

Memorandum 73-37

Subject: Study 26 - Escheat (Unclaimed Property Law)

Attached is a letter from the representative of American Express commenting on the decisions made at the last meeting.

The letter objects to the presumption added to the statute at the last meeting. However, this objection is really to any change in the statute which requires the keeping of the "negative" record, rather than to the presumption itself.

The staff does not recommend that any change be made in the previously approved recommendation. Attached is a copy of the recommendation (which includes the text of the statute as revised by the Commission at the last meeting).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Memo 73-37

EXHIBIT I

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HENRY DUQUE (1904-1971)

March 23, 1973

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

Re: Revision of the California Unclaimed Property Law

Dear Mr. DeMouly:

We have received copies of the tentative agenda for the meeting of the Law Revision Commission in April together with the minutes relating to the March 1, 2 and 3, 1973 meeting insofar as they relate to escheat.

With respect to the change in subdivision (b)(1) of Section 1581, the change from "residence" to "address" does seem proper.

We do not concur, however, with respect to the addition to the statute that absence of an entry showing that the purchaser's address was not in California establishes a rebuttable presumption that the purchaser's address was in this State. It certainly appears that the Law Revision Commission is coming full circle. If this presumption is added, your proposal will be simply to eliminate a presumption that the purchaser is a California resident in favor of a presumption that if there is no affirmative record indicating otherwise, the purchaser's residence is in California.

The effect of either of the presumptions will be essentially the same, i.e., either will establish that the vast majority of money orders escheat to the state in which purchased. The relative burden of the two presumptions is, however, radically different. The existing presumption creates no burden. Your proposed presumption creates an extensive burden not only on the individual sellers of money orders who must ask each purchaser their address, but also on issuers of money orders who must make and maintain records as to the purchaser's address.

John H. DeMouilly, Executive Secretary
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As you know, we have maintained that the existing presumption of residence is valid. We fail to see how the new proposed presumption is any more valid and again emphasize that it will create a substantial burden on the issuer and sellers of money orders.

Very truly yours,


WALLER TAYLOR, II

WT:ls

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

UNCLAIMED PROPERTY

Background

The California Unclaimed Property Law¹ provides a comprehensive scheme for the escheat to the state of various kinds of unclaimed personal property such as amounts held by sellers on account of travelers checks and money orders. If the owner of such property has failed to claim it for a specified period of time, the statute requires the holder to report this fact to the State Controller. Subsequently, the property 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.

The Unclaimed Property Law, which was enacted in 1968 upon recommendation of the Law Revision Commission,² superseded a prior statute based on the Uniform Disposition of Unclaimed Property Act.³ A primary purpose of the 1968 enactment was to conform the prior statute to the rules established by the Supreme Court of the United States in *Texas v. New Jersey*.⁴ In that case, the 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 property⁵ 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.⁶

Under the rules of *Texas v. New Jersey*, California is entitled to escheat amounts held on account of travelers checks and money orders sold by companies domiciled (incorporated) outside

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

²See *Recommendation Relating to Escheat*, 8 Cal. L. Revision Comm'n Reports 1001 (1967).

³9A Uniform Laws Ann. 416 (1965).

⁴379 U.S. 674 (1965).

⁵If 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.

⁶In 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.

California only if the seller maintains a record showing the last known address of the purchaser to be in California. Absent such a record, the state of incorporation is entitled to escheat such amounts. Nevertheless, in recognition of the burden on the seller of maintaining a record of the names and addresses of purchasers of travelers checks and money orders, Code of Civil Procedure Sections 1511 and 1581 were enacted in 1968 as part of the Unclaimed Property Law.

Section 1511 creates a presumption affecting the burden of proof that, "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 was designed to avoid the need to maintain a record showing name and address of the purchaser and instead to permit escheat on the basis of the state where the travelers check or money order was purchased, a fact relatively easy to determine.⁷ Section 1581 requires that the seller maintain either a record showing the last known address of the purchaser (permitting escheat under the rule of *Texas v. New Jersey*) or a record showing those travelers checks and money orders sold in California (permitting escheat under the presumption created by Section 1511).

