

ESCHEATS: STREAMLINED AUDIT PROCESS

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Senate Bill 538 (reported from House committee as H-2)

Sponsor: Sen. Jack Brandenburg

House Committee: Commerce and Trade

Senate Committee: Finance

Complete to 12-8-15

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 242 of 2015)

SUMMARY:

The bill would amend the Uniform Unclaimed Property Act to put in statute a streamlined audit process for certain Michigan-related corporations.

The bill would be retroactive and apply to audits in progress as of August 15, 2015, but would not apply retroactively to contested determinations in litigation before the bill's effective date.

Under the Uniform Unclaimed Property Act, generally speaking, property that remains unclaimed or dormant for a certain number of years, as provided in the act, is transferred to the state (that is, "escheated"). Unclaimed property or its equivalent value is maintained by the state for property owners in perpetuity; owners or heirs always have the right to claim the property. The act requires that individuals, businesses, and other commercial entities ("holders") of presumably abandoned and unclaimed property to file an annual unclaimed property report with the Department of Treasury (Unclaimed Property Division). To ensure compliance with the act, the department (or third parties with which the department has contracted) may examine (audit) the records of holders of property.

Specifically, this streamlined audit process would apply to "eligible holders," defined as a holders that are one or more of the following:

- A business whose principal place of business is in Michigan as evidenced by 20% or more of its payroll or 20% or more of its real and tangible personal property (except inventory) owned or rented in Michigan during the period subject to examination, or the majority of officers that direct, control, and coordinate the activities of the business are employed in Michigan.
- A corporation that wholly owns a corporation that has incorporated in Michigan, and the Michigan corporation meets the criteria in the paragraph above.
- A corporation that is wholly owned by a corporation that is incorporated in Michigan, and the Michigan corporation meets the criteria in paragraph one above.

An audit conducted under the streamlined process would have to be (1) completed within a timeframe jointly developed by the holder and the administrator, with the goal of completing the audit within 18 months from receipt of the audit notice; and (2) be conducted according to standards set forth in rules and regulations promulgated by the Department of Treasury.

The bill also would:

- Provide that, for an eligible holder participating in the streamlined audit process, the Treasurer could not begin an action or proceeding more than four years after any duty of a holder under the act arose.
- Specify that streamlined examinations could not include checks voided within 180 days of their issuance, for eligible holders participating in the streamlined process.
- Provide that property worth \$25 or less would not be subject to the custody of the state as unclaimed property, subject to certain exceptions (such as dividends and stocks).

MCL 567.222 et al.

FISCAL IMPACT:

Senate Bill 538 would allow for eligible holders of unclaimed property subject to an audit to enter into a streamlined audit process with the Department of Treasury. The streamlined audit process would institute a soft cap for completing the audit at 18 months. The new streamlined audit process could increase the number of unclaimed property audits entered into by the Department of Treasury which could increase the amount of statutorily required unclaimed property collections to the state assuming there is unclaimed property due to the state that is currently not being collected because of insufficient audit resources. While a portion of the unclaimed property collected by the state is used to administer the unclaimed property division and meet expected claims, the remainder of the unclaimed property funds escheating to the state are credited to the state's General Fund. Administrative costs would likely remain constant as the provisions of the bill would change the nature of the unclaimed property audit process allowing for additional audits to be completed as opposed to reducing the overall workload. Therefore, any increase in unclaimed property revenues would increase General Fund revenues.

The bill would also include language providing that property worth \$25 or less would not be subject to the custody of the state. This has the potential to reduce overall unclaimed property collections. The magnitude of the impact would depend on the amount of unclaimed property assets worth \$25 or less that are currently collected. That amount is currently unknown.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.