



Online gaming: The call of unclaimed property duties



Introduction and general unclaimed property concepts

The digital revolution has transformed the world of entertainment, with online gaming emerging as a significant player in the industry. As the sector continues to evolve, so too does the regulatory landscape that surrounds it. One of the regulatory areas that gaming companies need to pay close attention to is state unclaimed property compliance as the consequences for being away from keyboard "AFK"¹ regarding this regulatory scheme can be significant.

State unclaimed property laws— Background

State unclaimed property laws, which serve as quasi-tax and quasi-consumer protection statutes, are generally based upon a series of uniform laws, the latest of which is the 2016 Revised Uniform Unclaimed Property Act (RUUPA)². These state unclaimed property laws (“UPL”) set forth the types of transactions that can be considered unclaimed property (“UP”) as well as the various compliance requirements to which businesses must adhere. Note that for purposes of this discussion, on-line gaming differs from on-line “gambling.” On-line gambling typically involves betting on a random event with the hope that a reward results if the random event occurs. Many states may have specific laws outside their UPL, which pertains to on-line gambling and unclaimed winnings. On the other hand, on-line gaming is, for the most part, intended to refer to the playing of video games over the internet, either with other players or alone.

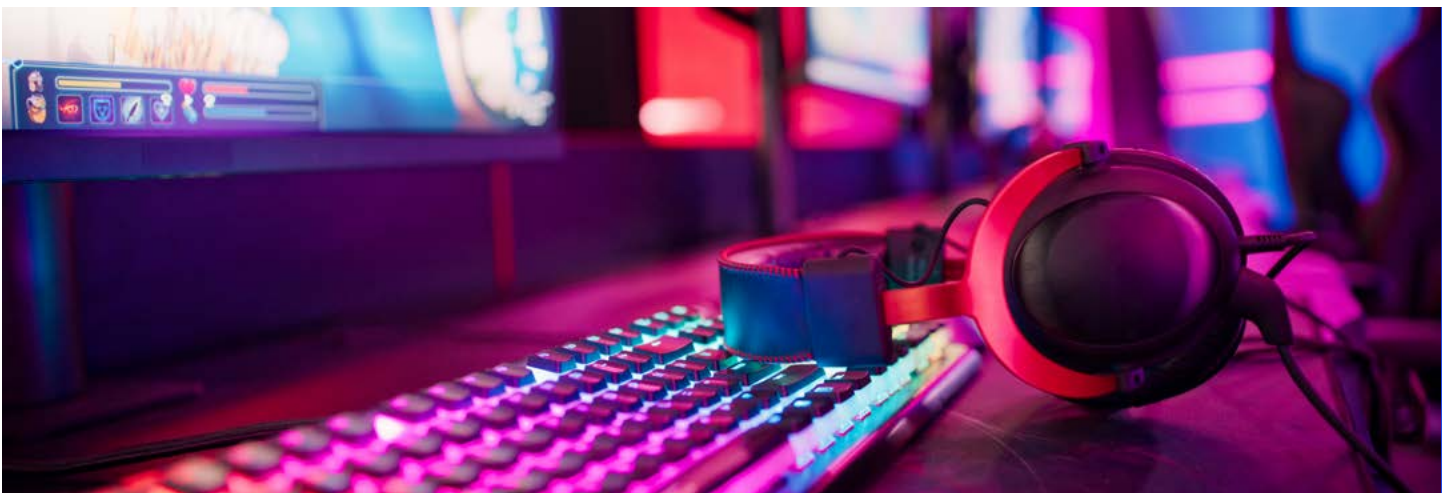
On-line gaming products have various characteristics that overlap with other types of property and transactions that are covered under state UPLs. Often, gaming products include the use of “tokens,” “coins” or “gems,” etc. to facilitate consumer interaction. The characteristics of these items are similar to certain other types of property which may be covered in state UPLs, including stored value cards (“SVC”), gift cards (“GIC”), virtual currencies (“VC”), and game-related digital content (“GRDC”). Consider that like tokens, gems, and coins, property such as SVCs and GCs have electronically stored value and that can be used

for designated purposes. Further, note that often state unclaimed property statutes include a broad “catchall” provision which covers property that is not specifically mentioned in other sections of the UPL. Sample definitions and attributes from the 2016 RUUPA and some general, pertinent unclaimed property concepts are below:

