Unclaimed Property

SOUTH DAKOTA LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

ISSUE MEMORANDUM 2018-09

Introduction

The abandonment of property occurs when the owner shows no interest in the property, takes no action to maintain its possession or control, and refrains from contacting the holder. The unclaimed property program is under direction of the State Treasurer's office.

Uniform Unclaimed Property History

The Uniform Law Commission (ULC)[1] promulgated the Uniform Disposition of Unclaimed Property Act in 1954. The ULC then went on to develop the Uniform Unclaimed Property Act (UUPA) in 1981. The State of South Dakota adopted the UUPA of 1981 through SB104 during the 1992 session. A total of 32 other states have adopted the UUPA of 1952 or 1981, including all the surrounding states except Nebraska. The UUPA abolished the common law on abandoned property, determined rules for when eligible property is unclaimed, and significantly changed the escheat[2] notion for intangible personal property. The update reduced the timeframe for abandoned property from seven years to five.

The ULC released an updated UUPA in 1995, which 15 states adopted including several of the states that adopted the 1981 version. The 1995 version clarifies the definition of intangible property and removes the ambiguities over the meaning of "last known address." The revised version also reduced the timeframe for specific property like unclaimed stock dividends, gift certificates, tax-deferred retirement plan distributions and proceeds from insurance policies. The shorter timeframe helps prevent a loss of assets that might occur without supervision by the State. The 1995 version stated a general rule regarding dormancy charges for all types of unclaimed property and that holders could not levy charges against the assets unless there is an enforceable contract. South Dakota has not adopted the UPPA of 1995. Instead, the State amended the unclaimed property statues as follows:

- SB55: 2002 session – Added presumed receipt of statements from banking or financial organizations by the owner if not returned;
- HB1270: 2012 session – Changed the timeframe for abandoned property from five to three years;
- SB138: 2014 session – Added United States savings bonds as unclaimed property;
- SB34: 2017 session – Updated the selling of stocks and bonds to 90 days after confirmed receipt; and
- SB45: 2018 session – Updated the selling of stocks and bonds to 180 days after confirmed receipt.

The Revised Uniform Unclaimed Property Act (RUUPA) of 2016 is the latest revision of the UUPA. The revised version addresses necessary updates to keep up with technological innovation and recognizes new forms of property not included in earlier versions. The RUUPA includes intangible property such as virtual currency (Bitcoin), payroll cards, stored-value cards, municipal bonds, health savings accounts, commissions, employee reimbursements, and custodial accounts for minors. The RUUPA also provides more specific dormancy periods, expands remedies for holders, and updates confidential information rules. Utah, Kentucky, and Tennessee have enacted the RUUPA and several other states have introduced legislation. South Dakota has not enacted any of revisions in the RUUPA of 2016.

[1] Also known as the National Conference of Commissioners on Uniform State Laws

[2] Escheat refers to the transfer of estate assets or property to the state if an individual dies without a will and legal heirs

What is Unclaimed Property?

Unclaimed property in South Dakota consists of property which has remained unclaimed by the owner for more than three years. Unclaimed property includes -

- All intangible property, including any income or increment derived therefrom[3];
- Financial assets such as checking and savings accounts, or time deposits[4];
- Life or endowment insurance policy or annuity contract[5];
- Any tangible and intangible property held in safe deposit boxes such as coins, patents, or security investments[6];
- Utility deposits, stocks and securities, gift certificates, and unpaid wages[7]; and
- Property held by business associations, courts, public agencies, agents, and fiduciaries[8].

Some rewards cards,[9] unredeemed gift certificates as well as closed[10] and open-loop[11] prepaid cards are not considered unclaimed property by the State unless there is an expiration date and the cards are subject to dormancy, inactivity, or a service fee[12]. Any unclaimed tangible property outside of safe deposit boxes are handled locally and the funds stay with the local entity. This would include items such as cars, storage units, firearms, and real estate property, as well as any other tangible property.

The State Takes Possession of Unclaimed Property

Before any unclaimed property can be turned over to the State, the unclaimed property holder is required to attempt communication with the owner and take any necessary steps to prevent the abandonment of the property.[13] If an unclaimed property holder is unable to find or locate the owner, the property can then be delivered to the state. Upon payment or delivery of the property to the State, the State assumes custody and responsibility of the property and the unclaimed property owner is relieved from liability.[14] The Unclaimed property office hires auditors to make sure unclaimed property holders are communicating with owners and are in compliance with the reporting requirements of SDCL 43-41B.

