

California Bankers Association:

Achieving Unclaimed Property Compliance Best Practices for the Banking Industry

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AGENDA

- Overview of Unclaimed Property
- Compliance Requirements
- Bank's Obligations
- California Requirements
- Importance of Compliance
- State Audits
- Legislative and Enforcement Update
- Retaining Customer Accounts
- Best Practices
- Questions

OVERVIEW OF UNCLAIMED PROPERTY

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- Definition
 - Financial obligations generated during the course of an organization's daily operations that are due and owing to another party (e.g., customer, vendor, employee, investor, etc.) are potentially "unclaimed property"
- For property to be considered UNCLAIMED under applicable state law, it must be:
 - Held or issued in the ordinary course of business;
 - A debt or an obligation to a creditor (i.e., the owner); and
 - Unclaimed for the statutory dormancy period
- Failure to recognize the obligations of managing and timely reporting unclaimed property to the states puts your organization at risk of a state audit, fines, and penalties

OVERVIEW OF UNCLAIMED PROPERTY

- Benefits of Unclaimed Property Laws
 - Reunite lost owners with their property
 - Owners never lose the right to claim their funds
 - Provide a central place to search for assets
 - Use funds for the good of all citizens until claimed by the rightful owners
 - Establish a system in which an obligation due an owner can be removed from the holder's books and records forever
 - Discourages embezzlement
 - Transfer custody and liability to the State
 - The State indemnifies the holder transferring custody

OVERVIEW OF UNCLAIMED PROPERTY

- Unclaimed Property Is Not a Tax
 - Derivative rights doctrine
 - State stands in the shoes of the owner
 - Nexus does not apply
 - Filing deadlines vary from state to state
 - Statute of limitations
 - Use of contract auditors
 - Records retention requirements

COMPLIANCE REQUIREMENTS

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- Every U.S. state and the District of Columbia have enacted unclaimed property laws
- Despite most states' unclaimed property laws being modeled after one of the four Uniform Unclaimed Property Acts, *no two state laws are the same*
 - States adopting a model act often modify it to meet the needs of their citizens
 - Compliance with all the different state laws is complex

COMPLIANCE REQUIREMENTS

- To be “in compliance” requires:
 - Adhering to the unclaimed property laws and requirements of all applicable jurisdictions
 - Reporting each and every year to the correct state as required by the state
 - Exception – Mississippi
 - Reporting the property and remitting the funds in the format/method required by each state
 - Increasing number of states requiring online filings and remittance by EFT
 - Performing due diligence in compliance with each state’s parameters
 - Reporting and remitting *every* applicable property type generated by the organization
 - Filing a negative report where required
 - Maintaining copies of the reports and supporting documentation

**Ignorance of the law is not an acceptable
excuse for non-compliance!**

COMPLIANCE REQUIREMENTS

- Compliance Considerations Unique to Banking
 - Special dormancy triggers for IRAs and certificates of deposit
 - Linking of accounts
 - Special reporting rules for certain property types
 - Contents of safe deposit boxes
 - Money orders, traveler's checks and similar written instruments
 - Service fees and dormancy charges – as allowed by applicable state
 - Expectation of greater than average standard of care

BANK'S OBLIGATIONS

BANK'S OBLIGATIONS

- Identify unclaimed property
- Perform due diligence
- Report and remit the property to the state when due
- Maintain copies of the reports as required by each state's law

BANK'S OBLIGATIONS

Examples of Reportable Property

- Deposit Accounts
 - Savings, Checking, Certificates of Deposit
- Official bank checks, money orders, travelers checks
- Uncashed checks
- Unidentified cash and deposits
- Safe Deposit Box contents
- Escrow & Trust
- Securities related property
- Payroll and commissions
- Vendor checks and credit balances

BANK'S OBLIGATIONS

- Dormancy Periods - Vary by state
 - Most property types -----> 3-5 years
 - Wages -----> 1 -3 years
 - Money orders -----> 7 years
 - Travelers checks -----> 15 years
- Texas dormancy period is three years for most property types
- National trend has been to shorten dormancy periods

