

## First Supplement to Memorandum 73-6

Subject: Study 26 - Escheat (Unclaimed Property Law)

Attached are the comments of the American Express Company on the staff draft of the recommendation relating to revisions of the unclaimed property law.

American Express objects to the requirement that it obtain the names and addresses of purchasers of travelers checks and money orders. It has no objection to retaining such address records in cases where they are now obtained by the company (obtained for travelers checks but not for money orders), but the company believes that the State of California should pay the company's cost of retaining the address records after the normal six-year retention period.

The staff has proposed in Memorandum 73-6 that the record-keeping requirement be phrased so that it would be satisfied merely by keeping a record of those travelers checks and money orders that are sold in California to purchasers who then resided outside the state. This should do much to meet the objection of American Express Company; no record would be required for sales to persons who reside in California. Thus, there could be a column on the form headed "purchaser resides outside California," and a check could be made in this column if (and only if) the purchaser responds negatively to the question: "Do you reside in California?".

American Express notes that legislation probably will be submitted to the United States Congress on this subject. To cover the possibility that legislation might be enacted by the United States Congress, the staff recommends that the following section be added to the proposed legislation:

1583. Notwithstanding any other provision of this chapter, intangible personal property escheats to this state under this chapter in any case where such property escheats to this state under any statute of the United States. To the extent that the record required by Section 1581 is unnecessary to accomplish the escheat of property to this state because such escheat is governed by the terms of a statute of the United States, the record required by Section 1581 need not be made or maintained.

The staff also believes that it would be desirable to include in our recommendation a recommendation that the California Legislature enact an appropriate measure recommending to the United States Congress that it enact legislation to provide for the escheat of travelers checks and money orders on the basis of the state where sold.

Despite the objections of the American Express Company, the staff recommends that the recommendation (as proposed to be revised in Memorandum 73-6 and in this supplement) be approved for submission to the Legislature.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

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January 11, 1973

John H. DeMouilly, Executive Secretary  
California Law Revision Commission  
School of Law, Stanford University  
Stanford, California 94305

Re: Revision of the California Unclaimed Property Law

Dear Mr. DeMouilly:

Enclosed herewith are copies of two memoranda prepared by our client, American Express Company, in response to your letter of December 8, 1972 and the proposed revisions to the California unclaimed property law, specifically the proposed requirement of maintenance and retention of records of the names and addresses of purchasers of travelers cheques and money orders.

Each of the enclosed memoranda is a factual memorandum designed to highlight the facts upon which we base our opposition or support of various parts of the unclaimed property law. As you and I have discussed, of course, as attorneys we do not believe that the Supreme Court's decision in Pennsylvania v. New York mandates a change in California's present unclaimed property law. Being a legal question, this aspect of the matter is not raised in the enclosed memoranda. We will be happy to expand upon our legal contentions if you believe it would be helpful.

The longer of the enclosed memoranda deals basically with the circumstances and problems involved in maintenance and retention of records of names and addresses of purchasers. As you will note, American Express Company does presently obtain names and addresses of purchasers of travelers cheques. Although such records have historically been preserved for only a six-year period, the Company is willing to retain such records for a longer period of time, if California imposes such a requirement.

As you will note from the first page of the memorandum, the six-year retention period was chosen because the cost of subsequent retention outweighed the utility of the records. Inasmuch

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as any additional retention would be solely for the benefit of California, it seems only fair that any proposed requirement that such records be maintained include a provision for the repayment of additional storage costs incurred by reason of the additional retention. Such repayment could be easily effected by a deduction from escheat payments and we strongly recommend that such a provision be inserted in any legislative proposals.

With respect to money orders, as you will note from the memorandum, no records of names and addresses are presently made nor is it practical to make such. Even assuming that the more intangible costs to money order sellers, e.g., additional time and trouble in making the records could and would be borne by the sellers, the calculable costs of changing forms, additional paperwork, increased postage and storage space would clearly substantially exceed the sums ultimately subject to escheat. In view of these facts, it simply does not make sense to impose a requirement that records be made and maintained as to names and addresses of money order purchasers.

