials, and expert reports prepared by or for the Treasurer during the consideration of the protest.

The independent reviewer would have to hold an oral hearing on the appeal within 90 days after he or she was appointed, unless otherwise agreed by the parties. At least seven days before the date of the hearing, or at another time ordered by the independent reviewer, the holder and Treasurer would have to submit to the reviewer and each other a brief containing argument and referring to supporting documentation from the record before the Treasurer, or an explanation as to why the documentation was not available. The independent reviewer would have to submit a written decision setting forth findings of fact and conclusions of law, within 90 days from the conclusion of the hearing or the completion of any posthearing briefing requested by the reviewer, whichever was later. In his or her discretion, the reviewer would have to assess costs, including his or her fee, against a party or between the parties.

Treasurer's Determination after Review; Appeal

The State Treasurer could adopt or reject an independent reviewer's decision in whole or in part. If the Treasurer modified or rejected all or part of the decision, he or she would have to issue a written determination setting forth the basis of any rejection or modification. Within 60 days after the Treasurer received the reviewer's decision, a copy of the Treasurer's determination, if any, along with the reviewer's written decision, would have to be sent to the holder by certified or registered mail.

The determination of the Treasurer as to those liabilities that were the subject of the appeal would be final as to the Department of Treasury. Within 30 days after the Treasurer's determination was mailed, the holder could appeal it in the circuit court. The court's review would be limited to whether the Treasurer's determination was supported by substantial evidence on the record. If the court determined that the record was insufficient for its review, it would have to remand the case to the Department for further proceedings on the record.

Circuit Court Actions

If any person refused to pay or deliver property, including penalty or interest on it, to the State Treasurer as required by the Act, the Treasurer could bring an action in the circuit

court in the county where the holder resided or had a principal place of business or, if no residence or principal place of business existed, in Ingham County, to enforce the payment or delivery.

Whenever a holder disputed whether reasonable cause existed for abating penalty or interest determined by the Treasurer to be due under the Act, the holder could bring an action in circuit court for the purpose of showing an abuse of discretion by the Treasurer in making the determination that penalty or interest was due.

Proposed MCL 567.251a

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an unknown impact on State revenue from unclaimed property and would increase the administrative costs of the Department of Treasury. The addition of an administrative reconsideration of unclaimed property findings and an independent review would possibly delay or reduce State collections of unclaimed property. This would reduce revenue to the General Fund by an unknown amount. The proposed administrative reconsideration and independent review of unclaimed property findings also would increase the costs of the Department of Treasury by an indeterminate amount, although the independent reviewer would be authorized to assess costs to either party; if assessed against a person holding property, this would offset State costs. The reconsideration and review process likely would reduce use of the existing circuit court appeal process.

The January 2014 Consensus Revenue Estimating Conference estimated State General Fund revenue from unclaimed property at \$45.0 million in FY 2013-14.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.