



Unclaimed Property ADVISORY ■

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Nevada Just Raised the Stakes for 2023 Annual Reporting with an Administrative Notice on AB 55

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UPDATE #2, July 17: Nevada U-Turns on Effect of AB 55 (Quietly)

On June 30, the day after our most recent update (see below) concerning the status and import of Nevada's Administrative Notice on AB 55, the Treasurer's Office seems to have published a replacement Notice that reverses its previously published position concerning the effective date of AB 55's changes that bear on determining an owner's last activity date for various property types. The [replacement notice](#) states:

Effective Date: All changes made by the bill are effective on July 1, 2023. Holders are expected to treat properties in the manner prescribed in the bill as of the effective date and are expected to be compliant with the bill for the purposes of last activity date changes in the reporting cycle ending on October 31, 2024. Properties affected by the bill's new last activity dates, will be reportable in the timeframe from that new last activity date as prescribed by the bill. For changes not impacting last activity date considerations, the bill will be required to be complied with for the reporting deadline of October 31, 2023.

Unfortunately, the replacement notice does not appear to have been widely disseminated or published on the Treasurer's website. We advise holders to review the replacement notice carefully. Importantly, the Treasurer's Office continues to assert that "changes not impacting [the] last activity date," which would at a minimum include the new certified mail due diligence mailing requirement for certain items of property with a value of more than \$1,000, will apply to properties that are reported in the 2023 filing cycle. The previously announced extension request process continues to be available for holders that cannot implement such changes in time to meet the October 31, 2023 filing deadline.

UPDATE, June 29: Potential Withdrawal of Nevada's Administrative Notice on AB 55

As we predicted on June 28, the concerns over Nevada's retroactive application of a law that will only come into effect on July 1, *after* holders have made determinations of which items of property are subject to due diligence and potential escheatment to the State of Nevada, have been immediate and intense.

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As we noted, the disruption to orderly compliance programs and reporting procedures has already been felt, and numerous holders and advocates contacted the Nevada Treasurer's Office to express their concerns with the agency's published interpretation.

Apparently, this wave of public reaction (and corollary efforts to educate the agency on statutory interpretation) has registered with the agency. The Notice has been taken off the Treasurer's Office website, and we understand that the Treasurer's Office is considering whether to replace the Notice with clarification that substantive changes brought about by AB 55 will apply only to the 2024 reporting cycle, which commences on July 1. It is unclear whether the Treasurer's Office will also clarify whether the requirement to send due diligence letters by certified mail applies in 2023.

That said, it should be noted that it may be too late for holders to comply with this requirement – holders are permitted under Nevada law to begin sending due diligence letters four months ahead of reporting, and many holders endeavor to get an early start on this process to ensure that they have completed all required tasks well before the October 31 reporting deadline, including the preparation of due diligence letters for mailing. In our view it would be equally appropriate for the Treasurer's Office to suspend the certified mail due diligence requirement until 2024 as well.

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On June 23, 2023, the Nevada Treasurer's Office issued a notice to "[All Holders and Third-Party Holder Reporting Entities](#)" on compliance with AB 55, purporting to provide the state's administrative interpretation of various aspects of the revisions made to Nevada's unclaimed property law through [Assembly Bill 55](#). This legislation was signed by Nevada's governor on June 2 and has an effective date of July 1, 2023. The changes effectuated by AB 55 are sweeping and largely will accelerate the presumed dormancy of owner's property, including securities property and retirement account property, by implementing aggressive new dormancy standards for these property types.

Because the state's reporting year turns on determinations of escheatable property as of the preceding June 30 (i.e., before the bill's July 1 effective date), the technical (and in our view, correct) interpretation of the changes in law made by AB 55 is that they will first take effect for the 2024 annual reporting cycle. This conclusion is both logical, reflective of statutory interpretation principles, and good public policy, given that holders are now preparing to send due diligence letters to owners of property that has already been determined to be escheatable under the current law this Friday, June 30, and reported and remitted to the state on October 31, 2023.