Additionally, American Express money orders are nearly always purchased for the payment of a specific obligation. Therefore, the question of who the "creditor" is with respect to unpaid money orders is confused as the creditor may well be the payee of the money order rather than the purchaser. Unfortunately, the recent decision in Pennsylvania v. New York does not really deal with American Express type money orders. Western Union money orders, the specific subject matter of that decision, are basically merely a means of transmission of money rather than payment of specific obligations. This is recognized by Western Union's obligation to return the money order if it cannot be delivered.

Therefore, with respect to American Express type money orders, the names and addresses of the purchasers may well not have the significance for escheat purposes attributed to this information in other circumstances.

We suggest that the enclosed memorandum concerning records be circulated among members of the Commission for their review and comment. Undoubtedly, the problems faced by other sellers of money orders are similar, with the exceptions of Western Union, who we understand presently makes and retains records of the names and addresses of purchasers because of the

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noted obligation to return the same if delivery cannot be made, and the United States Postal Service, which presumably would be exempt from State law as an entity of the Federal government.

The second memorandum concerns the suggestion of your letter that travelers cheques might be made subject to escheat seven years after sale rather than fifteen years as presently provided.

As you will note from the memorandum, the simple fact of the matter is that travelers cheques are sold on a "good until used" basis and are treated as such. If the seven-year period were adopted, the State simply would have to go through numerous bookkeeping transactions to return the escheated money when the owners of the travelers cheques requested it.

In view of the fact that records of the names and addresses of purchasers are presently made and are presently maintained for at least a six-year period, the additional burden of retaining the records for further periods of time does not outweigh the cost to the State of reversing substantial numbers of escheat transactions due to subsequent claims by the owners of the obligations escheated.

While the question of changing the period for escheat of travelers cheques is not, to our understanding, formally before the Commission, if you deem it appropriate, please feel free to circulate copies of this memorandum as well as the other.

Also enclosed is a copy of proposed Federal legislation which has been drafted by the attorney general's office of the State of Pennsylvania with the assistance of counsel for American Express Company. The enclosed proposed legislation is in the form in which we believe it will be introduced. If enacted, this legislation should resolve the question of what states are entitled to escheat what sums in favor of the state of purchase by presuming such state to be the state of residence of the purchaser. This, in our opinion, represents the fairest and most efficient method of resolving this entire problem.

In view of the enclosed memoranda, which we believe set forth in a clear and understandable manner the factual basis for the position of American Express Company, we do not think it

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necessary or appropriate for our client to have a representative at the upcoming meeting of the Commission. If you would like any further information or otherwise have any questions or comments on the enclosures, please feel free to give me a call at any time.

Very truly yours,

  
WALLER TAYLOR, II

WT:ls

Enclosures

Dated: January 5, 1973

REQUIREMENT THAT SELLERS OF  
MONEY ORDERS OBTAIN AND MAIN-  
TAIN A RECORD OF THE NAMES  
AND ADDRESSES OF THE PURCHASERS

This memorandum deals with the proposal by the California Law Revision Commissions to recommend certain amendments in the California Escheat Law to bring it into conformity with the decision in Pennsylvania v. New York, 407 U.S. 206 (1972). It is proposed to amend Section 1581 of that law so as to require all sellers of travelers checks and money orders to obtain and maintain a record of the names and addresses of the purchasers of such instruments sold after January 1, 1974 to purchasers residing in California.

Such a requirement, aside from other factors, would not pose any problems with regard to American Express Company travelers cheques. At the time of sale the purchaser is required to insert his address and sign his name on a Purchaser's Application which lists the serial numbers and denominations of the cheques purchased. It had been the practice for the Company to retain the applications for six years after which they were destroyed. This was so because their usefulness after that outweighed the storage costs for their further retention. As a result of the decision on June 19, 1972 in

Pennsylvania v. New York, the Company suspended the destruction of the Purchaser's Applications. At this time the Company has such records from July 1, 1966.

