#26 10/24/74

Memorandum 74-68

Subject: Study 26 - Unclaimed Property

You will recall that the Commission submitted a recommendation relating to escheat of amounts held by sellers on account of travelers checks and money orders to the 1973-74 session. The recommendation contained a Joint Resolution urging enactment of federal legislation (which was adopted by the California Legislature) and a revision of the California Unclaimed Property Law (which was held up awaiting federal developments).

On October 10, 1974, the United States Congress passed and sent to the President legislation to provide rules governing which state may escheat amounts held by sellers on account of travelers checks, money orders, and similar written instruments. The staff has prepared the attached recommendation which proposes conforming revisions in the California Unclaimed Property Law. We have sent a copy of the recommendation to the representative of American Express and to the office of the State Controller for review and comment.

We suggest that the Commission approve the attached recommendation for inclusion in our Annual Report and that the conforming legislation be submitted to the 1975 Legislature. The changes are technical and should give rise to no objections. In the unlikely event that significant problems are discovered in the proposal by American Express or by the office of the State Controller, we will not include the recommendation in our Annual Report and bring the matter back for consideration by the Commission

We attached two copies of the recommendation. Please mark your editorial changes on one copy and return it to the staff at the November meeting.

Respectfully submitted,

John H. DeMoully
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

ESCHEAT OF AMOUNTS HELD ON ACCOUNT OF TRAVELERS CHECKS, MONEY ORDERS, AND SIMILAR INSTRUMENTS

November 1974

CALIFORNIA LAW REVISION COMMISSION
STANFORD LAW SCHOOL
Stanford, California 94305

LETTER OF TRANSMITTAL

The California Unclaimed Property Law (Code of Civil Procedure Section 1500 et seq.)was enacted in 1968 upon recommendation of the Law Revision Commission. See Recommendation Relating to Escheat, 8 Cal. L. Revision Comm'n Reports 1001 (1967). The Commission continued this topic on its agenda with a view to reviewing the experience under the 1968 statute and submitting recommendations for any needed revisions. See Resolution Chapter 22 of the Statutes of 1972.

The Commission submitted a recommendation to the 1973 session of the Legislature as a result of the Commission's study of the effect on the Unclaimed Property Law of the decision of the United States Supreme Court in Pennsylvania v. New York, 407 U.S. 206 (1972). See Recommendating Relating to Unclaimed Property, 11 Cal. L. Revision Comm'n Reports 401 (1973). A Joint Resolution--memorializing the President and the Congress of the United States to enact federal legislation that would provide rules determining which state is entitled to escheat sums payable on travelers checks, money orders, and similar written instruments--was adopted by the Legislature as a result of the Commission's recommendation. Revision of the California Unclaimed Property Law also was recommended, but the Commission did not push for enactment of this legislation since it determined to await federal developments.

[H.R. 11221] has been passed by the United States Congress and was signed by the President on [date]. This law provides rules governing which state is entitled to escheat amounts held on account of travelers checks, money orders, and similar written instruments. The Commission has studied the new federal law and submits this recommendation for conforming revisions in the California Unclaimed Property Law.

Respectfully submitted,

Marc Sandstrom
Chairman

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

ESCHEAT OF AMOUNTS HELD ON ACCOUNT OF TRAVELERS CHECKS, MONEY ORDERS, AND SIMILAR INSTRUMENTS

The California Unclaimed Property Law[1] provides a comprehensive scheme for the escheat to the state of various kinds of unclaimed personal property, including amounts held by sellers on account of travelers checks, money orders, and similar instruments. If the owner of a travelers check or money order has failed to cash it for a specified period of time, the statute requires the seller to report this fact to the State Controller. Subsequently, the amount held by the seller on account of the travelers check or money order is transferred to the custody of the State Controller who then holds it subject to the claim of the owner. Little of such property is ever reclaimed by the persons entitled to it.