- Game-related Digital Content (“GRDC”): According to the RUUPA, game-related digital content is content that exists only within an electronic game or electronic-game platform. This includes:
 - (i) game-play currency such as a virtual wallet, even if denominated in United States currency; and
 - (ii) the following if for use or redemption only within the game or platform or another electronic game or electronic-game platform:
 - 1) points sometimes referred to as gems, tokens, gold, and other names; and
 - 2) digital codes.³

The second part of the RUUPA’s GRDC definition provides that GRDC does not include an item that the issuer either:

- 1) permits to be redeemed for use outside a game or platform for money or goods or services that have more than minimal value; or
- 2) otherwise monetizes for use outside a game or platform.²



GRDC may also have features that overlap with other property types covered under the UPLs:

Gift Cards: A form of stored value card, redeemable for merchandise, goods, or services and that may not be redeemed for money or monetized by the issuer.

Under the RUUPA, a gift card is a stored-value card, the value of which does not expire; that may be decreased in value only by redemption for merchandise, goods, or services; and that, unless required by law, may not be redeemed for or converted into money or otherwise monetized by the issuer⁴;

Stored Value Cards: A 'record' (including electronic records) evidencing a promise made for consideration by the seller or issuer that goods, services, or money will be provided to the owner of the record for the value or amount shown in the record.

The RUUPA defines a stored value card as a record evidencing a promise made for consideration by the seller or issuer of the record that goods, services, or money will be provided to the owner of the record to the value or amount shown in the record. The term: (A) includes: (i) a record that contains or consists of a microprocessor chip, magnetic strip, or other means for the storage of information, which is prefunded and whose value or amount is decreased on each use and increased by payment of additional consideration; and (ii) a gift card and payroll card; and (B) does not include a loyalty card, or game-related digital content.⁵

Virtual Currency: Digital representations of value used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the US.

The RUUPA defines "Virtual currency" as "a digital representation of value used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States. The term does not include: (A) the software or protocols governing the transfer of the digital representation of value; (B) game-related digital content; or (C) a loyalty card[or gift card]."⁶

Catch-All Property: All other types of property and transactions not specifically enumerated in the UPL for which a company has an obligation to pay or distribute to an owner, or for which an owner has a right to demand from the holder.

The catchall provision in the RUUPA states, "property not specified in this section or Section 202 through [207][208], the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises."⁷

Further, for property to be considered unclaimed property it must be “due and owing” and payable or distributable. For the most part, property is “due and owing” when there is a debt owed to someone other than the person or entity that holds the property. If an offer is made by one party to buy a chair but that offer is never accepted by the party selling the chair then there is nothing “due and owing”. Further, property is generally considered payable and distributable if it can be paid to an owner. Consider that if an agreement is made by party “a” to pay funds to party “b” on a particular date and that date has not yet arrived, there is no property payable or distributable to “b”. Lastly, determining which state law applies to a balance or transaction is governed by a series of United States

Supreme Court (“USSC”) decisions. Generally, these USSC decisions indicate that the state of the last known address of the owner, as reflected in the business’ records, control which state UPL applies and where property will be reported and remitted. However, these decisions also provide that if there is no address for the owner in the holder’s records then the law of the state of domicile or incorporation of the business applies⁸. Further, property owed to an owner with a last known address outside of the United States is generally reported to a holder’s state of corporate domicile. This jurisdictional reporting scheme means that a company may have an unclaimed property reporting obligation in states where it does not have a physical location or operations.



Application of unclaimed property laws: Requirements to online gaming

The 2016 RUUPA, which as of August, 2024 has been adopted by 12 states and the District of Columbia⁹, specifically defines game-related digital content in the matter noted above and excludes it from the definition of “Property” under the Act. However, the exclusion does not apply if the issuer (or gaming company) permits the tokens, gems, etc., to be redeemed for use outside a game or platform for money, goods, or services that have more than minimal value, or otherwise monetizes for use outside a game or platform.¹⁰ Such redemptions outside the platform therefore could trigger multi-state compliance obligations for unused balances.