In the case of American Express money orders, a requirement to obtain and maintain a record of the name and address of the purchasers would present the Company with insuperable practical and economical hurdles.

American Express Company introduced its money order in 1882. They have been sold in California since before the turn of the century. At the present time the Company has approximately 2,500 agents in California. They are mostly food and other retail stores which generally provide the money order service as a good-will item for their customers.

The Company knows from its experience that its money order agents will only provide the service if it can be done with a minimum amount of time and red tape. This has been particularly so in recent years as their labor costs have gone up. Now it takes an agent about ten seconds to complete a sale. Also, he is provided with report forms which list on them the serial numbers of the money orders. Each form has twenty such listings. The agent merely inserts the respective amount next to each serial number as the sale is made. He can thus report up to 20 sales on one piece of paper.



Money orders are sold by the U. S. Post Office, banks and organizations such as American Express Company. The Company knows of none that now have a procedure for obtaining and maintaining a record of the names and addresses of the purchasers. The consequences to the Company from installing such a procedure are as follows:

1. An agent now takes about 10 seconds to complete a sale. The added requirement would extend this to at least three or four minutes. The agent's report would then have to include a separate item for each money order sold. This would be an increase of twenty fold in the number of pieces of paper which have to be processed and mailed to the company. These factors, particularly the added orders time factor for issuing the money/would definitely cause a substantial number of agents to discontinue the service. It would also make it difficult for the Company to get new agents to take on the service.
2. The Company would have to redesign its various forms, its processing procedures and its recordkeeping facilities. If the requirement for names and addresses is limited to items sold in California, the cost of such a program would be in the tens of

thousands of dollars. If it had to be extended to all the United States, in order to be in a position to report as abandoned property money orders purchased outside California, the costs would increase many fold.

3. There would be an additional annual cost for forms and postage estimated at \$57,000 if the program is limited to California and many times that if it is extended nationwide.

4. The number of forms to be handled and processed at the Company's accounting center will be multiplied many times. The increase in the annual costs for this purpose is conservatively estimated at \$10,000 per annum if limited to California and, again, many times that if the program is extended to nationwide sales.

In its 1972 abandoned property report to the State of California, the Company reported outstanding money orders sold in California during the year 1964. The total amount paid to the State was \$40,540.96. The number of money orders represented approximately one tenth of one percent of the money orders sold in California that year or one out of one thousand money orders sold.

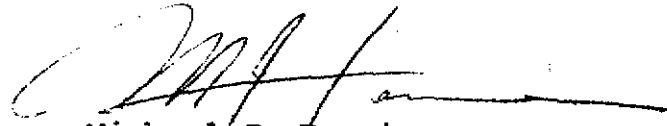
It seems utterly incongruous that the Company should be required to alter its method of doing business at costs far above what the state would realize. The money order business is highly competitive between the U. S. Post Office, the banks and organizations including American Express Company. Since the Post Office would not be burdened with the charges contemplated in the California Escheat Law, it would gain an important advantage.

The Company urges the Law Revision Commission to modify the proposed change to Section 1581 of the Escheat Law so as to require those organizations which obtain the names and addresses of the purchasers of money orders and travelers checks at the time of sale to retain such information for such reasonable period as designated by the State Controller. This would avoid the disastrous effects of a blanket requirement and it would assure the retention of records like the American Express travelers cheque purchaser's application. The Western Union Telegraphic money orders would also fall in this category since it is that company's practice to obtain names and addresses for such transfers.

American Express Company has strongly supported the adoption of a criteria that would permit the reporting and payment of the proceeds of money orders and travelers checks.

on the basis of state of sale. The Company will continue to support any measures to bring this about.

It should be mentioned that the average charge to a customer for a money order is \$.35. This has to be shared by the Company with its selling agent. In order to meet competition and keep the cost down to the public, it is not practical to increase the charge to provide additional compensation to the agent and to cover additional costs for any expanded recordkeeping procedures.

A handwritten signature in dark ink, appearing to read 'M. J. Fennimore', with a long horizontal flourish extending to the right.

