



ALAN WILSON
ATTORNEY GENERAL

February 10, 2016

The Honorable Curtis M. Loftis, Jr.
State Treasurer
PO Box 11778
Columbia, SC 29211

Dear Mr. Loftis:

We have received your opinion request seeking an interpretation of S.C. Code Ann. § 27-18-40, which is part of the Uniform Unclaimed Property Act, S.C. Code Ann. § 27-18-10 *et seq.* (1976 Code, as amended). Specifically, you state the following:

[a]s you know, this Office is responsible for administering the Act. The general purpose of the Act is to allow the State to collect unclaimed intangible property (e.g., checks, stocks, customer overpayments, unpaid wages) from “holders”¹ that is actually owned by, or owed to, other persons, businesses, entities, etc. (the “owner”). The State, as custodian, then holds the intangible property on behalf of the owner and provides a centralized online search database through which owners can locate and claim their intangible property.

Many of the Act’s provisions are designed to discourage holders from engaging in conduct some refer to as “lucrative silence,” i.e., holding onto owners’ unclaimed intangible property and doing as little as possible to communicate with them. To this end, the Act gives our Office the authority, among other things, to require any “person”² to file a verified report stating whether that person is holding any unclaimed property reportable or deliverable under the Act, and to examine the records of any person to determine compliance with the Act even if the person believes he or she is not in possession of any property reportable or deliverable under the Act. §27-18-310.

In the past, this Office has encountered little to no resistance from businesses and other holders with regards to compliance with the Act. However, several businesses have recently questioned the scope of the

¹ See S.C. Code Ann. § 27-18-20(8) (defining “holder” for purposes of the Act).

² See S.C. Code Ann. § 27-18-20(14) (defining “person” for purposes of the Act).

Act's application and resisted compliance therewith in reliance on a restrictive interpretation of § 27-18-40. That section states, in part, that "intangible property is subject to the custody of this State as unclaimed property if the conditions raising a presumption of abandonment under sections 27-18-30 *and* 27-18-60 through 27-18-170 are satisfied" and certain other conditions are met. §27-18-40 (emphasis added). As is evident from a review of the statutory sections referenced in §27-18-40, §27-18-30 provides the general rule that all intangible property is presumed abandoned after five years unless a different time period is specified elsewhere in the Act. Sections 27-18-60 through 170 each deal with specific types of intangible property and provide the specific conditions which must be met before they are presumed abandoned.

The holders from which we are meeting resistance assert that §27-18-40 is interpreted as meaning the requirements of §27-18-30 *and* the requirements of §§27-18-60 through 170 must be met for intangible property to be subject to the custody of the State. If this interpretation is accepted as correct, the scope of the Act would be limited only to those specific types of intangible property individually referenced in §§27-18-60 through 170. In our minds, this interpretation would render §27-18-30, as well as the definition of "intangible property" provided in §27-18-20(10), meaningless. Accordingly, we seek guidance from your Office as to the appropriate interpretation of §27-18-40 so as to definitively clarify any alleged ambiguities as to the scope of the Act, thereby allowing us to continue to prudently carry out our statutory duties thereunder.

LAW/ANALYSIS:

To answer your question, we must review the language of the statutes. Section 27-18-40 provides in its entirety:

[u]nless otherwise provided in this chapter or by other statute of this State, intangible property is subject to the custody of this State as unclaimed property if the conditions raising a presumption of abandonment under Sections 27-18-30 and 27-18-60 through 27-18-170 are satisfied and:

- (1) the last known address, as shown on the records of the holder, of the apparent owner is in this State;
- (2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this State;
- (3) the records of the holder do not reflect the last known address of the apparent owner, and it is established that:

- (a) the last known address of the person entitled to the property is in this State; or
 - (b) the holder is a domiciliary or a government or governmental subdivision or agency of this State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;
- (4) the last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this State;
- (5) the last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this State; or
- (6) the transaction out of which the property arose occurred in this State and
- (a)(i) the last known address of the apparent owner or other person entitled to the property is unknown, or
 - (ii) the last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property, and
- (b) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

Section 27-18-30, which is referenced in section 27-18-40, states the following regarding the “conditions raising a presumption of abandonment:”

[e]xcept as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned. . . .