The inclusion of game-related digital content (“GRDC”) language from the RUUPA in the statutes of states like Illinois¹¹ and Washington¹² offers a distinct advantage for gaming companies. If the digital content related to the game stays within the game’s environment and can’t be redeemed outside the game platform, then gaming companies can leverage this as an exclusion from the unclaimed property law for content belonging to players who have addresses in states that include this unclaimed property law exclusion (or if addresses are unknown and they are domiciled in these jurisdictions). However, the landscape changes when GRDC gains value outside the game, potentially placing it within the realm of escheatment under unclaimed property laws, either because the exclusion no longer applies and/or because the property type is subject to treatment as another transaction type under the Act.

Further, note that for states that have not adopted the specific game-related digital content exclusion or do not otherwise specifically define this type of property within their statutes, there’s a potential argument that GRDC could be considered unclaimed property under the broad catch-all provisions in these states’ unclaimed property laws¹³. In addition, if the property cannot be classified as GRDC, it is possible that the property may be considered another property type that is covered under state unclaimed property laws, i.e., gift cards, stored value cards, virtual currency, or a credit balance on account. For

example, under the Idaho unclaimed property law, if the property could be construed as a stored value card it could be reportable unclaimed property with a 5-year dormancy period.¹⁴ Also, it is important to note that, if the gaming platform permits the player to create an account where money can be held for purchase of game tokens, rewards, etc., and the money is unused in those accounts, the unclaimed and unused funds in these accounts may be considered as unclaimed property under state UPLs.

Once it has been determined that GRDC or property in game player accounts represent unclaimed property, there are several compliance obligations that businesses holding such property must consider. First, the business should consider whether address information is available. As noted above, this information determines which state unclaimed property law applies to the property. When the appropriate state law has been identified then the business holding the property must follow the property definitions/ classifications, dormancy periods (usually 3 or 5 years from the last owner activity date) and owner outreach requirements provided in that state law. Owner outreach prescribed by state laws is often a first class mailing and/or an electronic communication to the last known address for the owner/player in the business’ records.

Next, if the dormancy period for the property has run and the business has performed the owner outreach due diligence, any property unresolved from the outreach must be valued. If the property in question is not money in a player account for use in purchasing game tokens but is actual game tokens, gems, and points, the question remains as to how should it be valued in dollars, which is required for remittance to a state. If some form of valuation has been made from a balance sheet perspective for liability purposes, this valuation could be used to provide a value for a single point, token or gem as part of a broader valuation study and used for unclaimed property compliance purposes. Once the business determines the property’s valuation, a report must be prepared and a remittance made according to state specifications.

The non-compliance risks

Non-compliance with state unclaimed property laws has substantial risks for companies. First, is the audit risk. In recent years, there has been an increase in state enforcement actions such as multi-state unclaimed property audits, compliance reviews, and state inquiries. Enforcement actions can drain a business' resources due to the time and resources necessary to be compliant with auditor information demands and review. An audit can span 3 or more years and often involves extensive requests for records that date back 10 or more years prior.

Further, the interest and penalties that can be levied for non-compliance can be significant. Some states, like California, mandate in statute a specific interest rate that must be charged.¹⁵ The penalties and interest assessed can total more than the actual property that is past due for reporting due to complex estimation techniques that may be applied when records are not available for all property in the audit scope¹⁶.

Finally, not complying or incomplete compliance with unclaimed property laws can trigger litigation risk. State False Claim Acts permit state officials and whistleblowers to initiate court action against allegedly non-compliant businesses. Often, False Claims Acts permit a plaintiff to be awarded "treble" damages if they are successful in the lawsuit. In recent years, there have been qui tam or whistleblower lawsuits in which the plaintiffs allege the business defendant had an intent to circumvent state law by not reporting certain unclaimed property. In one notable lawsuit, in the Delaware Superior court, the state won a verdict requiring the business to pay damages of \$7.3 million dollars.¹⁷



Conclusion

In summary, the world of online gaming is not exempt from the reach of unclaimed property laws. Gaming companies need to become familiar with these laws and comprehend how the points (gems, tokens, gold, and similar names) and digital codes associated with their game player accounts are earned and redeemed, and ensure they are in compliance to avoid potential pitfalls and legal implications. As the industry continues to grow and evolve, so too will the need for robust compliance strategies and a deep understanding of the unclaimed property regulatory landscape. If a company finds itself out of compliance with unclaimed property reporting requirements, options may be available to clean up compliance with a mitigation of audit, penalty, and interest risks, which should be explored.