Michael J. Fennimore  
Assistant General Counsel  
AMERICAN EXPRESS COMPANY

Dated: January 5, 1973

THE PRESUMPTION THAT TRAVELERS CHEQUES  
BECOME ABANDONED PROPERTY IN LESS THAN  
FIFTEEN YEARS IS UNREASONABLE.

American Express Company originated the travelers cheque in 1891. It was designed to provide travelers with an instrument which would protect their funds against loss or theft, be readily negotiable and be convertible into the currency of whatever country in which its holder chose to cash it. Travelers cheques are sold in every state of the United States and throughout most of the world. Travelers - intrastate, interstate and foreign - are the principal purchasers, and substantial purchases are also made by business enterprises and by other persons who wish to have funds readily available in case of emergencies.

Travelers cheques are intended to and do circulate as freely as money. They are expressly designed to be valid for an indefinite period. Everything about them, including their appearance, creates the impression that they are good until used. They bear no date of sale and no date of maturity. Sometimes the purchaser of a travelers cheque will date it when he negotiates it; sometimes he will not. But whether he does or not is immaterial insofar as the instrument's validity, negotiability and length of life are concerned.

Since travelers cheques are sold all over the world and are accepted without question in every country in the world, there is no limit to the number of hands through which they may pass or the number of state and national borders which they may cross before they are finally presented for payment, in the case of American Express Company, at New York, New York.

American Express has always sold travelers cheques upon the representation that they are "good until used - no time limit," i.e., that the purchaser or any subsequent holder may keep them as long as he likes without forfeiting his right to ultimate payment. This representation is stressed in advertising and sales materials. The instructions issued by American Express to its thousands of selling agents direct those agents to tell purchasers that travelers cheques can be held indefinitely and that they are good until used.

Purchasers of travelers cheques and the public have come to rely upon this representation and act upon it. We base this statement primarily upon two basic facts. First, countless travelers cheques are cashed daily by persons who have no way of knowing how long they have been outstanding. Secondly, the record shows that a great many years may elapse

between the purchase of a travelers cheque and its presentation for payment.

It is American Express' experience that approximately 75% of those travelers cheques which are still outstanding 7 years after their issuance are presented for payment within the next 8 years. Even those travelers cheques that have been outstanding for 15 years are still very much alive. Of all such 15 year old items that have been reported and paid to the State of New York as abandoned property from 1949 to date, in excess of 65% of them have subsequently been presented for payment and then paid by American Express.

It can readily be seen from the foregoing statistics that there is no basis in fact for a presumption that travelers cheques outstanding for less than 15 years have been abandoned. Furthermore, such a presumption is entirely inconsistent with the expectations of the public who are the purchasers of American Express travelers cheques. The experience of American Express indicates that the minimum reasonable period which a state should wait before taking custody of travelers cheques is at least 15 years. It is also significant that a large number of states having abandoned property laws have adopted a 15-year period for travelers cheques.\* If any shorter period were adopted by a state, it

\*See asterisk note on next page.

is our belief that, in light of the very high percentage of travelers cheques which would ultimately come in for payment after such shorter period, the state would become merely a receiving and disbursing agent for the bulk of the funds coming into its possession and would be faced with the burden of high clerical and bookkeeping costs which would offset to an appreciable degree any increased revenues which the state might expect to derive.

For the foregoing reasons we submit that the various states contemplating the enactment or amendment of an unclaimed property statute applicable to travelers

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- \* In the following 26 out of 37 states which have applicable laws the period that is effective for travelers checks is 15 years or more:

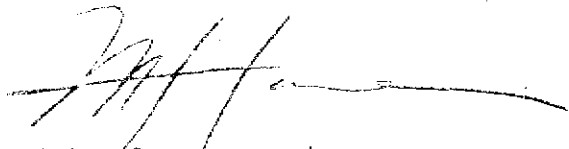
California	New Hampshire	<u>17 Years</u>
Delaware	New Mexico	Virginia
Florida	New York	
Georgia	North Carolina	<u>20 Years</u>
Idaho	Ohio	Minnesota
Illinois	Oregon	Vermont
Iowa	Pennsylvania	
Louisiana	Rhode Island	<u>21 Years</u>
Maryland	South Carolina	Oklahoma
Montana	West Virginia	
Nebraska	Wisconsin	