The statutory scheme outlined above is inconsistent with *Pennsylvania v. New York*,⁸ a 1972 decision of the United States Supreme Court. In that case, the 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*. Accordingly, it is now clear that a presumption like the one created by Section 1511 may not be used as the basis for the escheat of money orders and travelers checks.

Revision of the Unclaimed Property Law

To conform the Unclaimed Property Law to the holding in *Pennsylvania v. New York* and thus assure that California will receive the property it is entitled to escheat under that decision, the Commission makes the following recommendations:

(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. As indicated above, this presumption is contrary to the holding in *Pennsylvania v. New York*. Technical conforming amendments should be made to Sections 1513 and 1542 of the Code of Civil Procedure.

(2) Section 1581 of the Code of Civil Procedure, which specifies the record required to be maintained by a person selling travelers checks or money orders in this state, should be revised so

⁷See discussion in *Recommendation Relating to Escheat*, 8 Cal. L. Revision Comm'n Reports 1001, 1010-1012 (1967). See also discussion in the dissenting opinion in *Pennsylvania v. New York*, 407 U.S. 206, 216 (1972).

⁸407 U.S. 206 (1972).

that it requires no more than the minimum record needed to satisfy the requirements of *Texas v. New Jersey* and *Pennsylvania v. New York*. Specifically, Section 1581 should be revised to require that the seller of a travelers check or money order in California (1) determine from each purchaser whether his address is in California and (2) make and maintain a record showing each travelers check or money order that was sold to a person whose address is not in California.⁹ From this record, it can readily be ascertained which travelers checks and money orders are sold to persons whose address is in California; proof of the absence of an entry in the record showing that the particular travelers check or money order was sold to a person whose address was not in California establishes that the travelers check or money order was sold to a person whose address was in California.¹⁰

The Commission has considered whether the seller should be required to make an affirmative record when he sells a travelers check or money order to a purchaser who states that his address is in California. A requirement that an affirmative record be kept would impose a substantial burden on the seller. The Commission has concluded that the keeping of the affirmative record is unnecessary to protect California's right to escheat sums payable on travelers checks and money orders and proposes that only a record showing sales to persons whose address is not in California be required. *Texas v. New Jersey* and *Pennsylvania v. New York* require escheat to the state of the apparent owner's last known address, and the required record will establish those instances where California is the state of the apparent owner's last known address.

Section 1581 should be further revised to delete the option that permits compliance with the recordkeeping requirement merely by maintaining a record of travelers checks and money orders sold in this state. This option was designed to implement the impermissible presumption created by Section 1511.

(3) The Commission has been advised that legislation will be proposed in the United States Congress to provide for the escheat of the sum payable on a travelers check or money order to the state of origin of the transaction wherein such travelers check or money order was issued. To cover the possibility that the proposed legislation will be enacted, the Commission recommends that a new section be added to the Unclaimed Property Law to provide that intangible personal property escheats to California in any case where such property escheats to California under any statute of the United States. In any case where property escheats under the federal statute, the recordkeeping requirement of Section 1581 should not apply.

⁹ This follows the suggestion in *Pennsylvania v. New York*, 407 U.S. 206, 215, 222 (1972), that that decision can be implemented by a state requirement that the person selling money orders keep adequate address records.

¹⁰ See Evid. Code Sec. 1272 (absence of entry in business records). A provision should be added to Section 1581 that proof of the absence of an entry showing that the purchaser's address was not in California establishes a rebuttable presumption that the purchaser's address was in California. This presumption should be one affecting the burden of proof. The presumption is justified because compliance with the recordkeeping requirement is assured by the severe penalty provided for failure to comply with Section 1581. Subdivision (c) of that section provides: "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."

