

POLICY GUIDANCE

Reporting Standards for Business Associations General Unclaimed Property Notice Requirement For properties outlined in 72 P.S. §§ 1301.6(2) & (3)

Introduction.

Pennsylvania Treasury, Bureau of Abandoned and Unclaimed Property, issues this Policy Guidance statement to promote consistency by implementing standards in reporting property under Sections 1301.6(2) and 1301.6(3). The core function of the Disposition of Abandoned and Unclaimed Property Law¹ is to protect the property interests of owners of abandoned property and to provide a mechanism for the safe keeping and return of the property to its lawful owner. It is the intention of Treasury to only receive property from holders who have lost actual contact with owners of abandoned and unclaimed property, and not property of a living, passive investor who merely fails to respond to correspondence.

By the Act of July 13, 2016, the Pennsylvania General Assembly amended the Unclaimed Property Law to clearly define the circumstances in which property held by a fiduciary may be deemed abandoned and unclaimed, thereby subject to the custodial care of the Commonwealth. In so doing, the legislature identified specific elements that constitute an account owner's indication of interest in the property and when the fiduciary loses contact with the property owner, both of which are relevant as to determining the obligation of the holder to report the property into the custodial care of the Commonwealth. In addition, the Unclaimed Property Law was also amended to include a

¹ Act of December 9, 1982 (P.L. 1057, No. 248) *as amended*; 72 P.S. § 1301.1 *et seq.*

new section of general application that outlines the requirements for holder-notice that is to be provided to owners prior to reporting the property as abandoned and unclaimed.

Consistent with its consumer protection purpose, it is Treasury's objective to apply the provisions of the Disposition of Abandoned and Unclaimed Property Law in a manner that encourages and facilitates compliance while preserving the property interests of owners. Treasury notes its authority² to exercise its discretion to refuse the acceptance of certain types of unclaimed property and, therefore, will apply the fiduciary amendments and outlined standards to Sections 1301.6(2) and 1301.6(3), effective immediately.

It is Treasury's intention to memorialize this Policy Guidance through a statutory enactment. Questions pertaining to this policy change may be directed to Brian Munley, Treasury's Director for the Bureau of Unclaimed Property at bmunley@patreasury.gov.

² 72 P.S. § 1301.17

Property held by business associations (72 P.S. § 1301.6)

Section 1301.6 states, in relevant part, that the following property held or owing by a business association is presumed abandoned and unclaimed:

...

2. Any certificate of stock or participating right in a business association, for which a certificate has been issued or is issuable but has not been delivered, whenever the owner thereof has not claimed or *indicated an interest* in such property *within three (3) years* after the date prescribed for delivery of the property to the owner.

...

72 P.S. § 1301.6(2)(emphasis added).

Going forward, Treasury will require business associations to satisfy a double threshold before the property in § 1301.6(2) is deemed to be “abandoned and unclaimed.” Accordingly, before any certificate of stock, or participating right in a business association, is considered “unclaimed” and therefore reportable to the Commonwealth, the

- (1) holder must have “lost contact” with the owner for a period of three (3) years;
and
- (2) the owner has expressed no indication of interest or activity for the same three (3) year period.

Only when both of these elements (lost contact and three years of no indication of interest) are met will any certificate of stock, or participating right in a business association, be deemed “unclaimed” and reportable to Treasury’s Bureau of Unclaimed Property.

A. Lost Contact.

Sections 1301.8(b)(1)-(2) and (c) set forth the standard that will be imposed upon business associations for determining the date on which the holder of certificates of stock, or participating rights in a business association, has “lost contact” with its owner. A holder is considered to have lost contact with the owner if a first class mailing that is sent to the owner is returned as “undeliverable.” Section 1301.8 treats owners who select to receive first class mail notices differently from those owners who choose to receive account related communications electronically.³

For owners who have indicated a preference for first class mail, the holder is required to send two consecutive communications to the owner by first class mail. If the second communication is sent later than thirty (30) days after the first communication was returned as “undeliverable,” the holder is deemed to have “lost contact” with the owner on the date on which the first notice is returned as “undeliverable.”

If the owner receives communications regarding their securities via electronic communication, the holder is required to attempt to contact the owner by email, two (2) years following the owner’s last indication of interest in the account. If there is no response to the email within thirty (30) days, or if the email is not successfully delivered (i.e. “bounces back”), the holder is required to contact the owner by first class mail. If the first class mail is returned as “undeliverable,” the holder shall be deemed to have “lost contact” with the owner at the date of the owner’s last indication of interest in the property. For customers who have chosen to receive account information by email, holders are required to attempt to contact the owner via email. However, Treasury would

³ “Account related” refers to communications that concern a particular owner’s account, including, for example, tax statements provided by the holder to an owner. Account related communications do not include those consisting only of generic marketing and promotional materials.

like to emphasize that this is the *minimum* standard, and that nothing prevents the holder from also sending first-class mail, at any time, as a best practice.

