

ALERTS AND UPDATES

Acquisition of Company Assets May Include Unclaimed Property Liabilities

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When purchasing the assets of another company, one may also be buying a possible unclaimed property liability along with the assets. Unlike certain taxes (e.g., sales/use and withholding taxes), unclaimed property is a liability that does not normally transfer from the selling company to the buyer in an asset purchase. Nevertheless, sometimes unclaimed property is hidden within an asset that is purchased.

Unclaimed property is any amount owed to another, such as uncashed payroll or vendor checks, gift certificates, unused deposits, credits, overpayments, etc. If unreturned to the debtor, it is required to be turned over to a state. It is important to note that every state has an unclaimed property law.

When only the assets of a company are purchased (rather than the stock of the company), the unclaimed liability of the company (i.e., its debts) will generally not be purchased. However, that may not be the case in all instances. For example, unclaimed property can be hidden in an accounts-receivable account purchased in an asset sale. Therefore, if an accounts-receivable account is purchased in an asset sale, one may want to carefully consider any credit balances in the accounts receivable.

These credit balances (overpayments) should reduce the valuation of the accounts receivable because they will likely be deemed unclaimed property returnable to the customer or reportable to a state. If one buys \$10 million in accounts receivables of a company and in that total are \$500,000 in overpayments or credits, one can encounter unclaimed property issues after the closing, unless these offsets are accounted for and one understands that this unclaimed property may have to be filed and remitted to numerous states. Therefore, a little knowledge and planning may help avert such surprises.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact [Stanley R. Kaminski](#), any member of the [Tax Practice Group](#) or the lawyer in the firm with whom you are regularly in contact.

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