BANK'S OBLIGATIONS

- Depending on property type and state, the “dormancy clock” starts:
 - The date check or credit was issued
 - When the funds are “due and payable”
 - The last transaction date
 - The date of last customer contact
 - The date mail is returned from the post office
 - The date the owner is confirmed “lost”
 - Notification of owner’s death
 - Knowledge of owner’s death
 - Combination of criteria (and/or)
 - Unique rules for IRAs, certificates of deposit, unclaimed loan collateral and safe deposit box contents

BANK'S OBLIGATIONS

Due Diligence:

- Purpose is to only escheat those accounts of owners who are truly “lost”
- Not required by every state
- Most states only require due diligence if address on file is not known to be incorrect
- Period of time in which the letter must be mailed prior to reporting the funds to the state may also vary
- Many states provide samples of a due diligence letter on their website
- Best practice to reach out to customer before required to do so
 - If address is not proven to be inaccurate, must perform required due diligence before escheating even if there was no response.

BANK'S OBLIGATIONS

Tips for Effective Due Diligence

- Allow enough time for response.
- Make the letter easy to understand.
- Clearly state purpose of letter.
- Include a deadline for receipt of the response.
- Indicate what will happen if response not received.
- If providing state contact information, include when property will be sent.
- Provide company contact information for customer questions.

BANK'S OBLIGATIONS

Where to Report

- Texas v. New Jersey (1965)
 - State of owner's last known address
 - State of holder's incorporation or domicile if address not known
 - State of holder's incorporation or domicile if address of apparent owner is a foreign country and if holder is incorporated or domiciled in the U.S.
- Exceptions
 - Money orders, travelers checks and similar written instruments – State transaction occurred
 - Safe Deposit Boxes – State where contents are located

BANK'S OBLIGATIONS

“Reciprocity”

- Most states accept “incidental” out of state property
 - Both states must allow
 - Cannot be past due property
- Must report per requirements of state of last known address/incorporation
- Loss of indemnity
- Delays return of property to owner
- Best Practice – Report to the state of last known address/incorporation

BANK'S OBLIGATIONS

- Annual reports are due to most states in the fall
 - Report due date is October 31/November 1
 - Cut-off date as of June 30
 - Many “fall states” require life insurance companies to report in spring
- Annual reports are due to most of the remaining states in the spring
 - Varies between March 1 –May 1
 - Cut-off as of December 31
- Texas and Michigan
 - Reports due July 1
 - Cut-off dates as of March 1 (TX)and March 31(MI)
- The reporting deadlines for DE, IL and NY vary by industry
- Filing extensions
 - Must be received by the filing deadline
 - Interest may be assessed
 - Texas does not allow filing extensions

BANK'S OBLIGATIONS

- Aggregate reporting
 - Amount and requirements vary by state
 - Texas aggregate amount is \$50 except for mineral interests
- “Negative” reports
 - Requirements vary by state
 - Not required by Texas

BANK'S OBLIGATIONS

Reporting Requirements-Third Party Administrators

- Unless otherwise identified by contract, the legal obligation to file the report remains with the Bank
- Transfer Agents
 - Payroll and other paying agents
 - Rebates
- Need to be able to answer and identify the following:
 - Who is filing the report
 - Who is maintaining copies of the report
 - Who is paying the claims

CALIFORNIA REQUIREMENTS

CALIFORNIA REQUIREMENTS

“As of Date”

- Defines the end of a period of time in which property is reportable
- Determines which properties will be reported
- Must be your fiscal year-end date or the State’s fiscal year-end date (June 30th)
- Must be included on the Universal Holder Face Sheet (UFS-1)
- This date must be used consistently

CALIFORNIA REQUIREMENTS

Due Diligence is required for dormant property valued at \$50 or more before escheating property to the SCO.

