



Unclaimed Property ADVISORY ■

NOVEMBER 21, 2018

IRS Withholding Rule for IRAs “Pardoned” at the Last Minute

In a pre-Thanksgiving pardon from Washington, D.C. (unrelated to President Trump’s poultry pardon of Peas and Carrots), the Internal Revenue Service issued notice N-2018-90 on November 20, 2018, stating that the requirement to comply with Revenue Ruling 2018-17 will be delayed from January 1, 2019, until January 1, 2020. We previously [summarized](#) this ruling, which concluded that the escheatment of an Individual Retirement Account (IRA) to a state as unclaimed property constitutes a designated distribution and is therefore subject to federal income tax withholding and reporting requirements.

In the time since Revenue Ruling 2018-17 was issued in May 2018, numerous concerns have been raised with the ruling centering on the logistical and practical difficulties of complying with the directive in the context of securities. The Holders Coalition – whose members consist of Alston & Bird, the American Bankers Association, Investment Company Institute, Securities Industry and Financial Markets Association, and others – submitted a letter to the IRS and met with agency representatives in September to bring attention to certain key issues.

In particular, the Holders Coalition letter pointed out to the IRS that its directive would require holders to liquidate securities prior to escheatment in order to withhold income tax – an action that may be inconsistent with both state unclaimed property laws and applicable federal securities laws. In contrast, state unclaimed property departments routinely liquidate securities following escheatment. The Holders Coalition letter concluded that the states rather than holders were in the best position to withhold tax on escheated IRAs.

The IRS had not issued any additional guidance regarding Revenue Ruling 2018-17 (including a response to the Holders Coalition letter). As a result, it was assumed that the directive’s start date would take effect as scheduled. Now that notice N-2018-90 has pushed back the effective date to January 2020, “or the date it becomes reasonably practicable for the person to comply,” it remains to be seen whether the IRS will further refine the directive to address the valid concerns espoused by the industry. Regardless, the financial services sector seems certain to “gobble up” this implementation deferral along with other holiday treats.

For further information, please contact a member of our Unclaimed Property Group.

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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.

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