



Unclaimed Property ADVISORY ■

AUGUST 23, 2022

California Dreaming No More: California's Voluntary Compliance Program May Finally Be a Reality

On August 17, 2022, the California legislature passed Assembly Bill 2280 (AB 2280) that, if signed into law by Governor Gavin Newsom as expected, would establish the California Voluntary Compliance Program (VCP) for unclaimed property holders. Notably (or infamously), California is one of the only states where there is no voluntary compliance or similar program for holders to report past-due unclaimed property. Under AB 2280, current Section 1577.5 of the California Code of Civil Procedure would be repealed, and provisions creating the VCP would be added as a new Section 1577.5 with the significant benefit that the controller would be *required* to waive interest if the holder complies with the program's provisions.

Under the current California Unclaimed Property Law (UPL), holders are subject to 12% interest on late reported and delivered property, unless the failure to timely report and deliver is due to "reasonable cause." The State Controller's Office (SCO) automatically generates interest assessments on past-due property, and holders must plead their cases for a waiver, citing "reasonable cause" grounds for the SCO's withdrawal of an interest assessment (e.g., the failure to report was due to circumstances beyond the holder's control). A \$10,000 interest cap is provided if a holder timely delivers the unclaimed property but the report is not in substantial compliance (this would not apply to most reports containing past-due property).

Under the VCP, a holder would be ineligible to participate in the program if the holder (1) is the subject of an examination of records (or has received notification of an impending examination); (2) is the subject of a civil or criminal prosecution involving compliance with the UPL; (3) has been notified of an interest assessment under Section 1577 in the past five years that has remained unpaid; or (4) has had interest waived by the SCO within the previous five years via participation in the VCP (AB 2280 was amended by the Assembly to clarify that only VCP-related waivers within the last five years would render a holder ineligible). AB 2280 does allow a holder that currently has an unpaid interest assessment to either refile or reenroll in the VCP after resolving the interest assessment.

AB 2280 also provides that if a holder acquired or merged with another entity within a five-year period, the holder may request to enroll in the VCP to resolve unclaimed property issues relating to the acquired entity, even if the holder (or such acquired entity) had interest waived by the SCO within the previous five years.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

As we indicated in our [original advisory](#) reviewing AB 2280 when it was introduced, the bill is overly restrictive in that it prohibits participation in the VCP by holders that have an outstanding interest assessment, including one subject to ongoing SCO review of the holder's abatement request. The Assembly's amendment did not address this particular concern. AB 2280 would appear to preclude a holder from resolving ongoing interest assessment issues with the SCO via the VCP program, which is an unfortunate restriction. That said, the new Section 1577.5 allows the SCO "discretion" to enroll "eligible holders in the program," and AB 2280 authorizes the SCO to adopt guidelines that establish specific procedures of the VCP. It is possible that such guidelines could address the ability of holders with pending interest abatement requests to enter the VCP.

In order for an eligible holder to enter into the VCP and qualify for the interest waiver, a holder must:

- Enroll and participate in an "educational training program" provided by the SCO within three months of the SCO notifying the holder of the holder's enrollment in the VCP. Note that AB 2280 does not specify whether this requirement only applies to first-time filers of unclaimed property or to all holders.
- Undertake a review of its books and records for "at least" the past 10 report years (typically, 13 transaction years).
- "Make reasonable efforts" to notify owners by mail or electronically in accordance with the procedures established by the UPL.
- Report past-due property within six months of being enrolled in the VCP (unless extended by the SCO; the SCO has the authority to extend the reporting date for no more than 18 months after the enrollment date).
- Remit the property in accordance with the statutory remittance timeline (i.e., between seven months and seven months and 15 days after the report is received by the SCO). Note that the bill allows the SCO to reinstate interest if a holder fails to pay or deliver the property identified in the unclaimed property report.

The presumptive enactment of the VCP signals another step in California's recent focus on unclaimed property compliance that began with Assembly Bill 466 (AB 466), which became effective January 1, 2022. AB 466 amended Section 19554 of the California Revenue and Taxation Code to require companies filing California franchise tax returns to disclose information about previous unclaimed property report filings to the Franchise Tax Board (FTB). Specifically, companies must now disclose the date their last unclaimed property report was filed and the amount remitted on that report.