- Due diligence is mandated by California state law.
- Holders must notify property owners 6 – 12 months before the deadline for reporting the property to the State.
- Reasonable efforts must be made to locate the owners.
- What if contact is made?
 - The dormancy period resets. The holder should refund the property owner and/or reactivate the owner's account.

CALIFORNIA REQUIREMENTS

- Holder Notice Report
 - Submitted after Holder Due Diligence is performed
 - Due before November 1st (May 1st for Life Insurance)
 - Includes a complete listing of all unclaimed properties and their corresponding property codes
 - Must be in correct format (Standard NAUPA II)
 - Do not remit money

CALIFORNIA REQUIREMENTS

- Submitting the Holder Notice Report
 - Two items:
 - Universal Holder Face Sheet (UFS-1)
 - CD/Disk in Standard NAUPA II Format or Annual Report of Unclaimed Personal Property Owner Detail Sheet (UDS-1)

CALIFORNIA REQUIREMENTS

- Submitting the Holder Notice Report
- Two possible options:
 - Electronic Report – Must be used when reporting 10 or more properties
 - Free software can be found at www.unclaimed.org/reporting
 - Paper Report – May be used when reporting 9 properties or less
 - Must use the UDS-1

CALIFORNIA REQUIREMENTS

Respond to Owner Claims and Receive 14F Form

- The SCO will send Due Diligence letters to property owners
- Respond to owner claims
- Reactivate account and/or reissue check if contact is made
- The SCO will send a Holder Remit Report Reminder Letter (14F) to holder

CALIFORNIA REQUIREMENTS

- Submitting the Holder Remit Report
 - 1. UFS-1
 - Input Report ID # (top right hand corner of form)
 - Section A (check or EFT #)
 - Section F must be updated if property owner contacted Holder
 - 2. CD/Disk or UDS-1
 - FEIN
 - \$ Amount Reported
 - Report Year
 - Company Name
 - 3. Remittance
 - 4. 14F
 - 5. Securities Summary (SS-1) form, if applicable

CALIFORNIA REQUIREMENTS

- Remittance
 - Amounts under \$20,000
 - Holders may remit funds by EFT or check
 - \$20,000 or more
 - Holders must remit funds by Automated Clearinghouse (ACH) Debit, ACH Credit, Fedwire, or International Funds Transfer

CALIFORNIA REQUIREMENTS

2015 Reporting Cycle: 3 Year Dormancy

Fiscal Year End (As of Date)	Last Transaction Date	Due Diligence Must be Performed	Notice Report Due Before	Remit Report & Remittance Due
6/30/2015	7/1/11 to 6/30/12	10/31/14 – 4/30/15	11/1/2015	6/1/16 – 6/15/16
12/31/2014	1/1/11 to 12/31/11	10/31/14 – 4/30/15	11/1/2015	6/1/16 – 6/15/16

CALIFORNIA REQUIREMENTS

- Interest, Fines, and Penalties
- Late reports and remittances may be subject to interest at a rate of 12% per annum (CCP §1577)
- A fine may be assessed for willful failure to report/remit/deliver OR filing of a fraudulent report
 - \$100 per day (\$10,000 maximum) for failure to report (CCP§1576(a))
 - \$5,000 - \$50,000 for refusing to deliver property (CCP §1576(b))
- Remit by EFT all payments over \$20,000
 - A civil penalty of 2% of the payment amount can be assessed

CALIFORNIA REQUIREMENTS

- **Outreach & Compliance Resources**
 - **Holder Handbook** – This is a compilation of reporting instructions, laws, codes and regulations.
 - **Holder Notices** – Holder notices alert the holder community to important changes or new information. You may sign up on our website to receive all notices sent to holders.
 - **Holder Newsletter** – This is a quarterly newsletter to holders which identifies important upcoming dates and summarizes changes in the law and reporting tips.
 - **Holder Outreach Events Page** – View a list of upcoming events, and sign up to receive notifications about future workshops, seminars, and events.
 - **Outreach and Compliance Unit**
 - Site visit or speaking engagements
 - One-on-one assistance

