

# Popovits & Robinson

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## CLIENT ADVISORY

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### **Illinois Uniform Disposition of Unclaimed Property Act (the “Act”)**

#### *What to Report*

The Act requires “business associations” to report all property and any earnings to which the owner would be entitled that have remained unclaimed for 5 years and are therefore presumed abandoned. Business associations are defined as any corporation, joint stock company, business trust, partnership, or any association, limited liability company, or other business entity consisting of one or more persons, whether or not for profit. Property shall consist of, but is not limited to, the following:

- Unclaimed wages;
- Deposits or payment for repair or purchase of goods or services;
- Credit checks or memos, or customer overpayments;
- Stocks, bonds, or any other type of securities or debt instruments, and interest and dividends therefrom;
- Unidentified remittances, unrefunded overcharges;
- Personal Property;
- Unpaid claims, unpaid accounts payable or unpaid commissions; and
- Credit balances – accounts receivables, checks written off, employee bond buying and profit-sharing

Intangible personal property that is distributed in the course of a voluntary dissolution of a business association that is unclaimed by the owner within 2 years after the date of final distribution is also considered abandoned.

Intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has within 5 years after it became payable or distributable indicated an interest in the property with the fiduciary.

#### *Exemptions*

Any property due or owed by a business association to or for the benefit of another business association resulting from a transaction occurring in the normal and ordinary course of business is exempt from the provisions of the Act.

If property is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the property cannot be presumed abandoned in Illinois and subject to the Act if:

- The property may be claimed as abandoned or escheated under the laws of such other state; and
- The laws of such other state have reciprocal provisions that similar property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within Illinois by a holder who is subject to the jurisdiction of Illinois.

In addition, personal property such as travelers checks reportable as unclaimed property before 7/1/73; funds held by any federal, state, or local government or governmental subdivision, agency, entity, officer, or appointee thereof reportable as

unclaimed property before 7/1/81; or any other personal property reportable as unclaimed property before 7/1/85, based upon the presumptive abandonment period in effect on that date, are considered exempt.

### *When to Report*

On an annual basis business associations are required to report unclaimed property to the State Treasurer. The State of Illinois requires the filing of a negative report even if a business association is not holding unclaimed property. The reports are due May 1<sup>st</sup> and should include one year of account activity five years prior to the last calendar year. Example: Report is due May 1, 2008, the report will cover the period of January 1, 2002 – December 31, 2002.

The following are exceptions to reporting requirements:

- Business associations who have no reportable property and annual sales of less than \$500,000, and whose securities are not publicly traded, whose net worth is less than \$1,000,000, and who employ 49 or fewer persons, are not required to file annual reports; and
- Business associations who have no reportable property and annual sales of less than \$500,000, and whose securities are not publicly traded, whose net worth is less than \$1,000,000, and who employ 50 or more people but fewer than 100 persons, are required to file reports in even numbered years.

### *What to Report*

The information needed to complete the report is as follows:

- The name, social security number or federal tax identification number and last known address of each person appearing from the records of the holder to be the owner of any property valued at \$25 or more and presumed abandoned;
- 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; and

- Other information which the State Treasurer prescribes by rule as necessary.

Before reporting and delivering the property, a business association may deduct from the amount of otherwise reportable intangible personal property the economic loss suffered by it in connection with that intangible personal property arising from transactions involving the sale of tangible personal property at retail. The business association may also deduct the costs for communicating with owners.

In addition, the holder of the property presumed abandoned shall send a letter with the following information to the owner at his last known address in order to prevent abandonment from being presumed:

- The name, address, position and telephone number of person to contact;
- Steps required by owner to have holder remit property to owner;
- Steps required by owner to have holder continue to maintain property;
- Statement that if owner's property is remitted to State, the owner and/or heirs may file a claim with the State;
- Statement that State is the perpetual custodian of presumed abandoned property; and
- A date, not less than 15 business days prior to the date the holder will remit the property to the State, by which the owner must contact the holder.

The holder shall communicate with the owner at least 120 days prior to the deadline for filing the annual report. If the owner has not, the owner must mail at least 60 days before the deadline, a letter by first class mail to the owner.

The State can demand that a report be filed if it believes that a person failed to report property.

### *Delivery of Abandon Property*

Every person who has filed a report shall deliver to the State Treasurer all abandoned property specified in such report on the same date the annual report is filed. The State will assume custody and be responsible for such property.

All property delivered to the State will be sold within a reasonable time to the highest bidder at a public sale. Proceeds from the sale are deposited into a trust fund. The State will deposit into the State Pensions Fund any amount exceeding \$2,500,000 from the trust fund.

### *Claiming Property*

Any person claiming an interest in abandoned property or proceeds from the sale of abandoned property must file a claim on the forms prescribed by the State Treasurer.

### *Penalties for Failure to File*

A person who fails to file a report is guilty of a business offense and fined not more than \$500. Each day the report is not filed constitutes a separate offense.