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This Week in State Tax (TWIST)

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Florida: Significant Unclaimed Property Law Changes Enacted

On May 2, 2024, Florida Governor Ron DeSantis signed House Bill 989 into law, which makes significant changes to Florida's unclaimed property code. Many of the new and revised provisions took effect immediately upon the Governor's approval. The bill modified numerous provisions, such as including virtual currency under the statute's purview and using the owner's death to accelerate dormancy periods.

Owner Contact Standard Clarified and Securities Dormancy Triggers Modified: House Bill 989 introduces provisions that define an owner's electronic contact as an "expression of interest," effectively delaying the start of the dormancy period. The bill further includes a definition of "record" that encompasses information stored in an electronic medium. It stipulates that a record related to the property, communicated by the owner to a business holding the property (holder), is considered an expression of owner interest.

Furthermore, the bill modifies the dormancy trigger for securities by removing the "returned from post office" (RPO) mailing component and introducing death as one of the triggers. To clarify, the previous law used the earlier of owner inactivity or RPO as triggers. The revised law now determines the triggers as the earlier of owner inactivity or death.

Dormancy Periods Accelerated Upon Death: Two Provisions—General and Securities: The legislation introduces a provision applicable to all covered property types that may accelerate the dormancy period if the owner is deceased. More specifically, if the holder learns of or receives confirmation of an owner's death, the property is presumed unclaimed two years after the date of death. However, an exception is made if a fiduciary, appointed to represent the owner's estate, expresses interest in the property before the end of this two-year period.

Also, the revised law includes a special provision for securities that accelerates the dormancy period upon the owner's death. If the holder receives a death certificate, a notice of death from an administrator, beneficiary, relative, trustee or personal representative of the owner, or any other evidence from which the holder can reasonably conclude the owner is deceased, the dormancy period is triggered three years after the date of the death of the owner. Alternatively, if such notice or evidence is received within two years of the owner's death, the dormancy period is shortened to one year after the date on which the owner receives the notice, so long as it is received two years or less after the owner's death and the holder lacked knowledge of the owner's death during that period.

Due Diligence Requirements Enhanced: State laws generally mandate that holders notify owners before reporting, in an attempt to prevent the property's transfer to the state. These statutory notices, known as "due diligence," typically follow a prescribed method and timeline. Effective January 1, 2025, House Bill 989 expands the definition of due diligence to include email. The revised provisions will allow email notices as an alternative to United States Postal Service (USPS) notices, provided the owner has elected to receive notices in this manner. Effective January 1, 2025, the legislation also modifies the content requirements for due diligence notices. The new requirements, similar to those in the 2016 Revised Uniform Unclaimed Property Act ("RUUPA"), include specific header language for the notice, a statement indicating that if the property

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isn't legal tender of the United States, it may be sold or liquidated by the state, a statement confirming that the property is currently with the holder, and instructions on how to prevent the holder from reporting and paying the property to the state.

Record Retention and Statute of Limitations Expanded: Similar to other states, the legislation extends the record retention period from five years to ten years after the property becomes reportable. This change aligns with the statute of limitations set at ten years after the duty arose. However, the bill clarifies that the statute of limitations is tolled by the either the delivery of an audit notice by the Florida Department of Financial Services or their audit agent, or the holder's written election to enter into an unclaimed property voluntary disclosure agreement with the state.

Aggregate Reporting Limit Lowered: Many states permit items of the same property type valued below a certain threshold (aggregate limit) to be combined and reported "in the aggregate". Prior to the enactment of House Bill 989, Florida's aggregate limit was $50. House Bill 989 reduces this limit to $10 beginning January 1, 2025.

Audit Records Request Authorization Broadened and Other Enforcement Measures Outlined: The legislation has expanded the state's authority to request and review records from a holder or their agent/affiliate/representative during an unclaimed property audit. The updated unclaimed property law now permits the state to request records to "verify the completeness or accuracy of the records provided, even if such records may not identify property reportable to the department." In addition, House Bill 989 enhances the state's authority to request verified unclaimed property reports and conduct unclaimed property compliance reviews.

Virtual Currency Covered and Requirements Set: Consistent with recent state trends, House Bill 989 incorporates "virtual currency" into the definition of "intangible property" and outlines its unclaimed property treatment. The revised law assigns a five-year dormancy period to virtual currency, triggered by lack of owner communication and mandates liquidation within thirty days before the holder files the unclaimed property report. Furthermore, the revised law states that: "Upon delivery of the virtual currency proceeds to the department, the holder is relieved of all liability of every kind in accordance with the provisions of s. 717.1201 to every person for any losses or damages resulting to the person by the delivery to the department of the virtual currency proceeds."

Conclusion: The above summary highlights the more significant statutory revisions. For more information about these and other revisions, their implementation, and the potential impacts for your organization's compliance, please contact Will King, Marion Acord, or Ryan Hagerty with KPMG's National Unclaimed Property Team

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