CALIFORNIA REQUIREMENTS

- Reporting Resources List
- SCO Reporting Page: http://www.sco.ca.gov/upd_rptg.html
- Holder Handbook: http://www.sco.ca.gov/Files-UPD/guide_rptg_holderhandbook.pdf
- Unclaimed Property Law and Regulations: http://www.sco.ca.gov/upd_lawregs.html
- Dormancy Period Tables: http://www.sco.ca.gov/Files-UPD/outreach_rptg_hol_dormancy.pdf
- Property Reporting Cycle Tables: http://www.sco.ca.gov/upd_rptg.html
- Holder Notices: http://www.sco.ca.gov/ucp_holder_notification_email.html
- Holder Newsletter: http://www.sco.ca.gov/upd_rptg_outreach.html
- Holder Outreach Events Page: http://www.sco.ca.gov/upd_events.html
- NAUPA: <http://www.unclaimed.org/reporting/free-holder-reporting-software/>

CALIFORNIA REQUIREMENTS

Contact Information

California State Controller's Office

Unclaimed Property Division

10600 White Rock Road, Suite 141, Rancho Cordova, CA 95670

Holder Outreach & Compliance Unit

(916) 464-6088

UPDHolderOutreach@sco.ca.gov

Reporting Unit

(916) 464-6284

UCPReporting@sco.ca.gov

Questions regarding EFT Remittance

(916) 464-6220

UPDSOEFT@sco.ca.gov

Claims Assistance

(800) 992-4647

www.claimit.ca.gov

IMPORTANCE OF COMPLIANCE

IMPORTANCE OF COMPLIANCE

- It's the law
- State enforcement is on the rise
 - Increase in audits
 - Increase in state systems which can identify past due property
- Generally no statute of limitations
- States are more active in changing their laws
- Historically an area that has been overlooked, misunderstood and inconsistently applied
- Non compliance with the states' unclaimed property laws can have Sarbanes-Oxley implications for public companies

IMPORTANCE OF COMPLIANCE

- Potential for significant penalties and interest
 - A can be assessed penalties and/or interest for
 - Failure to report/remit the property
 - Failure to comply with the statute
 - Interest generally applied at 10% - 25% of property value
 - Penalties can be substantial – up to \$25,000
 - Some states – Class B misdemeanor
- Several states also assess the cost of the audit
- Interest, costs and fines can exceed the amount of past due unclaimed property
- In most states, there is no statute of limitations which can result in decades of accumulated unclaimed property liabilities
- Penalties and Interest are mandatory in Texas
 - 10% Penalty + 10% Interest

IMPORTANCE OF COMPLIANCE

- Amnesty
 - Statutory or administrative amnesty
 - Specific conditions are posted
 - Deadlines are provided
 - Generally no “pre-authorization” required
- Voluntary Disclosure Agreements (“VDA”)
 - Formal vs. informal
 - Conditions include reach-back and pre-authorization
 - Formal signoff and release from penalties and/or interest
 - Ability to conduct audit is generally preserved
- Texas offers a voluntary compliance program

STATE AUDITS

STATE AUDITS

- States have the authority and ability to audit to determine compliance and are increasing their efforts to identify non-reporting holders
- States are increasing their efforts to identify holders who are not in FULL compliance with state unclaimed property law
- Increased efforts include:
 - Cross referencing data between departments. For example: Cross referencing State tax records with unclaimed property reporting histories
 - Trending reported property to identify decreases in amounts reported or missing property types
 - Reviewing reported property types to determine if all expected property types are being included for specific industries
 - Evaluating “Negative Reports” for reasonableness