In addition, the Revised Uniform Disposition of Unclaimed Property Act provides for a 15-year abandonment period for travelers checks.



checks should adopt the 15-year abandonment period. This period is consistent with the trend in other states, provides for uniformity, which is important to companies engaged in selling their travelers checks in all or most of the 50 states, and takes into account the fact that users of travelers checks retain them for many years. At the same time, the 15-year period gives effect to the legitimate interests of the various states while it keeps to a minimum the amount of administrative work involved in processing refund applications.

Most people do not realize the large percentage of checks which are outstanding after 15 years that are cashed or redeemed thereafter. The fact of the matter is that only a very small percentage of the travelers cheques sold are ever truly abandoned.



Michael J. Fennimore  
Assistant General Counsel  
AMERICAN EXPRESS COMPANY

AN ACT

To regulate which state may escheat or take custody of certain intangible abandoned property and to confer jurisdiction upon the district courts.

WHEREAS, the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and travelers checks do not as a matter of business practice show the last known addresses of purchasers of such instruments, and

WHEREAS, it has been determined that a substantial majority of such purchasers reside in the states where such instruments are issued or sold, and

WHEREAS, the states wherein the purchasers of money orders and travelers 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, and

WHEREAS, it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the states entitled thereto, and

WHEREAS, the cost of maintaining and retrieving addresses of purchasers of money orders and travelers 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,

NOW, THEREFORE, Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Definitions.

(a) "Banking Organization" means any bank, trust company, savings bank, safe deposit company or a private banker engaged in business in the United States.

(b) "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.

(c) "Financial Organization" means any savings and loan association, building and loan association, credit union, or investment company, engaged in business in the United States.

Section 2. State entitled to escheat or take custody.

Where any sum is payable on a money order, travelers check or similar written instrument on which a banking or financial organization or a business association is directly liable, and

(a) where the books and records of such banking or financial organization or business association show the state of origin of the transaction wherein such money order, travelers check or similar written instrument

was issued, such state of origin of the transaction shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that state's power under its own laws to escheat or take custody of such sum; or

(b) where the books and records of such banking or financial organization or business association do not show the state of origin of the transaction wherein such money order, travelers check or similar written instrument was issued, the state in which the banking or financial organization or business association is organized or incorporated or, in the case of a national banking association or other entity organized under federal law, the state of its principal place of business, shall be entitled to escheat or take custody of the sum payable on such money order, travelers 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 origin of such transaction; or

(c) where the books and records of such banking or financial organization or business association show the state of origin of the transaction wherein such money order, travelers check or similar written instrument was issued and the laws of the state of origin of the transaction

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 is organized or incorporated or, in the case of a national banking association or other entity organized under federal law, the state of its principal place of business, shall be entitled to escheat or take custody of the sum payable on such money order, travelers 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 origin of the transaction to recover such sum from the state of organization, incorporation or principal place of business if and when the law of the state of origin of the transaction makes provision for escheat or custodial taking of such sum.

Section 3. Adjudication of state claims.

The district courts shall have original jurisdiction to determine disputes between states arising under this act. Any such case shall be brought in any district court within a state which is a party in the case or in any district court within the state in which the banking or

financial organization or business association is organized or incorporated or, in the case of a national banking association or other entity organized under federal law, within the state of its principal place of business. Judgments and decrees rendered under this section shall be subject to review as provided in sections 1254 and 1291-1294 of Title 28 of the United States Code.

Section 4. Effective Date.

This act shall take effect on \_\_\_\_\_  
\_\_\_\_\_ and shall be applicable to sums payable on money orders, travelers checks and similar written instruments deemed abandoned on or after February 1, 1965.