



Unclaimed Property ADVISORY ■

MARCH 1, 2016

U.S. Supreme Court Denies Petitioners' Writ of Certiorari in *Taylor v. Yee*

On February 29, 2016, the U.S. Supreme Court denied the writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit in *Taylor v. Yee*, 780 F.3d 928 (9th Cir. 2015). The case involves a 13-year litigation over California's Unclaimed Property Law (UPL), which authorizes the state to escheat and liquidate unclaimed property, including unclaimed securities. Although the Court denied the writ of certiorari, Justice Samuel Alito's concurrence denying certiorari signals the Court's growing concerns over the constitutionality of current state escheat laws.

The Petition

On August 5, 2015, Chris Lusby Taylor and others filed a petition for a writ of certiorari asking the Court to reverse the Ninth Circuit's decision, which rejected the petitioners' claim that the UPL violated the Due Process Clause of the Fourteenth Amendment by failing to provide constitutionally adequate notice to owners of unclaimed securities to be escheated, and by failing to take adequate steps to locate and notify property owners before liquidating their property. In particular, the petitioners argued that the UPL violates due process because it does not provide adequate individualized notification that property may be escheated by utilizing records and databases readily available to the state trying to locate the owner, but rather relies on written notices to addresses that the state knows are no longer valid and generic newspaper publications. In addition, in light of *Horne v. Department of Agriculture*, 135 S. Ct 2419, 2428 (June 22, 2015), the petitioners asked the Court to vacate and remand the Ninth Circuit's decision on the separate basis that the Ninth Circuit applied the incorrect legal standard by failing to review California's unclaimed property scheme under the Takings Clause of the Fifth Amendment. In particular, the petitioners alleged that California's practice of liquidating the securities after seizing them, and paying only the proceeds of the liquidation rather than their current value, is an unconstitutional taking without just compensation.

Amicus Curiae Briefs in Support of Petitioners

On September 8, 2015, the Unclaimed Property Professionals Organization (UPPO), Shareholder Services Association (SSA) and Securities Transfer Association (STA) moved to file amicus curiae briefs in support of the petitioners.

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.

In its amicus brief, UPPO argued that the issues raised in the petition are not limited to California's UPL, but are implicated by the unclaimed property laws of many states because those state laws contain notice and compensation provisions similar to or less adequate than those adopted by California. In particular, UPPO argued that if the Court did not clarify what constitutes constitutionally adequate notice before a state may seize and liquidate an owner's property under the state's unclaimed property laws, as well as what constitutes just compensation to owners as a result of such liquidation, the effects of the Ninth Circuit's decision would be felt across the nation as well as outside the country (since states escheat property owned by foreign persons) and result in significant loss to property owners—particularly securities.

Similarly, in their amicus brief, the SSA and STA urged the Court to grant the petition and to provide clear, unambiguous standards regarding the state's escheatment and liquidation of securities. The SSA and STA argued that if the Ninth Circuit's decision is allowed to stand, California and other states that rely on unclaimed property as a revenue source will continue to prioritize revenue over reuniting owners with their property.

Alito's Concurrence Denying Petitioners' Writ of Certiorari

The Court ultimately denied the petitioners' petition for writ of certiorari, with Justice Alito writing a concurring opinion. In his concurrence, Justice Alito reiterated that the Due Process Clause requires states to give adequate notice before seizing private property. That is, when a state is required to give notice, it must do so through processes "reasonably calculated" to reach the interested party—here, the property owner. Noting that seizure of private property is "no small thing," Justice Alito stated that whether the means and methods employed by a state to notify owners of a pending escheat meets the constitutional floors is an important question.

Justice Alito pointed out that the trend for states to shorten escheat periods with minimal notification procedures raises important due process concerns. Significantly, Justice Alito suggested that publication-only notice provisions (Delaware's Escheats Law has such a provision), may not satisfy due process. Justice Alito noted that advances in technology make it easier and easier to identify and locate property owners and suggested that states may need to take advantage of such technology to meet their constitutional obligation to provide adequate notice before liquidating private property.

Despite these constitutional concerns, Justice Alito explained the petitioners' writ of certiorari was denied because "[t]he convoluted history of [the] case makes it a poor vehicle for reviewing the important questions it presents." Notably, however, Justice Alito signaled the Court may review these constitutional concerns of state escheat law in the near future, writing "*the constitutionality of current state escheat laws is a question that may merit review in a future case.*"

Several other cases that involve the improper escheatment and liquidation of securities, and resulted in significant losses to the owners, are currently pending in lower courts. Hopefully the judges in those cases will take notice of Justice Alito's concurrence as they consider these very important issues.

If you would like to receive future *Unclaimed Property Advisories* electronically, please forward your contact information to SALT.advisory@alston.com. Be sure to put “**subscribe**” in the subject line.

Alston & Bird offers clients unparalleled experience dealing with issues involving state unclaimed property/escheat laws. Our five senior attorneys with unclaimed property expertise 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.
john.coalson@alston.com
404.881.7482

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

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

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

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

Samantha M. Bautista
samantha.bautista@alston.com
213.576.1052

Andrew W. Yates
andy.yates@alston.com
404.881.7677

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

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2016

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
 BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
 CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
 DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
 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
 RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260
 SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 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