STATE AUDITS

- Situations and events that may bring a state auditor to your door
 - Failure to file or filing late
 - Filing negative reports year after year
 - Filing incomplete reports or reports that don't match the remittance
 - Not filing in the state's required format
 - Reporting late
 - Reporting property to the wrong state
 - Not reporting property types that are standard for your industry
 - Reporting much less than similar organizations
 - Reporting limited property types (i.e. securities, payroll) through a third party administrator but not filing reports for the organization's other probable property types
 - Transient workforce
 - Mergers and acquisitions
 - Media event / publicity
 - Claiming property without being compliant
 - State of incorporation

STATE AUDITS

- Types of audits:
 - Desk Audit – usually performed by state staff auditors
 - Holder is required to furnish documents and data to be examined at the auditor’s office
 - Can result in a multitude of requests for documentation
 - Self Audit
 - Holder performs the review and sends the findings, with a detailed narrative to the state for approval
 - Field Audit – performed by either state staff auditors or third party auditors
 - Auditor may “set up shop” in holder’s place of business
 - Often performed by third party auditor representing multiple states

LEGISLATIVE AND ENFORCEMENT UPDATE

LEGISLATIVE AND ENFORCEMENT UPDATE

Dormancy Periods

- **Pennsylvania**-effective February 10, 2015, the dormancy period for all 5 year property is reduced to 3 years
- **Mississippi**-effective January 1, 2015, new regulations changed the presumption of abandonment for certificates of deposit
- **Texas**- HB 858 was filed January 21 which would increase dormancy periods on checking/saving accounts and certificates of deposit to 15 years

Electronic Reporting Requirements

- **Alabama**-requires both reports and remittance be filed electronically. The Treasurer may grant an exception upon written request.
- **Indiana**-requires all reports be filed on-line through their website
- **Oklahoma** –requires reports with 15 or more items of property to be filed electronically.
- **Oregon** –requires that all reports be filed electronically
- **Texas** - finalized regulation 25719 2013 which requires all unclaimed property reports be submitted online in NAUPA2 format as of December 31, 2013

Shortened Record Retention Requirements

- **North Carolina** -reduced the time a holder is required to retain records from 10 to 5 years after the report is filed
- **Michigan**- reduced its record retention requirement from 10 to 5 years after the property becomes reportable