South Dakota has several large remitters who remit the majority of all the unclaimed property each year. If any one of the large remitters were to leave South Dakota, the State would continue to hold what has been remitted and would be liable for any of those claims. The State would not receive any new remittances from any entities leaving the state. This could create an instance where the State would be receiving less in remittances (revenue) than what is being claimed (paid out).

The State Sells Unclaimed Property

Any unclaimed property receipted by the State which is not cash or its equivalent is sold by the State. Stocks and securities are sold within 180 days of confirmed receipt, unless there is an open claim[15]. The owner of the stocks and securities can earn dividends and interest prior to liquidation, and the earned value is added to the total value after liquidation into cash.[16] Property turned over to the State from safety deposit boxes like coins, certificates, and other items are sold three years after receipt of the property.[15]

Claiming Proceeds of Unclaimed Property

Anyone wanting to check for any unclaimed property simply needs to go to: southdakota.findyourunclaimedproperty.com and click "Get Started". From there a person enters their name and clicks search, selects any claims with a match, and then selects file a claim. The claim process requires entering

[3] SDCL 43-41-2
[4] SDCL 43-41B-7
[5] SDCL 43-41B-5; 43-41B-6
[6] SDCL 43-41B-17
[7] SDCL 43-41B-8; 43-41B-10; 43-41B-15; 43-41B-16
[8] SDCL 43-41B-9; 43-41B-13; 43-41B-14
[9] SDCL 43-41B-41
[10] Closed-loop cards can only be used at certain locations.
[11] Open-loop cards have a logo and are used anywhere that accepts the brand.
[12] SDCL 43-41B-42; 43-41B-43
[13] SDCL 43-41B-18
[14] SDCL 43-41B-21
[15] SDCL 43-41B-23
[16] SDCL 43-41B-22

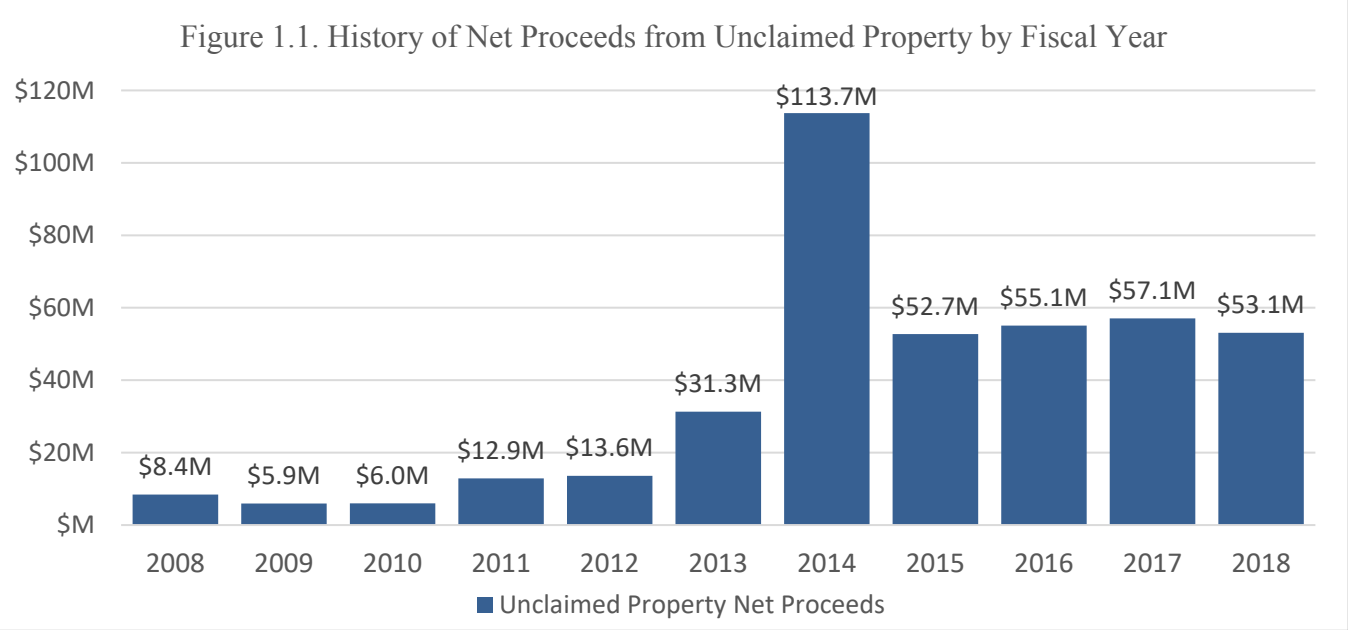
proof of identification information such as name, birthdate, address, social security number or a tax identification number. Once a year the unclaimed property office does a claim pay out to each state based on the last known address of individuals on file. For example, the State of South Dakota sends unclaimed property, information about the unclaimed property, and any associated revenue to the State of Iowa. The receiving state then takes on the liability and responsibility for finding the individual.[17] The State of South Dakota has a total outstanding claimable balance of $449,091,925 consisting of cash, securities, and value of shares as of fiscal year end 2018, which is substantially different than the unclaimed property liability to the State.