S.C. Code Ann. § 27-18-30 (1976 Code, as amended)(emphasis added).

Sections 27-18-60 through 27-18-170 are also mentioned in section 27-18-40. Although these sections are necessary for our analysis, we will not provide their complete language for the sake of brevity. Instead, we will provide a brief summary of the different types of intangible property contained in these statutes along with their differing presumptions of abandonment. Checks, drafts, or similar instruments which have been outstanding for more than five years are presumed abandoned unless certain exceptions are met. (S.C. Code Ann. § 27-18-60). Demand, savings, or matured time deposits with banks or financial institutions are presumed abandoned after five years unless certain exceptions are met. (S.C. Code Ann. § 27-18-70). United States savings bonds are presumed abandoned and unclaimed five years after the bond matures and no longer earns interest. (S.C. Code Ann. § 27-18-75). Funds held or owing under life or endowment insurance policies or annuity contracts that have matured or terminated are presumed abandoned if unclaimed for more than five years with certain exceptions. (S.C. Code Ann. § 27-18-80). Property payable or distributable in the course of demutualization of an insurance company is presumed abandoned five years after the earliest of certain dates. (S.C. Code Ann. § 27-18-85). Utility service deposits that remain unclaimed for more than one year after the termination of services is presumed abandoned. (S.C. Code Ann. § 27-18-90). Any sum that a business association has been ordered to refund by a court or administrative agency which has remain unclaimed for more than one year is presumed abandoned. (S.C. Code Ann. § 27-18-100). Stock or other equity in a business is presumed unclaimed three years after the earliest of certain dates with certain exceptions. (S.C. Code Ann. § 27-18-110). Intangible property distributable in the course of dissolution of a business association which is unclaimed for more than one year is presumed abandoned. (S.C. Code Ann. § 27-18-120). Intangible property held in a fiduciary capacity for the benefit of another person is presumed abandoned after five years with certain exceptions. (S.C. Code Ann. § 27-18-130). Intangible property held by a court, state, governmental agency, public corporation, or public authority which is unclaimed for more than five years after becoming payable is presumed abandoned with the exception of tax refunds. (S.C. Code Ann. § 27-18-140). A credit memo which remains unclaimed for more than five years after becoming payable is presumed abandoned. (S.C. Code Ann. § 27-18-150). Unpaid wages unclaimed for more than one year are presumed abandoned. (S.C. Code Ann. § 27-18-160). All tangible and intangible property held in a safe deposit box which is unclaimed for more than five years after the rental period has expired is presumed abandoned. (S.C. Code Ann. § 27-18-170).

To determine the relationship between section 27-18-30 and sections 27-18-60 through 27-18-170, we must review the rules of statutory interpretation. We have previously opined in regard to statutory construction that:

“[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 86, 533

S.E.2d 578, 581 (2000). “[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation.” Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). “If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning.” Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). “[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable.” State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). “While it is not conclusive, it is proper in construing a statute to consider legislation dealing with the same subject matter as an aid in construction.” Hartford Ace. & Indem. Co. v. Lindsay, 273 S.C. 79, 85, 254 S.E.2d 301, 304 (1979). “In construing a statute, [courts] will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.” Lancaster County Bar Ass'n v. S.C. Com'n on Indigent Defense, 380 S.C. 219, 222 670 S.E.2d 371, 373 (2008).

Op. S.C. Atty. Gen., December 2, 2013 (2013 WL 6516331).

Pursuant to the rules of statutory interpretation, sections 27-18-30 and 27-18-60 through 27-18-170 must be construed together and each statute given effect since they are all part of the Uniform Unclaimed Property Act. A review of section 27-18-30 shows that all intangible property which has remained unclaimed for more than five years is presumed abandoned unless another part of the Uniform Unclaimed Property Act provides otherwise. Sections 27-18-60 through 27-18-170 are part of the Act and they provide that specific types of property have differing presumptions of abandonment.