Section 19554 also authorizes the FTB to share this disclosed information with the SCO. With the enactment of AB 466, California has made avoiding unclaimed property reporting obligations much more difficult for companies through the information sharing between the FTB and SCO. With the presumptive enactment of the VCP, the VCP becomes the carrot to UPL compliance, which the state is betting is more palatable for companies than the stick of increased examinations and possible litigation.

Companies should also be aware that the VCP may save them from the threat of litigation for failing to comply with the UPL. Recently, the California Department of Justice has focused on companies' unclaimed property compliance (or lack of compliance) efforts. In March 2022, the California attorney general intervened in a California False Claims Act (CFCA) lawsuit alleging unclaimed property noncompliance, *People of the State of*

California, ex rel. Andrew Nguyen v. U.S. Healthworks, Inc., No. BC 698811 (Cal. Super. Ct. Cty. of Los Angeles). Using bold language such as “corporate evasion is corporate fraud,” the California attorney general’s [press release](#) alleges that a company “violated the CFCA when it chose not to report its unclaimed property holdings, thereby knowingly concealing millions of dollars due to the State of California.” With the state’s recent focus on unclaimed property compliance, the VCP offers qualifying holders an opportunity to become compliant with the UPL using the VCP and to avoid the cost of litigation.

Even with the welcome news of AB 2280 establishing a VCP, uncertainties remain. The bill does not provide an implementation date for the VCP, so in the short term, holders cannot rely on the VCP for interest abatement. Relatedly, new Section 1577.5 does not require the SCO to adopt the VCP, stating “the Controller *may* establish a program for the voluntary compliance of holders for the purpose of resolving unclaimed property” (emphasis added). While we expect the SCO to establish the VCP, it may not be on the SCO’s list of top priorities, so the program’s full implementation may take longer than holders would prefer.

Nonetheless, AB 2280 is a welcome development, as the VCP would provide holders of unclaimed property in California (possibly 1.3 million of them) the opportunity to clean up past-due unclaimed property without being subject to onerous interest impositions, examinations, and litigation. For the holder community, which has long dreamed of a VCP in California, AB 2280 is poised to make holders’ dreams a reality, albeit possibly delayed.

You can subscribe to future *Unclaimed Property* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

Alston & Bird offers clients unparalleled experience dealing with issues involving state unclaimed property/escheat laws. Our five senior attorneys with unclaimed property experience together have more than 85 years of experience advising major corporations on unclaimed property matters. We assist our clients in analyzing complex legal issues, obtaining legal opinions, conducting multistate/multi-entity internal compliance reviews, designing corporate compliance policies, advising clients on planning and related restructurings, negotiating voluntary disclosure agreements, defending single-state and multistate audits, litigating unclaimed property issues, and influencing unclaimed property policy and administration.

Click [here](#) for Alston & Bird's Tax Blog

Please direct any questions to the following members of Alston & Bird's Unclaimed Property Group:

John L. Coalson, Jr.
404.881.7482
john.coalson@alston.com

Joshua A. Labat
212.210.9569
josh.labat@alston.com

Kathleen S. Cornett
404.881.4445
kathleen.cornett@alston.com

Maryann H. Luongo
202.239.3675
maryann.luongo@alston.com

Daniel Dubin
213.576.1156
daniel.dubin@alston.com

Ethan D. Millar
213.293.7258
ethan.millar@alston.com

Michael M. Giovannini
704.444.1189
michael.giovannini@alston.com

Amy Nogid
212.210.9413
amy.nogid@alston.com

Matthew P. Hedstrom
212.210.9533
matt.hedstrom@alston.com

Tiffany Li Qu
404.881.7272
tiffany.li.qu@alston.com

Kendall L. Houghton
202.239.3673
kendall.houghton@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2022

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
 BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
 BRUSSELS: Rue Guimard 9 et Rue du Commerce 87 ■ 3rd Floor ■ 1000 Brussels ■ Brussels, 1000, BE ■ +32.2.550.3700 ■ Fax: +32.2.550.3719
 CHARLOTTE: One South at The Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
 DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
 FORT WORTH: Bank of America Tower ■ 301 Commerce ■ Suite 3635 ■ Fort Worth, Texas, USA, 76102 ■ 214.922.3400 ■ Fax: 214.922.3899
 LONDON: 4th Floor, Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
 NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
 RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
 SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
 SILICON VALLEY: 1950 University Avenue ■ Suite 430 ■ East Palo Alto, California, USA 94303 ■ 650.838.2000 ■ Fax: 650.838.2001
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333