Unclaimed Property as a Liability to the State

Each year in the Comprehensive Annual Financial Report (CAFR) the State reports unclaimed property as a liability. The fiscal year end 2018 unaudited liability for the State is $16.5M. The Accounting Analysis and Financial Reporting office within the Bureau of Finance and Management uses the last eight years of unclaimed property history as a base to calculate the State's unclaimed property liability. The assumption is any unclaimed property older than eight years will not be claimed because the probability of claim on the property goes down for each additional year it remains unclaimed. The liability is much lower than the total claimable amount because roughly 23% of unclaimed property received each year by the State has no name attached to the property. Another 3% of unclaimed property only has a name, which makes the likelihood of identifying the rightful owner rare in these cases.

Deposit and Use of Unclaimed Property Receipts

Throughout the year the State receives unclaimed property receipts (revenue), pays out claims, and has administrative costs (expenses). The administrative costs include mailing, publication, service charges, selling of stock, and examining records in relation to unclaimed property. Unclaimed property derives net proceeds from total receipts minus claims paid minus office expenses. The State Treasurer deposits the net proceeds from unclaimed property into the general fund.[18] The State appropriates approximately $50M each year in general funds from the net proceeds of unclaimed property. There is no restriction in statute regarding appropriating the proceeds from unclaimed property; therefore, unclaimed property proceeds pay for a minor portion of all programs and activities paid for by the General Fund. Figure 1.1 provides the history of net proceeds from unclaimed property by fiscal year.



[17] SDCL 43-41B-26

[18] SDCL 43-41B-24

Table 1.1 provides the five-year expenditure history of the unclaimed property office by fiscal year. The primary factor driving the increase in expenditures within the unclaimed property office is the payout for claims. Total claim payouts increased from $10.1M in 2014 to $27.2M in 2018. Another factor leading to an expenditure increase in the unclaimed property office is contractual services. Contractual services more than tripled in 2018, increasing to $1.69M from $495k. In 2018, $1.48M was coded as other contractual service, which is the largest contracted service category for the expenditures. Upon further analysis, it was determined the Treasurer's Office paid $1.278M for audit services. Fiscal year 2017 had similar coding for the largest contractual expenditure of $234K, which was mostly related to audit services, but was paid to several different companies. The audit service is a check on the holders of unclaimed property to verify the holders are remitting the correct unclaimed property.