We believe that the best way to describe the relationship between the statutes is that section 27-18-30 is a general rule and sections 27-18-60 through 27-18-170 are its exceptions. In other words, intangible property is presumed abandoned if it has been unclaimed for more than five years unless the intangible property is specifically addressed in sections 27-18-60 through 27-18-170.

This appears to be the intent of the Legislature since it would lead to an absurd result for intangible property under the Uniform Unclaimed Property Act to be limited to the property specifically described in sections 27-18-60 through 27-18-170. To limit the intangible property that can be collected by the State in such a manner would not only ignore section 27-18-30, it would also ignore the broad definition of “intangible property” provided by in section 27-18-20(10). Under section 27-18-20(10), “intangible property includes” various types of property, such as monies, checks, drafts, customer overpayments, stocks, amounts due under insurance policies, and tax refund checks. See S.C. Code Ann. § 27-18-20(10) (1976 Code, as amended) (emphasis added). Since the definition of “includes” is “to take in or comprise as a part of a whole or group,”³ it appears that the Legislature intended for “intangible property” to encompass more than the property listed in section 27-18-20(10).

³ See Merriam Webster at <http://www.merriam-webster.com/dictionary/include>

In a prior opinion, we explained that the National Conference of Commissioners drafted the Uniform Disposition of Unclaimed Property Act in an attempt to unify differing unclaimed property laws among states and the majority of states have adopted some version of the Uniform Unclaimed Property Act. See S.C. Atty. Gen., August 25, 2014 (2014 WL 4382451). Since the majority of states have some version of the Uniform Unclaimed Property Act, we will review the laws and opinions of other jurisdictions for support.

In an opinion, the Colorado Attorney General referred to Colorado's versions of sections 27-18-40 and 27-18-30 as "omnibus" or "catch-all" sections of the Unclaimed Property Act. See Co. Atty. Gen., April 13, 2005 (2005 WL 4020083). The New Jersey Superior Court explained in State v. Elsinore Shore Assoc., 249 N.J.Super. 403, 592 A.2d 604 (1991), that New Jersey's version of section 27-18-30 "establishes as a general rule that intangible personal property is presumed abandoned if it remains unclaimed for five years." The New Jersey court added that New Jersey's versions of sections 27-18-60 through 27-18-170 "modify the general rule in particular circumstances." Id.

The Michigan Court of Appeals held:

[i]n general, 'all property, including any income or increment derived from the property, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and remains unclaimed by the owner for more than 5 years after it becomes payable or distributable is presumed abandoned.' MCL 567.223(1). However, certain types of property are subject to specific presumptions of abandonment that provide for longer or shorter periods. See MCL 567.225 through 567.237.

The case law and persuasive authority from other states supports our conclusion that section 27-18-30 is a general rule and sections 27-18-60 through 27-18-170 are its exceptions.

CONCLUSION

In conclusion, we believe that the relationship between 27-18-30 and sections 27-18-60 through 27-18-170 provided for by section 27-18-40 is one of a general rule and its exceptions. Intangible property is presumed abandoned if it has been unclaimed for more than five years unless the intangible property is specifically addressed in sections 27-18-60 through 27-18-170. The intangible property that can be collected by the State is not limited to the intangible property specifically described in sections 27-18-60 through 27-18-170 as this would ignore the broad provisions of sections 27-18-30 and 27-18-20(10) and would lead to a result not intended by the Legislature.

Sincerely,



Elinor V. Lister

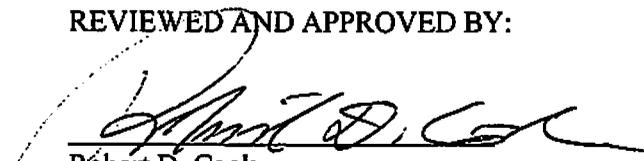
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The Honorable Curtis M. Loftis, Jr.

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REVIEWED AND APPROVED BY:



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