



MULTISTATE TAX

U.S. Supreme Court decision on unclaimed property Tax Alert

On February 28, 2023, in [Delaware v. Pennsylvania et al.](#), the U.S. Supreme Court ruled against Delaware in its dispute with 30 other states over the escheatment of unclaimed agent checks and teller's checks that has been ongoing since 2016. This Tax Alert summarizes the decision and provides some considerations.

In the *Delaware* case, the Supreme Court considered which unclaimed property sourcing rule should apply to unclaimed agent checks and teller's checks. Under the 1974 Disposition of Abandoned Money Orders and Traveler's Check Act ("Federal Disposition Act" or "FDA"), unclaimed funds that are payable on a money order, traveler's checks, or other similar written instruments (other than third-party bank checks) are sourced to the state in which the financial instrument was purchased. By contrast, under state law and Supreme Court precedent, third-party bank checks are sourced to the state of the last known address of the debtor/payee to which the property is owed, and absent a record of the debtor/payee's last known address, the property is sourced to the creditor/payer's state of incorporation/domicile/formation.

Agent checks and teller's checks are prepaid financial instruments used to transfer funds to a named payee and, when not presented for payment within a certain amount of time, they are considered abandoned. Delaware argued that agent checks and teller's checks do not meet the definition of money order in the FDA because they can only be purchased at a financial institution and are generally used by customers transferring large sums of money. Delaware argued that the nature of these instruments qualifies them as third-party bank checks, which are specifically exempt from the FDA. The Court disagreed with this argument, stating:

[w]hen a financial product operates like a money order— i.e., when it is a prepaid written instrument used to transmit money to a named payee—and when it would also escheat inequitably solely to the State of incorporation of the company holding the funds under our common-law rules due to recordkeeping gaps, then it is sufficiently 'similar' to a money order to fall presumptively within the FDA. Such is the case with [agent checks and teller's checks]. And nothing in the parties' arguments, the Special Master's Second Interim Report, or the record in these

cases persuades us that [agent checks and teller's checks] should be deemed 'third party bank checks.'

Observations

The decision provides for equality amount sourcing of unclaimed property where an address is unknown but a place of purchase is known for these specified financial instruments, and Delaware may now have to return several hundreds of millions of dollars to other states.

The decision may open the door for states to attempt to argue that other property types for which debtor/payee information is unknown but place of purchase is known to be sourced under the FDA.

The decision could prompt changes to state unclaimed property laws, as well as the sourcing methodologies employed by financial institutions in reporting unclaimed property for various instruments.

Impacted institutions should discuss this decision with legal counsel.

Companies should remain vigilant for any communication received from Delaware as the state continues to mail VDA invitation letters and ramp up its enforcement efforts through various types of compliance reviews and audit examinations, as covered in our recent [Tax Alert](#). More information about these topics and others are also covered in our recent Dbrief that can be accessed in playback [here](#).

Please contact us for your unclaimed property compliance and filing needs.

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