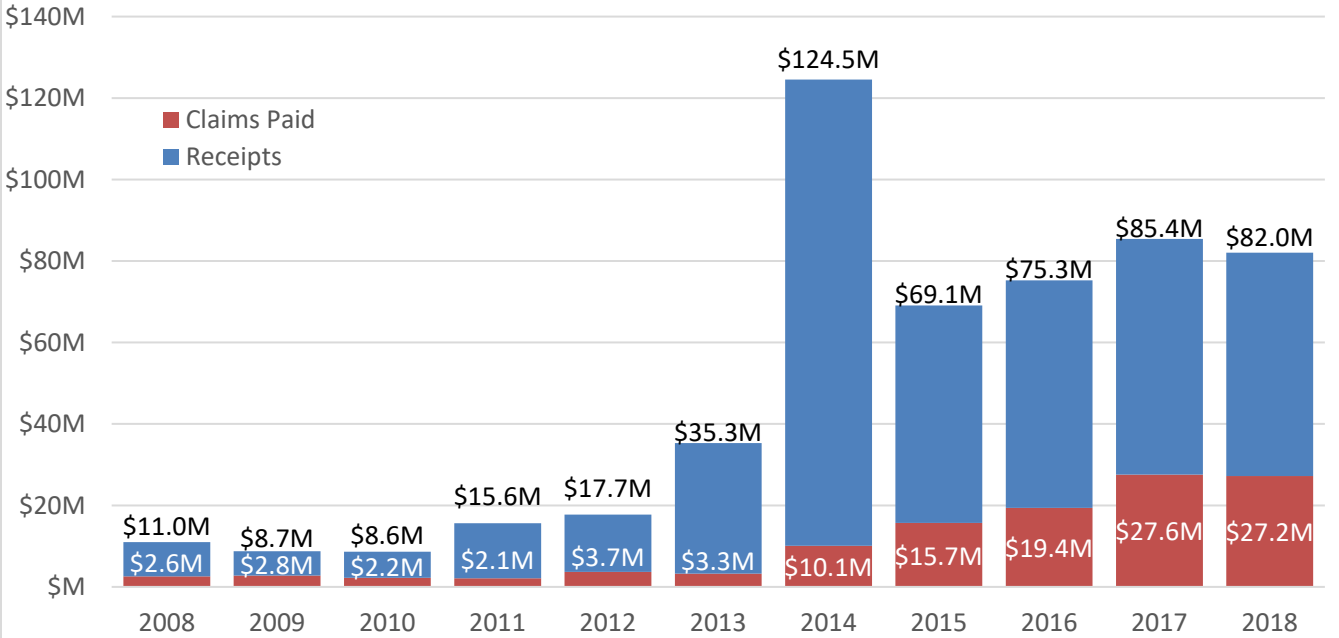
Table 1.1. History of Unclaimed Property Expenditures by Fiscal Year

	2014	2015	2016	2017	2018
Personal Services	265,704	258,686	270,216	289,657	299,608
Operating Expenses					
Travel	8,191	12,325	7,083	8,867	7,215
Contractual Services	405,762	356,387	472,652	495,348	1,689,986
Supplies & Materials	20,003	22,858	17,138	20,623	23,297
Capital Outlay	5,428	4,273	7,145	2,096	120
Other (Claims)	10,098,890	15,706,992	19,407,853	27,558,407	27,207,055
Total Expenditures	**10,803,979**	**16,361,521**	**20,182,086**	**28,374,997**	**29,227,280**

History of Unclaimed Property Receipts and Claims

Figure 1.2 provides the history of unclaimed property receipts and claims by fiscal year. Prior to fiscal year 2013 the State received a small amount of receipts and paid out fewer claims. Currently, the State receives about $80 million dollars or more annually in receipts and pays out approximately $27 million dollars in claims. About 7% of the total annual claims paid out are to South Dakotans, which leaves 93% of annual claims paid to other states and foreign entities. The large change in the State receiving more receipts is due to the presence of new large holders residing in the state. Fiscal year 2014 shows receipts of $124.5 million dollars which is an outlier due to a dormancy change for one of the large holders.

Figure 1.2. History of Unclaimed Property Receipts and Claims by Fiscal Year



Conclusion

Unclaimed property has seen many changes at the national level through revisions by ULC, but South Dakota, as well as many other states, have not adopted many of the recent uniform changes. The State has handled unclaimed property since the 1980's, however, the large amount of receipts and claims is relatively new. Over the years unclaimed property claims have become easier to claim because of advances in technology including a fast track system for property under $250, which is all paperless. The website allows claimants to make multiple claims for properties at one time. The State will always carry a large claimable amount due to the fact many of the receipts have no names or only names, which is why tracking the liability amount for unclaimed property is important.

This issue memorandum was written by Jeffrey Mehlhaff, Senior Fiscal & Program Analyst, on November 9, 2018, for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.