CHAPTER 1

Four Myths of Unclaimed Property

Myth 1: "We Don't Have Unclaimed Property."

All companies have unclaimed property. If your company writes checks; issues gift certificates or gift cards; writes employee expense reimbursement checks; or issues vendor credits; you have unclaimed property. If you write checks, you have unclaimed property until every single one is cashed. If you issue credits in your accounting system, you have unclaimed property until every credit is used. Since *unclaimed property* is generally defined as *tangible or intangible property that has gone unclaimed by its rightful owner,* every check, vendor credit, gift certificate, and payroll electronic transfer is unclaimed property until it is cashed, offset, redeemed, or accepted into a valid account. *Every business has unclaimed property.* This book will help you answer the important question: *"Is my outstanding unclaimed property reportable to any state unclaimed property office?"*

Myth 2: "Unclaimed Property Compliance is Voluntary."

Unclaimed property compliance is *mandatory* in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. Several other countries also have unclaimed property laws (see Chapter 9, Foreign Unclaimed Property Laws). Compliance does not just mean you are reporting the unclaimed property that you know you have. Compliance, in some states, means that you are filing a report telling the states that you have *no* unclaimed property that is reportable that year. Several states, such as Ohio, require that every business that is registered to do business in that state file an unclaimed property report *every year,* even if they have no property to turn over for that period. This is called a *negative report* or a *zero report.* Not every type of business is required to report unclaimed property in all of the U.S. states and territories, but all of these governing bodies are collecting unclaimed property from *some* businesses. For example, the escheat laws in Guam only govern dormant bank accounts, but every bank that does business in Guam or has customers with a last known address of record in Guam could be subject to reporting unclaimed property to that territory. I will help you pinpoint all of the areas where your company is required to file unclaimed property reports in this book.

Myth 3: "If I Don't Have Records, the Auditor Can't Determine Any Unclaimed Property Liability for My Company."

In the absence of records, auditors are permitted to use estimation techniques to determine a holder's unclaimed property liability. Many of my clients have historically followed the federal government's seven-year tax record retention policy for all of their financial records. For unclaimed property purposes, this gets them into a heap of trouble. Unclaimed Property is not a tax. It is a *property law.* As such, it is generally *not* subject to any statute of limitations. Only a few states provide for any statute of limitations, and even then the statute only applies if the holder properly reported to the correct government agency in a timely manner. The typical unclaimed property audit covers a period of ten to fifteen years, which is much longer than the federal government's tax record retention period. If a holder, like most businesses, does not have financial records for the entire audit period, auditors use the most current records to project what the old records *might* have looked like. If your company has had recent periods of growth, but was smaller 15 years ago, today's records are going to produce a much inflated picture of what your historic unclaimed property reporting liability actually was. There are several ways to estimate your unclaimed property in the absence of actual records, and you can negotiate with auditors to use the projection method most beneficial to your company's situation. We will discuss how to handle your records (or lack of them) later in Chapter 4.

Myth 4: "I Am Only Liable for Reporting Unclaimed Property to States Where I Conduct Business (i.e., Have Nexus)."

Unclaimed property is *not a tax!* There is no nexus requirement for your company to be subject to unclaimed property reporting. The U.S. Supreme Court has laid out the reporting pecking order for unclaimed property, and it has absolutely nothing to do with where your company is doing business. If you have an address in your records, then the last known address of the property's owner determines where it must be reported. Where your company is incorporated plays a part, but only if you do not have addresses for the true owner of the escheatable property. As companies do not always do business in the states where they are incorporated (i.e., Delaware), nexus can have absolutely NOTHING to do with your unclaimed property reporting obligations. We will address how you can get a handle on your unclaimed property reporting obligations in Chapter 6.

Why all the fuss about unclaimed property? As of 2005, a total of $20 billion worth of unclaimed property was in state coffers, and only about 20% of that money is ever returned to the true owners. This means that the states get both the benefit of interest earned on the assets being held and, in some cases, the actual escheated property after a period of years. Unclaimed property is the fastest growing source of state revenue—and it's increasing 20% per year!

The country's state unclaimed property administrators estimate that only 10% to 20% of U.S. businesses currently comply with escheat laws. That leaves 80% to 90% either unaware of their reporting obligations or too overwhelmed by the process of coming into compliance to know where to begin. First-time audits of previously noncompliant companies typically reach back a minimum of 10 years, but some reach back as far as 20 years. In most states, there is no statute of limitations for unclaimed property compliance. Filing a negative or zero report does NOT start any statute of limitations running to limit your company's exposure. You may think, for example, that you are safe from audits because you are compliant with the unclaimed property laws in your incorporation state, but do not count on it! States are joining forces and sending audit teams all over the country with the authority to audit on behalf of multiple states. Many states are signing contracts with third-party audit firms that do not get paid their 10% to 15% unless they find unclaimed property owing to any of the 31 states with which they have agreements. And your audit threat is not limited to being fingered by a state auditor. States have passed "whistle-blower" laws to encourage individuals with knowledge of a company's noncompliance to come forward and share the wealth. A whistle-blower typically gets 10% of what the state collects in an unclaimed property audit as a reward. If you have any disgruntled ex-employees, or current employees who want to retire early on your dime, you need to get into unclaimed property compliance.

Keeping track of the unclaimed property compliance is a full-time job for most businesses. There is currently no uniform set of laws that apply to all states; each state, district, or territory has its own laws, which amounts to 54 different jurisdictions, including all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands! Do you have time to keep track of the legislative changes every year? Do you have the resources to assign this task to someone in your organization?

When state revenues go down, unclaimed property audit efforts go up. Every company registered to do business will eventually be contacted for an unclaimed property audit, but early preparation can make all the difference in what that audit ultimately costs. While many businesses make decisions for their company's future based on tax laws, very few, if any, plan their growth around unclaimed property laws—nor should they. This book is meant to help businesspeople understand what unclaimed property is, how the escheat laws apply to their particular circumstances, and how they can bring their enterprises into compliance with the least amount of manpower and cash outlay possible. You *can* comply with unclaimed property laws without going either crazy or bankrupt, and I will show you how.