In Texas v. New Jersey,[2] the United States Supreme Court held that only one state may escheat intangible personal property even though the holder of the property may be subject to the jurisdiction of several states. The court ruled that (1) the state of the last known address of the owner as shown by the records of the holder may escheat intangible personal property[3]

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1. Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

2. 379 U.S. 674 (1965).

3. If the state in which the owner had his last known address (as shown by the records of the holder) does not provide for the escheat of unclaimed property, the state where the holder is domiciled may escheat the property subject to a claim of the former state if its law later provides for the escheat of such property.

and (2) if the records do not show an address of the owner, the property may be escheated by the state where the holder is domiciled.[4] In Pennsylvania v. New York,[5] the United States Supreme Court held that escheat of amounts held by Western Union on account of money orders is governed by the rules set forth in Texas v. New Jersey. In Pennsylvania v. New York, a number of states proposed that such amounts should escheat to the states where the money orders were purchased, but the court refused to make any exceptions to Texas v. New Jersey.

In 1973, the Law Revision Commission recommended[6] revisions to conform the California Unclaimed Property Law to the holding in Pennsylvania v. New Jersey and thus assure that California would receive the property it was entitled to escheat under that decision. The Commission also stated its belief that the enactment of federal legislation offered the best long-range solution to the problem of which state is entitled to escheat sums held by the seller on account of travelers checks and money orders and recommended that the California Legislature adopt a Joint Resolution memorializing the President and the Congress of the United States to enact legislation to provide appropriate rules governing the escheat of sums payable on money orders, travelers checks, and similar written instruments.

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4. In cases falling in the second category, if another state proves that the last known address of the owner actually was within its borders, that state may escheat the property and recover it from the holder or from the state that first escheated it.

5. 407 U.S. 206 (1972).

6. Recommendation Relating to Unclaimed Property, 11 Cal. L. Revision Comm'n Reports 401 (1973).

The Joint Resolution recommended by the Commission was adopted by the Legislature.[7] Because the United States Congress was considering legislation that appeared to have a good chance for enactment, the Commission decided not to push for enactment of the recommended revision of the California Unclaimed Property Law.

[cite federal statute] was passed by the Congress and signed by the President on [date]. This new federal statute (set out immediately following this recommendation) prescribes rules that determine which state is entitled to escheat sums held by the seller on account of travelers checks, money orders, and similar written instruments. The Commission has reviewed the new federal statute and makes the following recommendations to conform the California Unclaimed Property Law to the federal statute:

(1) Section 1511 of the Code of Civil Procedure, which creates a presumption that the state in which a travelers check or money order was purchased is the state of the last known address of the apparent owner (absent an address being shown on the records of the holder), should be repealed. This presumption is contrary to the holding in Pennsylvania v. New York,[8] and is inconsistent with the rules stated in the new federal statute.

(2) A new section, to be numbered Section 1511, should be enacted that codifies the rules stated in the new federal statute. This will assure that California will receive the property it is entitled to escheat under that statute. Technical conforming amendments should be made to Sections 1530, 1542, and 1581 of the Code of Civil Procedure.

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7. Cal. Stats. 1973, Res. Ch. 76.

8. 407 U.S. 206 (1972).

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to amend Sections 1530, 1542, and 1581 of, to add Section 1511 to, and to repeal Section 1511 of, the Code of Civil Procedure, relating to the escheat of travelers checks, money orders, and similar instruments.

The people of the State of California do enact as follows:

Section 1. Section 1511 of the Code of Civil Procedure is repealed.

~~1511.--For-the-purposes-of-Section-1510,-where-the-records-of-the holder-do-not-show-a-last-known-address-of-the-apparent-owner-of-a travelers-check-or-money-order,-it-is-presumed-that-the-state-in-which the-travelers-check-or-money-order-was-purchased-is-the-state-of-the last-known-address-of-the-apparent-owner.--This-presumption-is-a-presumption-affecting-the-burden-of-proof.~~

Comment. Section 1511 is repealed because the presumption created by the section is contrary to the holding in Pennsylvania v. New York, 407 U.S. 206 (1972), and because the section is inconsistent with subsequently enacted federal legislation. See [H.R. 11221 - Depository Institutions Amendments of 1974].