RETAINING CUSTOMER ACCOUNTS

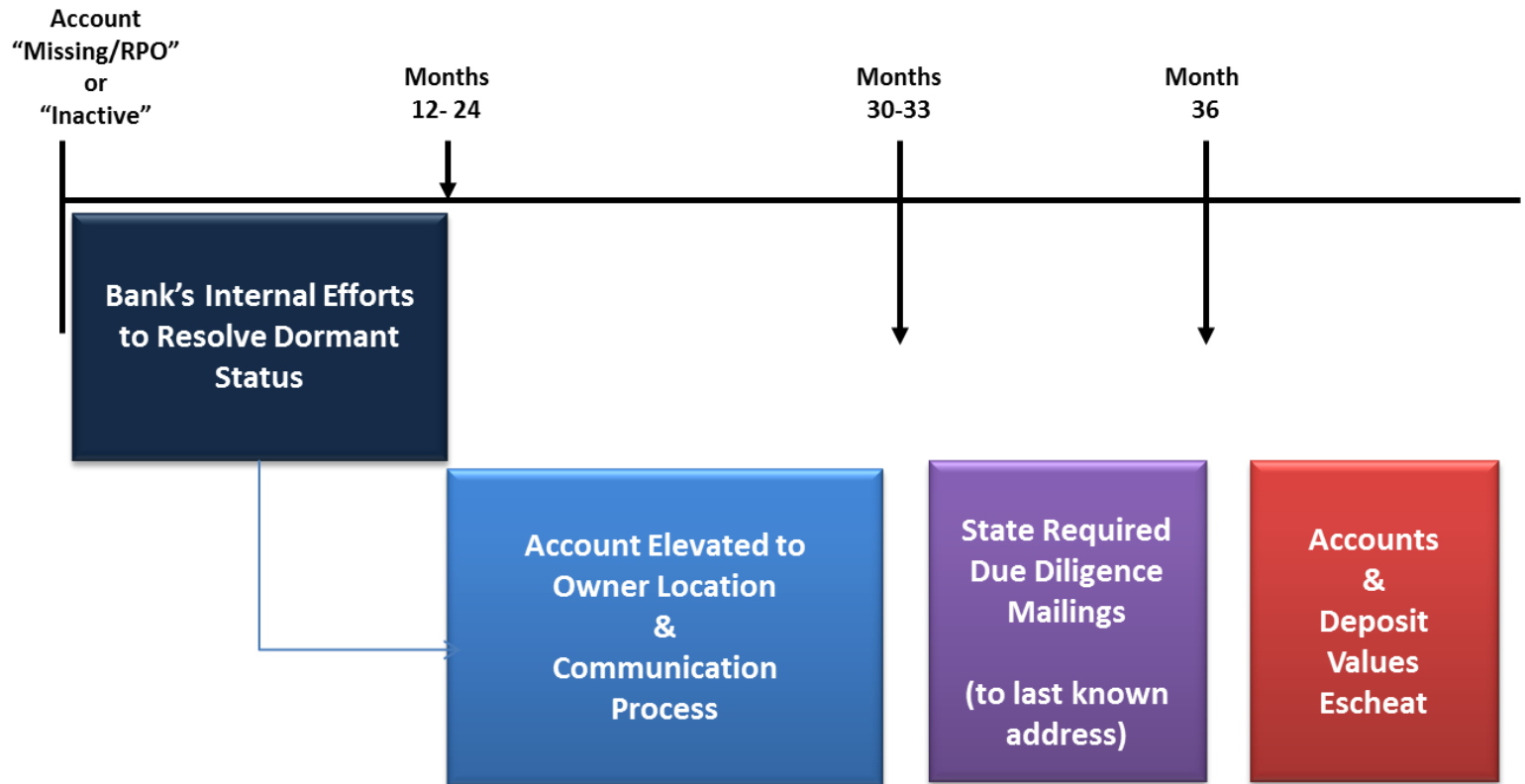
RETAINING CUSTOMER ACCOUNTS

- Full Compliance = Escheating Accounts to the state
- There is no requirement beyond state due diligence
 - No requirement to locate new address
- Growing challenge to protect customer accounts and assets
 - Good customer service
 - Retain assets under management
- Time is limited given shortened dormancies

RETAINING CUSTOMER ACCOUNTS

- Carefully follow state-specific due diligence requirements
 - Ensure you're meeting state and property type variations
 - Perform due diligence on all accounts, even if not required by the state and regardless of dollar amount
 - Prepare for pending legislative changes
- Encourage continuous learning and review
 - Annual training and industry interaction
 - Schedule periodic independent and internal compliance reviews

