

**MORRIS NICHOLS ATTORNEYS CO-AUTHOR TREATISE ON
LAW OF UNCLAIMED PROPERTY**

Obscure law a burgeoning revenue source to states;

Businesses alerted to enforcement efforts

(*Wilmington, DE, July 31, 2006*) – Partners **Michael Houghton** and **Walter C. Tuthill** led a team of attorneys at **Morris, Nichols, Arsht & Tunnell LLP** in writing a comprehensive analysis of the law of unclaimed property, recently released by the nationally recognized legal publisher, the Bureau of National Affairs (BNA). Jointly authored by Morris Nichols and the accounting firm Deloitte & Touche LLP, the treatise is published in BNA's Corporate Practice Series Portfolio 74-2nd "Unclaimed Property." [Michael Houghton et al., *Unclaimed Property*, 74-2nd C.P.S. (BNA)]

The often misunderstood and largely ignored law of unclaimed or abandoned property is increasingly the subject of serious discussion in corporate boardrooms around the country, as the efforts of states to enforce their rights under the law gain momentum. Authors Houghton and Tuthill, who head Morris, Nichols' Unclaimed Property Practice Group, attempt to provide clarity and offer guidance to businesses in this highly complex area of the law.

The Portfolio includes an analysis of the Uniform Acts, and discusses the law concerning conflicting state claims to abandoned property. It examines several important U.S. Supreme Court cases in which the Court asserted its original jurisdiction under the Constitution to create priority rules that govern the relative rights of the various states to take custody of unclaimed intangible personal property. The second half of the Portfolio taps into the collective experience of the authors to provide an insider's perspective into what a business can expect if faced with an enforcement action. In addition, the Portfolio highlights several issues that the authors expect will receive greater attention in the coming years, including the implications of Sarbanes-Oxley. Finally, the Portfolio provides guidance as to the procedures corporations should take to secure compliance with the law, and the penalties for violations and non-compliance.

Houghton, Tuthill and their colleagues predict that enforcement of the law of unclaimed property will have a significant impact on business. According to Houghton, "We have seen a marked increase by many states to capture the revenue from unclaimed property. We feel it will become more important in the future for corporations to understand the laws of the state or states in which they do business and to make certain that their reporting mechanisms are timely and accurate."

Houghton outlines a few of the reasons why he anticipates increased enforcement activity by the states:

1. Abandoned or unclaimed property represents a potentially significant source of revenue to state governments.
2. Strained budgets compel states to vigorously pursue all possible sources of revenue, including ramping up corporate enforcement efforts through obligatory audits.
3. The Sarbanes-Oxley Act set forth strict requirements for corporate profit reporting, and imposes harsh penalties for violations or non-compliance.

What Is "Unclaimed Property"?

Unclaimed property can refer to a broad range of tangible items, including dormant bank accounts, unclaimed security deposits, unclaimed shares of stock and uncashed dividend checks, but it also may include such things as unused gift certificates and gift cards, unused rebates and customer credits, accounts receivable, uncashed vendor checks and various types of credits that appear on a company's records.

Background on the Law

American law governing the treatment of abandoned or unclaimed property can be traced to English common law, which provided broad rights to "the sovereign" concerning tangible property. This broad principle was enacted in various American state statutes in the early 19th Century, and by the turn of the 20th Century, the States began expanding the reach of their unclaimed property statutes to include intangible property.

With the rapid growth of the United States' economy in the early 20th Century, businesses were expanding beyond the borders of one state, and as a result, there were often conflicting state claims to the same intangible personal property. In response to these conflicts, in 1954 the National Conference of Commissioners on Uniform State Laws (hereinafter "NCCUSL") proposed a uniform act entitled the "Uniform Disposition of Unclaimed Property Act" (hereinafter the "1954 Uniform Act"), which was specifically designed to create "symmetry" in the law for the benefit of persons doing business in more than one state. Subsequent superseding uniform acts were approved in 1966, 1981 and 1995, and today, all but six states have adopted at least a modified version of one of these uniform acts.

Despite the existence of the Uniform Acts, the law in this area is not considered uniform. For example, the period of time that must elapse before property is presumed to be abandoned varies significantly under state law. Furthermore, the states often do not claim the same property uniformly. A good example would be gift cards and gift certificates, where more than half the states have exempted gift cards and gift certificates from the reach of their

unclaimed property law, but the breadth of the exemptions can vary widely, and state law in this area is constantly changing.

In recent years, states realizing that unclaimed property is a major revenue source have increased the professionalism and seriousness with which they enforce their unclaimed property laws. As a result, businesses that have either unintentionally ignored or misunderstood their reporting responsibilities under current unclaimed property law have created the very real potential of protracted audits resulting in extensive liabilities

Messrs. Houghton and Tuthill are available to respond to questions and to provide additional information if requested. To receive a copy of the Portfolio, please contact Francie Victor, 1201 N. Market Street, P.O. Box 1347, Wilmington, DE 19899-1347; FVictor@MNAT.com; (302) 351-9245.