Sec. 2. Section 1511 is added to the Code of Civil Procedure, to read:

1511. (a) Any sum payable on a money order, travelers check, or other similar written instrument (other than a third-party bank check) on which a business association is directly liable, escheats to this

state under this chapter if the conditions for escheat stated in Sections 1513 through 1521 exist, and if:

(1) The books and records of such business association show that such money order, travelers check, or similar written instrument was purchased in this state.

(2) The business association has its principal place of business in this state and the books and records of the business association do not show the state in which such money order, travelers check, or similar written instrument was purchased.

(3) The business association has its principal place of business in this state, the books and records of the business association show the state in which such money order, travelers check, or similar written instrument was purchased, and the laws of the state of purchase do not provide for the escheat of the sum payable on such instrument.

(b) Notwithstanding any other provision of this title, this section applies to sums payable on money orders, travelers checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a state prior to January 1, 1974. For the purposes of this subdivision, the words "deemed abandoned" have the same meaning as those words have as used in Section 604 of the Depository Institutions Amendments of 1974 [H.R. 11221].

Comment. Section 1511 adopts the rules provided in federal legislation which determines which state is entitled to escheat sums payable on money orders, travelers checks, and similar written instruments. See Sections 603 and 604 of [cite federal statute].

Sec. 3. Section 1530 of the Code of Civil Procedure is amended to read:

1530. (a) Every person holding funds or other property escheated to this state under this chapter shall report to the State Controller as provided in this section.

(b) The report shall be on a form prescribed or approved by the Controller and shall include:

(1) Except with respect to travelers checks ~~and~~ money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of twenty-five dollars ($25) or more escheated under this chapter.

and similar written instruments that escheat under Section 1511,

(2) In case of escheated funds of life insurance corporations, the full name of the insured or annuitant, and his last known address, according to the life insurance corporation's records.

(3) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of such property and the place where it is held and may be inspected by the State Controller. The report shall set forth any amounts owing to the holder for unpaid rent or storage charges and for the cost of opening the safe deposit box or other safekeeping repository, if any, in which the property was contained.

(4) The nature and identifying number, if any, or description of any intangible property and the amount appearing from the records to be due, except that items of value under twenty-five dollars ($25) each may be reported in aggregate.

(5) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

(6) Other information which the State Controller prescribes by rule as necessary for the administration of this chapter.

(c) If the holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1st of each year as of June 30th or fiscal year-end next preceding, but the report of life insurance corporations shall be filed before May 1st of each year as of December 31st next preceding. The State Controller may postpone the reporting date upon his own motion or upon written request by any person required to file a report.

(e) The report, if made by an individual, shall be verified by the individual; if made by a partnership, by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

Comment. Section 1530(b)(1) is amended to conform to Section 1511 which provides for escheat to the state where the travelers check, money order, or similar instrument was purchased. See also Section 1581 (seller to maintain record showing state where travelers check , money order , or similar instrument was purchased).

Sec. 4. Section 1542 of the Code of Civil Procedure is amended to read:

1542. (a) At any time after property has been paid or delivered to the State Controller under this chapter, another state is entitled to recover the property if:

(1) The property escheated to this state under subdivision (b) of Section 1516 because no address of the apparent owner of the property appeared on the records of the holder when the property was escheated under this chapter, the last known address of the apparent owner was in fact in such other state, and, under the laws of that state, the property escheated to that state;

(2) The last known address of the apparent owner of the property appearing on the records of the holder is in such other state and, under the laws of that state, the property has escheated to that state;

(3) The property is the sum payable on a travelers check ~~or~~ money order, or other similar instrument that escheated to this state ~~by application of the presumption provided by~~ under Section 1511, the ~~last known address of the apparent owner~~ was in fact in such other state, and, under the laws of that state, the property escheated to that state; or

(4) The property is funds held or owing by a life insurance corporation that escheated to this state by application of the presumption provided by subdivision (b) of Section 1515, the last known address of the person entitled to the funds was in fact in such other state, and, under the laws of that state, the property escheated to that state.