For example, if Mr. Smith holds securities in Company A (who has elected not to receive communications by mail), Company A is required to attempt to contact Mr. Smith if he fails to demonstrate any interest in the securities for two years. If Mr. Smith does not receive communications by mail, Company A is required to attempt to contact him by email. If Company A is unsuccessful in establishing contact with Mr. Smith by email (either it bounces back or there is no response), then Company A is directed to contact Mr. Smith by first class mail. If that mail is returned as “undeliverable,” then Company A is deemed to have “lost contact” with Mr. Smith and the three year period of account inactivity begins on the date of last indication of interest – approximately two (2) years ago.

In either case, the converse is also true. The holder is not deemed to have lost contact with the owner if first class mail is not returned as “undeliverable.” Moreover, if at any time during the 3-year period from the initial date of lost contact, the holder conducts due diligence such that it is successful in sending a first class mailing (i.e. the mail is not returned as “undeliverable”), the owner is no longer deemed to have lost contact as of the date of the successful mailing. In either case, the property is therefore not reportable to Treasury. Under all circumstances, the holder is encouraged to reestablish contact with the lost owner and effectuate an owner’s indication of interest in order to re-set the three (3) year inactivity period in the account, thereby preventing the reporting of the property into the custodial care of the Commonwealth. It is the intention

of Treasury to apply Section 1301.8 to business associations in a manner that facilitates and encourages holders of securities to maintain contact with the security owners.

B. No indication of interest.

A certificate of stock, or participating right in a business association, is presumed abandoned and unclaimed if the owner has not claimed or indicated interest in the property within (3) years after the date prescribed for delivery of the property to the owner. 72 P.S. § 1301.6(2). The inclusion of the “indication of interest” standard in Section 1301.6(2) is intended to reduce circumstances in which property of a known owner is remitted into the custodial care of the Commonwealth. It is recognized that many owners pursue a buy-and-hold investment strategy, resulting in minimal account activity. Accordingly, the next step in determining whether securities are deemed abandoned and unclaimed is to ascertain if the owner has indicated an interest in the securities.

The new due diligence requirements outlined here are consistent with federal laws, regulations, and best practices that require financial service providers to “know your customer,” including maintaining an accurate and current customer name, physical address and social security number.⁴ Sections 1301.8(a)(1) and (2) identify a number of ways in which owners have indicated or expressed an “interest” in their property, thereby resetting the three (3) year period that must occur prior to the account being deemed “abandoned and unclaimed.” Only when there has been no indication of interest for three years after the holder has lost contact with the owner, will the property be presumed abandoned and subject to notice and reporting requirements.

⁴ USA Patriot Act, Act of 2001 (P.L. 107-56, 115 Stat 272); *See also* 31 CFR § 1020.220(a)(2)(i) “Customer Identification Program: minimum requirements”

Below is a non-exhaustive list of ways in which owners “indicate interest” and thereby avoid having their property reported as abandoned or unclaimed. For securities held by business associations, the owner may indicate interest by any of the following:

- increasing or decreasing the principal,
- accepting payments of the principal or income,
- initiating a transfer to or from the account,
- logging onto the account’s online site,
- emailing the holder,
- telephoning and speaking with a holder,
- corresponding with the holder, or
- expressing any similar interest in a different financial account or property overseen and held by the same holder, such as a checking account, savings account, credit account or similar financial account of the owner.

Any expression of “interest” by an owner of securities will toll and reset the three (3) year period, thereby preventing the securities from being deemed “abandoned and unclaimed.” Only if there is no owner activity or indication of interest during an entire, uninterrupted three (3) year period, after the holder has “lost contact,” are the reporting provisions of the statute to be implicated.

Notice Requirements (72 P.S. § 1301.10-A)

New Section 1301.10-A applies to all property that has met the threshold to be presumed abandoned and unclaimed. In an effort to prevent the reporting of property that is not truly abandoned or unclaimed, the holder is required to send a final notice to

the owner, not more than one hundred and twenty (120) days nor less than sixty (60) days, prior to the date the property is to be reported to Treasury. The date from which the notice period is measured is April 15th of the year in which the property is due to be reported to Treasury, unless the holder requests and is granted an extension.

This notice is to be sent by the holder if the holder has an address for the owner that records do not show to be inaccurate, and the property is valued at fifty dollars (\$50) or more. Any notice to the owner shall include a description of the property and information necessary to contact the holder in order to prevent the property from being reported to Treasury. In addition to the required notice, any holder may give additional notice at any time between the date of the last owner activity and the date the property is to be transferred to Treasury.⁵

The written or electronic communication to the owner should contain information sufficient to provide notice that there has been a lack of activity on his or her account and that the holder is trying to re-establish contact with the owner to prevent the account being reported to the Commonwealth as unclaimed property.⁶

⁵ 72 P.S. § 1301.10-A(c)

⁶ See 72 P.S. 1301.10-A(b)(1)-(4) (stating that notice should include such information as a description of the property, a description of the ownership, the value of the property, and any information necessary for the owner to contact the holder).