Nevertheless, it seems that a number of parties reached out to the Treasurer's Office to request the agency's instruction on whether AB 55's changes should be applied for purposes of fall 2023 reporting. Unfortunately, Nevada accepted those parties' invitation to "instruct" and, per the Notice, has established an aggressive and disruptive interpretation of AB 55 that places the bill's burdens on holders for purposes of the current 2023 annual reporting cycle.

The published Notice states that *the new law applies to the 2023 reporting cycle*:

All changes made by the bill are effective on July 1, 2023. Holders are expected to treat properties in the manner prescribed in the bill as of the effective date and are expected to be compliant with the bill for the reporting cycle ending on October 31, 2023.

The Notice directs holders to retroactively apply AB 55's new dormancy standards to categories of property that have already been analyzed and segregated by holders (if dormant under the preexisting standards) for 2023 due diligence and reporting purposes. Among other things, the dramatic changes effectuated by AB 55 include:

- Eliminating the returned mail (RPO) dormancy trigger for securities and replacing it with a standard based solely on whether the account has had no activity for three years.
- Repealing the recently adopted RPO trigger for IRAs and, if tax-deferred or tax-exempt, substituting a required minimum distribution age (under federal law) trigger in place of the existing age-70.5 trigger.
- Instituting an alternative "knowledge of death" dormancy trigger for property types, including securities; demand, savings, and time deposits; debt of a business association or financial organization; and property in an individual retirement account, defined benefit plan, or other account or plan established for retirement purposes. For these accounts, the dormancy period is triggered on the date the holder has knowledge of the death of the owner, if that date is earlier than the otherwise applicable trigger date.

To say that this legislation if applied to fall 2023 reports will create chaos and disruption for holders in the already-busy fall filing cycle is an understatement – this directive will require holders of the impacted property types to reevaluate the status of all such Nevada property in their possession. Compounding the chaos is the state's announcement that new certified mail due diligence procedures must also be implemented for these items of property, including the use of certified mail for stocks, retirement accounts, and virtual currency valued at \$1,000 or more.

To be clear, Nevada's approach to forcing compliance in the current reporting year with a law whose effective date falls *after* the end of the reporting year lies well outside the parameters of normal state practice and good public policy. In an apparent attempt to forestall the wailing and gnashing of teeth that this announcement will inevitably yield, the Treasurer's Office has offered an extension option to holders that simply will not be in a position to meet the exigencies of the directives contained in this Notice. In particular:

If a holder does not believe that they can be compliant by the reporting deadline, the holder will be required to submit an extension request no later than September 30, 2023, detailing which types of properties the Holder believes it will be out of compliance with and when the Holder reasonably estimates it will be in compliance with the bill, up to 6 months. Penalties and interest associated with approved extension requests due to changes in the bill will be waived, so long as the Holder is in compliance by the date agreed upon in the Extension approval. Properties not subject to these changes are considered reportable in the normal reporting cycles and will not be considered for the purposes of an extension request and/or special waiver as outlined in this notice.

The Notice provides this link to the Holder Request for Extension form:

https://www.nvadatreasurer.gov/uploadedFiles/treasurer.nv.gov/content/Unclaimed_Property/Forms/Holder_Request_Form.pdf

Observations

We expect all holders filing a report in Nevada will require some time to evaluate the impact on their upcoming annual reporting process – but with a deadline to request an extension to file the 2023 report for impacted properties of September 30, holders must act quickly. If holders are directly impacted by AB 55, they will want to consider the resources that will be required and the procedures that must be implemented to satisfy these directives. Bear in mind that if you request an extension, you will be filing *two annual reports* with Nevada for the 2023 reporting cycle – one that contains property not impacted by AB 55's changes in law on or before the existing October 31 deadline, and one with the impacted properties sometime thereafter.

What's at stake for holders that ignore this Notice and implement the changes in law in 2024? At a minimum, they should expect non-waivable interest and penalties to be assessed. On the other hand, any holder that interprets the provisions to not apply in 2023 may have a basis for challenging any such imposition of interest and penalties on the basis that the Notice is simply incorrect and that the legislation cannot be interpreted to apply to the fall 2023 reporting process.

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