(b) The claim of another state to recover escheated property under this section shall be presented in writing to the State Controller, who shall consider the claim within 90 days after it is presented. He may hold a hearing and receive evidence. He shall allow the claim if he determines that the other state is entitled to the escheated property. A claim allowed under this section is subject to the charge specified by subdivision (c) of Section 1540.

Comment. Section 1542(a)(3) is amended to conform to the rules stated in Section 1511.

Sec. 5. Section 1581 of the Code of Civil Procedure is amended to read:

1581. (a) Any business association that sells its traveler's checks or money orders ~~in this state~~ or that provides such checks or orders to others for sale in this state shall ~~either~~:

~~(1) Maintain a record of the name and address of the purchaser of all traveler's checks and money orders sold on or after January 1, 1965, to purchasers residing in this state; or~~

~~(2) Maintain a record indicating those traveler's checks and money orders that are sold in this state on or after January 1, 1965, and pay to the State Controller sums that this chapter provides escheat to this state.~~

(b) The record required by this section may be destroyed after it has been retained for such reasonable time as the State Controller shall designate by regulation. ~~If the business association complies with paragraph (2) of subdivision (a), the State Controller may not require the the business association maintain the record described in paragraph (1) of subdivision (a). If any provision of this chapter or application thereof to any person or circumstance is held invalid, the requirement of paragraph (2) of subdivision (a) that the business association pay to this state the sums that this chapter provides escheat to this state is satisfied by payment to this state of the sums that escheat to this state under the provisions of this chapter which can be given effect without the invalid provision or application.~~

(c) Any business association that willfully fails to comply with this section is liable to the state for a civil penalty of five hundred dollars ($500) for each day of such failure to comply, which penalty may be recovered in an action brought by the State Controller.

in this state

maintain a record indicating those checks, orders, or instruments that are purchased in this state .

, or other similar written instruments (other than third party bank checks) on which such business association is directly liable,

, or instruments

TITLE VI—DISPOSITION OF ABANDONED MONEY ORDERS AND TRAVELER'S CHECKS

FINDINGS

Sec. 601. The Congress finds and declares that—

(1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;

(2) a substantial majority of such purchasers reside in the States where such instruments are purchased;

(3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;

(4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and

(5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

DEFINITIONS

Sec. 602. As used in this title—

(1) "banking organization" means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States;

(2) "business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals; and

(3) "financial organization" means any savings and loan association, building and loan association, credit union, or investment company engaged in business in the United States.

STATE ENTITLED TO ESCHEAT OR TAKE CUSTODY

Sec. 603. Where any sum is payable on a money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable—

(1) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler's check, or similar written instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the ex-

text of that State's power under its own laws to escheat or take custody of such sum;

(2) if the books or records of such banking or financial organization or business association do not show the State in which such money order, traveler's check, or similar written instrument was purchased, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, until another State shall demonstrate by written evidence that it is the State of purchase; or

(3) if the books and records of such banking or financial organizations or business association show the State in which such money order, traveler's check, or similar written instrument was purchased and the laws of the State of purchase do not provide for the escheat or custodial taking of the sum payable on such instrument, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of purchase to recover such sum from the State of principal place of business if and when the law of the State of purchase makes provision for escheat or custodial taking of such sum.

APPLICABILITY

Sec. 604. *This title shall be applicable to sums payable on money orders, traveler's checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a State prior to January 1, 1974.*