#26 2/22/73

First Supplement to Memorandum 73-15

Subject: Study 26 - Escheat (Unclaimed Property Law)

Attached is a letter from the law firm that represents American Express. Basically, the letter indicates concern that there will be uncertainty (absent a court decision) whether California can escheat money orders on the basis of a negative record. New York apparently is unwilling to surrender its claim on the basis of a negative record. The letter points out the expense of keeping even the minimum record and suggests that the Commission concentrate its efforts on obtaining the enactment of federal legislation.

This matter was fully discussed at the last meeting. The solution worked out then (and reflected in the revised tentative recommendation) was considered workable and one that would most likely satisfy the requirements of the 1972 Supreme Court decision. Nothing in the letter brings up matters not previously considered.

The letter suggests that an amendment to Code of Civil Procedure Section 1530 may be needed. No amendment to this section is needed. The name and address is not required by Section 1530 to be included in the report to the State Controller because there is no requirement that such information be published. Nothing in Section 1530 excuses the company from keeping such records as are otherwise required; Section 1530 deals only with the report to the State Controller.

Respectfully submitted,

John H. DeMoully
Executive Secretary

1st supp Memo 73-15 EXHIBIT I

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February 20, 1973

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California Law Revision Commission
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Re: Revision of the California Unclaimed Property Law

Dear Mr. DeMoully:

This is in response to your letter of January 31, 1973 enclosing copies of the revised draft recommendation relating to revisions of the unclaimed property law.

As we understand it, the current draft of your recommendation requires the sellers of travelers cheques and money orders to make and maintain records indicating which purchasers are non-residents of California. This will be done by means of a simple check mark with respect to each non-resident purchaser. No record of a specific address is required.

Parenthetically, the latest revised recommendation does not appear to include any amendment to present Code of Civil Procedure Section 1530. Inasmuch as present Section 1530 specifically excludes travelers cheques and money orders from record keeping requirements, we assume that you contemplate some amendment to it. We would appreciate your forwarding the language of the proposed amendment at your earliest convenience.

It is our understanding that the present recommendation is unacceptable to the State of New York. New York is presently demanding that all sums which are subject to escheat be turned over to it forthwith. New York does not believe that records couched in negative terms such as those of the current draft recommendation are sufficient but asserts that the minimum requirement is a listing of the state of residence of the purchaser.

Where or not the present draft recommendation is amended to require listing of the state of residence of the purchaser or is maintained as only requiring an indication when and if the

residence is not California, American Express Company can offer absolutely no assurance that the actual sellers of money orders will in fact make the necessary records with respect to money orders.

As you know, with respect to travelers cheques, address records are presently made and maintained. It is simple to enforce such a requirement as the purchaser of travelers cheques has an interest in recording his address as it facilitates possible claims with respect to lost or stolen travelers cheques. This is simply not the case with money orders. Furthermore, the margin of profit on money orders is so small that there is no incentive for sellers of money orders to expend the necessary time to ask the necessary question or questions and record the appropriate information with respect to state of residence.

Furthermore, even the "minimal" requirements of the present draft recommendation will, in practice, impose prohibitively expensive costs on the sellers of money orders and travelers cheques. As you know, California can only escheat items whose purchaser was a California resident. Absent the presumption of Section 1511, a debtor company will be required to determine with respect to each item being escheated whether that item is owed to a California resident. This correlation of state of residence and items subject to escheat would be extremely time consuming and expensive. As nearly as can presently be calculated, the cost of this correlation would exceed the value of items being escheated, at least with respect to obligations of American Express Company.

Presently, items subject to escheat approximate .1% of money order transactions, however, to determine which of the items being escheated involve non-residents will require all money order records to be searched in order to determine residence. It is this sorting and correlation problem which makes the record making and maintaining requirement prohibitively expensive.

As I am sure you realize, the core of the escheat problem is how to determine which state is entitled to escheat. Under New York vs. Pennsylvania, et al., the state of residence of the purchaser has priority, subject, of course, to evidence that it is the state of residence.

California now utilizes a presumption that the state of purchase is the state of residence. Available data clearly demonstrates the validity of such a presumption. You believe that this presumption has been invalidated by Pennsylvania v. New York, et al. While we disagree, assuming such is the case, the question becomes what quantum of evidence is sufficient to prove prima facie residence. You have suggested a negative test, i.e., an indication of non-residence where appropriate. This, of course, involves a presumption that a blank indicates both the request for residence information and reply indicating California. As noted, New York believes this is inadequate and that the state of residence of each purchaser must be recorded.

Our mutual problem, apart from prohibitive expense, is that there is no way to insure that the sellers of money orders will in fact record whatever information is ultimately required. The only way to resolve this problem is to avoid it by means of a binding presumption of residence. If state law is considered insufficient, federal law must be involved.

As you know, we have long supported federal legislation in this area as the only feasible way of resolving the disputes between the various states as to which is entitled to escheat. We are informed and believe that the proposed federal legislation forwarded to you under cover of my letter of January 11, 1973 will be introduced in the very near future in both the United States Senate and House of Representatives.

I will be contacting the California Attorney General, Mr. Younger, in the near future concerning this. Other Attorney Generals also have been contacted with respect to the proposed legislation. They are in contact with both members of the United States Senate and House of Representatives. I strongly urge that the commission turn its efforts to supporting this legislation rather than consideration of what we consider to be essentially impractical state laws.

I would appreciate an opportunity to meet with you to more fully discuss this matter. I would appreciate your giving me a call so that we may set up a mutually convenient time and place.

Very truly yours,

WALLER TAYLOR, II

WT:ls