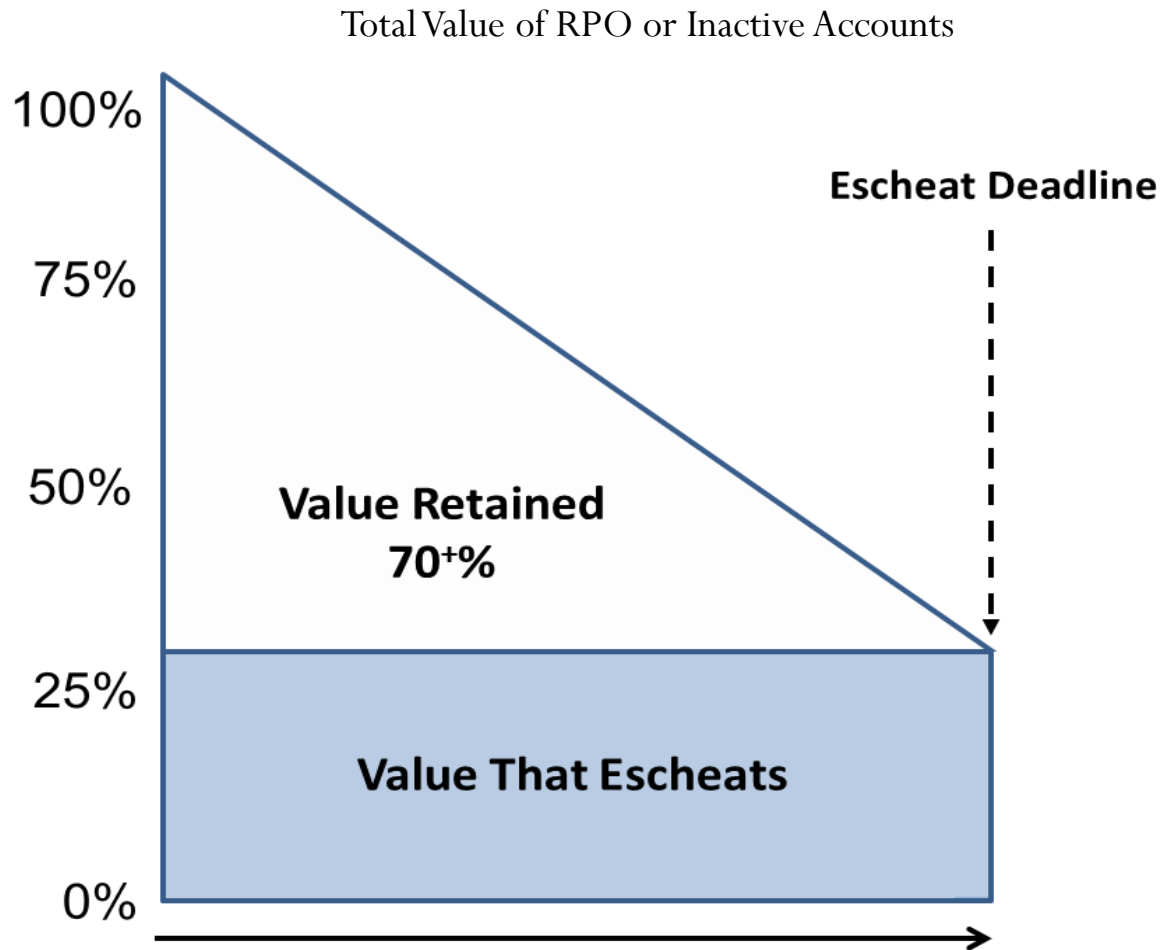
RETAINING CUSTOMER ACCOUNTS



3-Year States

RETAINING CUSTOMER ACCOUNTS

- Impact of Customer Location and Outreach



BEST PRACTICES

BEST PRACTICES

- Develop a corporate philosophy regarding proactive customer location and communication
 - Review and address customer account inactivity early and systematically to promote good customer relations and minimize escheat
- Encourage early remediation of potential unclaimed transactions
 - Employ internal research and external communication efforts
- Reconcile and update vendor and customer files
- Motivate staff to consistently engage in remediation
 - Staying current is easier than researching in audit mode
- Maintain documentation – *this is critical*

BEST PRACTICES

- Implement strong written policies and procedures to identify, track, and report unclaimed property
 - Periodically test the procedures to ensure they are still relevant
- Create an unclaimed property committee
 - Include representatives from each department – don't forget IT!
 - Meet periodically to address changes that could impact unclaimed property compliance
- Conduct a rigorous self audit or independent evaluation of your deposit and general ledger records to identify areas of potential exposure (current and past due)
- Consider voluntary compliance initiatives in jurisdictions where exposure exists

BEST PRACTICES

- Stay informed!
 - Unclaimed Property Professional's Organization
www.uppo.org
 - NAUPA www.unclaimed.org
 - KEANE www.KeaneUP.com

QUESTIONS?