Footnotes:

¹ “AFK” is slang used by gamers to mean “away from keyboard.”

² The 2016 Revised Uniform Unclaimed Property Act, adopted by the Uniform Law Commission in July, 2016. As of May, 2024, about 13 states and the District of Columbia have adopted some form of the RUUPA as the state’s unclaimed property law.

See [Final Act with Comments Revised Uniform Unclaimed Property Act_2016](#)

<https://www.uniformlaws.org/viewdocument/final-act-148?CommunityKey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa>

³ Id. at Section 102 (10)

⁴ Id. at Section 102 (11)

⁵ Id. at Section 102 (29) Note that the RUUPA leaves open the option for a state to exclude “gift cards” specifically from the definition of a stored value card when and if they adopt the RUUPA.

⁶ Id at Section 102 (32)

⁷ Id at Section 201 (13)

⁸ *Texas v. New Jersey*, 379 US 674 (1965); *Delaware v. New York*, 507 US 490 (1993)

⁹ Uniform Law Commission RUUPA bill tracking web page (as seen on 8/5/2024), [Unclaimed Property Act, Revised—Uniform Law Commission \(uniformlaws.org\)](#) (Note, however, while not a state that has adopted the 2016 RUUPA, Nevada has adopted a similar definition of “game-related digital content” in its unclaimed property statute and excludes it from the definition of “property”: Nev. Rev. Stat. Ann. § 120A.075 and 120A.113)

¹⁰ 2016 RUUPA, Section 102 (10)

¹¹ 765 Ill. Comp. Stat. Ann. 1026/15-102 (10)

¹² Wash. Rev. Code Ann. § 63.30.010 (10)

¹³ For example, the “catchall” provision in New Jersey’s law is, “Except as otherwise provided by this chapter, all property, including any income or increment derived therefrom, less any lawful charges, whether located in this State or another state, that is held, issued, owing in the ordinary course of a holder’s business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.” N.J. Stat. Ann. § 46:30B-7 (in pertinent part).

¹⁴ Idaho Code Ann. § 14-5-206

¹⁵ “...any person who fails to report, pay, or deliver unclaimed property within the time prescribed by this chapter, unless that failure is due to reasonable cause, shall pay to the Controller interest at the rate of 12 percent per annum on that property or the value thereof from the date the property should have been reported paid, or delivered.” Cal. Civ. Proc. Code § 1577 (a) (in pertinent part)

¹⁶ See *Temple-Inland, Inc. v. Cook*, 192 F. Supp. 3d 527 (D. Del. 2016)

¹⁷ *Overstock.com, Inc. v. The State of Delaware ex. rel. French*, C.A. No. N13C-06-289 (Del. Super. Ct. June 24, 2020) Note, that on appeal to the Delaware Supreme Court the verdict in favor of Delaware was reversed due to an incorrect instruction to the jury relating a matter of law under the Delaware False Claims Act prior to its later being amended.

Contact us



William King
Principal, Tax
Unclaimed Property Services
KPMG LLP
T: 214-840-6107
E: williamking@kpmg.com



Marion Acord
Managing Director, Tax
Unclaimed Property Services
KPMG LLP
T: 404-222-3053
E: mvacord@kpmg.com



Karen Anderson
Director, Tax
Unclaimed Property Services
KPMG LLP
T: 303-382-7020
E: karenanderson@kpmg.com



Ryan Hagerty
Managing Director, Tax
Unclaimed Property Services
KPMG LLP
T: 267-256-3389
E: rhagerty@kpmg.com



Keela Ross
Managing Director, Tax
Unclaimed Property Services
KPMG LLP
T: 972-532-5316
E: keelaross@kpmg.com



Jamie Lynne Aquino
Senior Manager, Tax
Unclaimed Property Services
KPMG LLP
T: 213-817-3261
E: jamielynneaquino@kpmg.com



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