Need for Federal Legislation

The recommended revisions of the Unclaimed Property Law are those necessary so that California will receive its share of the funds it is entitled to escheat under the holding in *Pennsylvania v. New York*. Nevertheless, the Commission recognizes that the **person issuing a travelers check or money order will be required to make and maintain a record that may have no use other than ultimately to permit California to escheat the amounts he holds on account of those few travelers checks and money orders that are not cashed.** As previously stated, **this situation is created by the holding in *Pennsylvania v. New York*, and the only alternatives available to California are to require the keeping of the record or to give up its claim to the funds.**

The Commission believes that

enactment of federal legislation offers the best long-range solution to this problem. Accordingly, the Commission recommends that the California Legislature adopt a Joint Resolution memorializing the President and the Congress of the United States to enact legislation that would provide for the escheat of any sum payable on a money order, travelers check, or similar written instrument to the state of origin of the transaction wherein such money order, travelers check, or similar written instrument was issued. Such a federal statute would provide a rule that would be administratively convenient because a record of the state of origin is a simple one to make and retain. The rule proposed is consistent with the express purpose of *Texas v. New Jersey* to achieve clarity, certainty, and ease of administration. The recommended rule would distribute the escheat of funds due on money orders, travelers checks, and similar written instruments ratably among the states in proportion to the volume of purchases of such instruments in each state. Since the vast majority of money orders, travelers checks, and similar written instruments are purchased near the purchasers' homes, the result reached would approximate the result reached under the basic rule promulgated in *Texas v. New Jersey* and *Pennsylvania v. New York* (unclaimed property should escheat to the state of the last known address of the last known owner).

Recommended Legislative Measures

The Commission's recommendation would be effectuated by enactment of the following measures:

1. Revisions of Unclaimed Property Law

An act to amend Sections 1513, 1542, and 1581 of, to add Section 1507 to, and to repeal Section 1511 of, the Code of Civil Procedure, relating to unclaimed property.

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

SECTION 1. Section 1507 is added to Article 1 (commencing with Section 1500) of Chapter 7 of Title 10 of Part 3 of the Code of Civil Procedure, to read:

1507. 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 escheat of property to this state is governed by the terms of a statute of the United States which does not require the keeping of the record required by Section 1581 in order to accomplish such escheat, such record need not be made or maintained.

Comment. Section 1507 covers the possibility that legislation may be enacted by the United States Congress to provide, for example, for the escheat of sums payable on travelers checks, money orders, and similar written instruments to the state of origin of the transaction wherein the instrument was issued. If such legislation were enacted, Section 1507 would permit compliance with the recordkeeping requirement of Section 1581 by a record that shows merely the state of origin of the transaction wherein the instrument was issued.

SEC. 2. 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).

SEC. 3. Section 1513 of the Code of Civil Procedure is amended to read:

1513. Subject to ~~Sections~~ *Section* 1510 and 1511, the following property held or owing by a business association escheats to this state:

(a) Any demand, savings, or matured time deposit made with a banking organization, together with any interest or dividends thereon, excluding any reasonable service charges which may lawfully be withheld and which do not (where made in this state) exceed those set forth in schedules filed by the banking organization from time to time with the State Controller, when the owner, for more than 15 years, has not:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization.

(b) Any funds paid toward the purchase of shares or other interest in a financial organization or any deposit made therewith, and any interest or dividends thereon, excluding any reasonable service charges which may lawfully be withheld and which do not (where paid or made in this state) exceed those set forth in schedules filed by the financial organization from time to time with the State Controller, when the owner, for more than 15 years, has not:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization.

(c) Any sum payable on a travelers check issued by a business association that has been outstanding for more than 15 years from the date of its issuance, when the owner, for more than 15 years, has not corresponded in writing with the business association concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with such association.

(d) Any sum payable on any other written instrument on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, any draft, certified check, or money order,

that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, excluding any charges that may lawfully be withheld, when the owner, for more than seven years, has not corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization.

(e) Any sum payable on a money order issued by a business association (other than a banking or financial organization) that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, excluding any charges that may lawfully be withheld, when the owner, for more than seven years, has not corresponded in writing with the business association concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the business association.

