



Unclaimed Property ADVISORY ■

MARCH 2, 2016

Pennsylvania Sues Delaware to Recover Unclaimed Checks Issued in Pennsylvania

On January 26, 2016, the Pennsylvania Treasury Department filed a lawsuit in federal district court to recover unclaimed property paid to the Delaware State Escheator by MoneyGram Payments Systems, Inc., a Delaware-incorporated entity. MoneyGram issues both money orders and “official checks,” the instruments at issue in the lawsuit.

According to Pennsylvania’s complaint, after the completion of an unclaimed property audit by the Delaware State Escheator, MoneyGram paid to Delaware \$10,293,869.50, representing the value of official checks issued in Pennsylvania between 2000 and 2009 but never cashed. MoneyGram’s customers purchased the official checks in question at financial institutions by paying the face value of a check plus a transaction fee. MoneyGram was then “directly liable,” according to the complaint, for the face value of the official checks. Pennsylvania argues that, other than the location of the sale and limits on the face value of the instrument, MoneyGram’s official checks are identical to MoneyGram’s money orders.

Pennsylvania alleges that by escheating the official checks, Delaware violated the Disposition of Abandoned Money Order and Traveler’s Checks Act (the “Federal Disposition Act”).¹ The Federal Disposition Act provides that for sums payable for a “money order, traveler’s check, or similar written instrument” on which a banking association or financial institution is directly liable, the state in which the instrument was purchased “shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State’s power under its own laws to escheat or take custody of such sum.”

Relying on the Federal Disposition Act, Pennsylvania’s unclaimed property law provides that when the records of a holder do not show the address of a “traveler’s check or money order,” the last known address of the owner is presumed in Pennsylvania if the instrument was issued in Pennsylvania.² The Federal Disposition Act is a statutory exception to the federal common law rule of *Texas v. New Jersey* and its progeny,³ which allow the state of a holder’s domicile to take custody of unclaimed property for which the holder’s records do not contain the address of the owner.

¹ 12 U.S.C. §§ 2501–03.

² 72 Pa. Stat. § 1301.2(a)(2)(iii).

³ See *Texas v. New Jersey*, 379 U.S. 674 (1965); *Pennsylvania v. New York*, 407 U.S. 206 (1972); *Delaware v. New York*, 507 U.S. 490 (1993).

The dispute between Pennsylvania and Delaware centers on the nature of MoneyGram's official checks. According to the complaint, Delaware has taken the position that the official checks are "third party bank checks," which would not fall under the Federal Disposition Act. By contrast, Pennsylvania contends that the official checks are in all relevant respects identical to money orders, a fact that would allow Pennsylvania to take custody of them because of the Federal Disposition Act. As evidence of its contention, Pennsylvania notes that MoneyGram was previously incorporated in Minnesota, and during that time Minnesota agreed to remit to Pennsylvania the value of official checks issued in Pennsylvania that MoneyGram escheated to Minnesota.

This case is significant because it represents the rare occasion in which one state sues another state in federal court to recover money paid by a holder as unclaimed property. In this way, Pennsylvania's suit is similar to *Texas v. New Jersey*, *Pennsylvania v. New York* and *Delaware v. New York*. Unlike those cases, however, Pennsylvania seeks a remedy under a federal statute, rather than pursuant to federal common law. In addition, Pennsylvania has brought the action in federal district court rather than in the U.S. Supreme Court under its original jurisdiction over state-versus-state disputes.

In its complaint, Pennsylvania asks for a declaration that the MoneyGram official checks are "money orders" or "similar written instruments" for purposes of the Federal Disposition Act and that Delaware violated the Act by taking custody of the official checks. Pennsylvania also asks for return of the \$10,293.869.50 plus 12% interest, penalties of \$1,000 per day and attorneys' fees. Delaware and MoneyGram, which is also a named defendant, have until March 18 to answer the complaint, unless they waive service of the complaint, in which case they will have until April 26 to answer.

Pennsylvania's suit against the Delaware State Escheator raises important substantive questions related to the scope of the Federal Disposition Act. This is an issue that we have seen arise in unclaimed property audits, and any decision in this case would likely provide meaningful guidance to both holders and auditing states.

The case is *Treasury Department of the Commonwealth v. Gregor*, No. 1:16-cv-00351 (M.D. Pa.).

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