

ACKNOWLEDGED SIGNIFICANT ADVICE, MAY BE DISSEMINATED

**SCA 1998-025
Released 12/04/98**

CC:EL:GL:Br2:RCGrosenick
GL-604565-98

MEMORANDUM FOR DISTRICT COUNSEL, GEORGIA

FROM: Joseph W. Clark [signed]
Senior Technician Reviewer, Branch 2 (General Litigation)

SUBJECT: Processing Abandoned Checks

You requested that we advise you:

1. Whether it is legally appropriate for the Service to receive the proceeds from abandoned checks payable to the Service from the State of Florida.
2. Whether all states should turn over such proceeds to the Service.
3. Whether the Service can request information, such as the Taxpayer Identification Number, from the banks which turned over the abandoned checks to the State of Florida.
4. Whether these proceeds should be applied to the taxpayer's account, deposited in "excess collections" or transferred to Account 2300.

You indicate that the State of Florida turns over to the Service proceeds of bank drafts and cashier checks made payable to "Internal Revenue Service" which have escheated to the State. Under Florida law, any cashier's check, certified check, or other similar instrument¹ on which a bank is directly liable and which has been outstanding for more than five years is presumed abandoned. Fla. Stat. § 717.105. Annually, banks must furnish the State with a report of such abandoned checks where the face amount of the check exceeds \$50.00. This report must contain the name, social security number or employer identification number, and last address, if known, of the writer of the check.² Fla. Stat. § 717.117. Together with the report, the bank forwards the proceeds of the abandoned checks to the State. Fla. Stat. § 717.119.

Florida has entered into an agreement to turnover the proceeds of any check which was made payable to the "Internal Revenue Service" to the Atlanta Service Center. The Atlanta Service Center, which receives these proceeds, wants to know how to apply these funds.

¹ Collectively referred to as "checks."

² Travelers checks and money orders are excluded from this requirement.

It is permissible for the Service to receive, from a state, the proceeds from abandoned checks made payable to "Internal Revenue Service."

States as sovereigns may take custody of or assume title to abandoned personal property. Delaware v. New York, 507 U.S. 490 (1993). Most states, including Florida and Georgia, have enacted a version of the Uniform Unclaimed Property Act (the Act). The Act provides a mechanism for a state to take and dispose of personal property which is abandoned. Unlike escheat, where a state takes title to or ownership of property, the Act allows a state only to take custody of property. Under the Act, the owner of the abandoned property retains ownership. See Boswell v. Citronelle-Mobile Gathering, Inc., 294 So.2d 428, 432 (Ala. 1974) (Act is not an escheat act, but a possessory act). Not acquiring title, the state, as custodian, only holds the property (or its proceeds) until the rightful owner makes an approved claim.

Since section 1(12) of the Act defines "owner" as a creditor, claimant, or payee of intangible property, the Government would qualify as the owner of an abandoned check made payable to the Internal Revenue Service. Consequently, as under Florida and Georgia state law the Service is the statutory owner of checks made payable to "Internal Revenue Service," the Service may accept the proceeds of these checks as transmitted by these States. See Reg. § 301.6311-1(a).

Under the Act, any state may turn over proceeds of abandoned checks to the Service.

As of 1997, thirty-two states had enacted the Act. Although the Act has a specific provision which allows other states to claim abandoned property from the enacting state, there is no comparable provision allowing claims by the United States. However, section 24 of the Act permits a person, including a governmental entity, with an interest in the abandoned property to file a claim with the state. If the claim is allowed, the state turns over the property or proceeds to the person. Whether the Service is the owner of or has an interest in the abandoned funds, the Service is entitled under the Act to claim those funds from the state. It would appear that agreements like the agreement established between the Service and the State of Florida could be explored with any state which follows the Act.³

³ Or a similar state law which provides for custody, rather than ownership, of abandoned property.

The Service may request, but cannot demand, identifying information from the issuing bank.

Although the Service may contact the issuing bank to determine the identity of the taxpayer and the amount of the abandoned check, the bank has no legal obligation to provide such information. In attempting to trace the payment, the Service may be told by the bank that such information is protected under the Right to Financial Privacy Act, 12 U.S.C. § 3401, *et. seq.*, (RFPA), and cannot be disclosed. The RFPA limits governmental access to information contained in the financial records of any customer of a financial institution. Congress created the RFPA in response to a determination that a customer has no legitimate expectation of privacy in bank records. Miller v. United States, 425 U.S. 435 (1975). According to the legislative history, the key principle behind the RFPA is to give the customer prior notice of any governmental attempt to access his records, so the customer has the opportunity to challenge such access in court. For purposes of determining the ownership of the account from which the abandoned check was issued, the RFPA effectively allows the financial institution to refuse to provide any information about the account holder. See section 3403(a) (no financial institution may provide any Government authority access to or information contained in the financial records of any customer).

12 U.S.C. § 3413(c) provides an exception to the RFPA for an administrative summons issued by the Service, for the purpose of determining liability for tax.⁴ However, the issuance of a summons to identify the customer who issued the check to the Service is inappropriate since it does not involve the determination of a tax liability. Thus, it appears the sole circumstance where the Service is likely to obtain the information necessary to identify the maker of the abandoned check is where the financial institution voluntarily provides it.⁵

However, the Act in section 117 provides that the report furnished by the bank to the state must contain the name and last known address of the writer of the check. States may require additional information be contained in the report, including social security numbers or employer identification numbers. See, e.g., Fla. Stat. § 717.117. Although the Right to Financial Privacy Act may not allow banks to provide the Service with identifying information regarding the abandoned checks, there is no such federal restriction on a state's ability to furnish the Service with a copy of the abandoned property report. As part of an agreement with a state to turn over the proceeds of any

⁴ See, e.g., IRM (34)(12)31(3); IRM (33)372(2)(b).

⁵ The Act, in section 5, defines an abandoned check as one where the maker has not had any contact with the bank for more than five years. Also, section 18 of the Act requires the state to attempt to locate the maker, by written notice and by publication. As a practical matter, the Service is unlikely to locate the maker from any information obtained from the bank, either voluntarily or by administrative summons.

abandoned check listing the Service as payee, the turnover of the portion of the abandoned property report identifying the author of those proceeds should be explored.

Proceeds from abandoned checks should be credited to Account 2320 when the taxpayer cannot be identified.

Under IRM 3.17.220.2.13 (8), credits representing abandoned checks⁶ made payable to “Internal Revenue Service” turned over to the Service by a state should first be researched to attempt to identify the taxpayer entitled to such credit. If the taxpayer cannot be identified, the credit should be transferred to Account 2320.⁷

If you have any questions, please contact Richard Charles Grosenick at 622-4208.

⁶ Bank drafts and cashiers checks purchased by taxpayers but never cashed.

⁷ IRM 3.17.220.2.13(8) references Account 2300. However, IRM 3.17.63.10.15 (2) has redesignated this as Account 2320.