Comment. The amendment to Section 1513 deletes the reference to Section 1511 which has been repealed.

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 1510 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; *or*

~~(3) The property is the sum payable on a travelers check or money order that escheated to this state by application of the presumption provided by 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)~~ (3) 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. Paragraph (3) of subdivision (a) of Section 1542 has been deleted because that subdivision was designed to implement the presumption created by Section 1511 and that section has been repealed. See the Comment to Section 1511.

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

1581. (a) *As used in this section, "instrument" means a travelers check, money order (including but not limited to a telegraphic money order), or similar written instrument.*

(b) Any business association that sells its ~~travelers checks or money orders~~ *instruments* in this state or that provides such ~~checks or orders~~ *instruments* to others for sale in this state shall ~~either~~ :

(1) ~~Maintain~~ *Make and maintain* a record of the ~~names and addresses of the purchasers of all travelers checks and money orders sold on or after January 1, 1969, to purchasers residing in this state; or indicating all instruments that are sold in this state on or after January 1, 1974, and with respect to such instruments determine from each purchaser whether his address is in this state and make and maintain a record indicating those instruments sold in this state to persons whose address is not in this state; and~~

(2) ~~Maintain a record indicating those travelers checks and money orders that are sold in this state on or after January 1, 1969, and pay to this state the sums that this chapter provides escheat to this state any record with~~

respect to instruments sold before January 1, 1974, in this state from which it can be determined whether the purchaser's address was in this state.

(c) With respect to the record required by paragraph (1) of subdivision (b), proof of the absence of an entry showing that the purchaser's address was not in this state establishes a rebuttable presumption that the purchaser's address was in this state. This presumption is a presumption affecting the burden of proof.

~~(b)~~ **(d) The Any record required to be maintained 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 that 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)~~ **(e) 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.**

Comment. Section 1581 is revised to require the keeping of a record that will satisfy the requirements of *Pennsylvania v. New York*, 407 U.S. 206 (1972). See *Recommendation Relating to Unclaimed Property*, 11 Cal. L. Revision Comm'n Reports 401 (1973).

Section 1581 applies to all "business associations" that sell the types of instruments described in subdivision (a). See Section 1501(c) (defining "business association"). Accordingly, Section 1581 applies not only to banks and similar financial organizations but also to other business associations, such as check sellers and cashers, that sell or provide for sale the instruments described in subdivision (a).

As to the effect of the enactment of federal legislation on the recordkeeping requirement of Section 1581, see Section 1507.

II. Joint Resolution Memorializing the President and the Congress

Assembly Joint Resolution No. 27—Relative to escheat of intangible abandoned property.

WHEREAS, In *Texas v. New Jersey*, 379 U.S. 674 (1965), it was held that (1) the state of the last known address of the owner as shown by the records of the holder may escheat abandoned intangible personal 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; and

WHEREAS, In *Pennsylvania v. New York*, 407 U.S. 206 (1972), it was held that the rules of *Texas v. New Jersey* govern which state may escheat abandoned sums payable on money orders and (by necessary implication) on other similar instruments; 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 of the sums payable on such instruments; and

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

WHEREAS, It is now necessary for each state (other than the state that is the domicile of the issuer) to enact legislation requiring banking and financial organizations and business associations engaged in issuing and selling money orders and travelers checks to make and maintain a record showing the last known address of the purchasers of such instruments in order that the state be entitled to escheat the amounts it is entitled to escheat under *Texas v. New Jersey* and *Pennsylvania v. New York*; and

WHEREAS, Obtaining, maintaining, and retrieving such records often serves no purpose other than to protect the interest of the state in being entitled to escheat abandoned sums payable on such instruments and imposes a significant cost on the holder of the abandoned property; and

WHEREAS, The great majority of the purchasers of money orders and travelers checks reside in the state where such instruments are issued or sold; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation that would provide for the escheat of any abandoned sum payable on a money order, travelers check, or similar written instrument to the state of origin of the transaction wherein such money order, travelers check, or similar written instrument was issued; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.