



American Payroll Association

Government Relations • Washington, DC

August 31, 2017

Via e-mail to david.gregor@state.de.us

David M. Gregor
State Escheator
Department of Finance
820 N. French Street
Wilmington, DE 19802

Re: Department of Finance Revised Proposed Regulations:
Abandoned or Unclaimed Property Reporting and Examination Manual

The American Payroll Association (APA) appreciates the opportunity to comment on the above-referenced proposed regulations issued by the Delaware Department of Finance on August 1, 2017. Our comments are limited to the characterization of payroll cards as wages for purposes of the State's Unclaimed Property Law (UPL).¹

About the American Payroll Association

The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

Treatment of Payroll Cards Under Delaware's Unclaimed Property Law

The UPL establishes the presumptive abandonment periods for several types of property including "demand, savings, or time deposits" and "wages."² Although the UPL does not mention payroll cards, the proposed regulations subject payroll cards to the presumptive abandonment period for wages. Specifically, section 2.21 of the proposed regulations lists payroll cards under National Association of Unclaimed Property Administrators (NAUPA) Property Code MS01 for "Wages, Payroll, Salary." We are concerned that this classification stems from a common misunderstanding of how payroll cards operate.³

¹ The UPL was revised earlier this year by Senate Bill 13 and Senate Substitute 1 for Senate Bill 79, and adopts certain provisions of the Uniform Law Commission's 2016 Revised Uniform Unclaimed Property Act.

² See, 12 Del. C. § 1133(5), (11).

³ Note that a review of NAUPA's website reveals that the organization itself has not addressed payroll cards in its property codes.

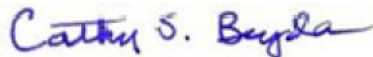
Payroll cards are linked to an account or subaccount at a financial institution that is owned and controlled by the employee. On payday, wages are deposited directly into the account and the funds are irrevocably transferred from the employer to the employee. This differs substantially from when wages are paid by check. In the latter arrangement, the funds remain in the employer's bank account until the check is cashed by the employee or remitted by the employer to the state as unclaimed property. The Uniform Law Commission recognized this distinction in the most recent version of its Revised Uniform Unclaimed Property Act. The Commission explained that the term "payroll card" means "the bank account into which wages and other compensation can be paid and accessed electronically by the employee. Accordingly, payroll cards have the same three year holding period as bank accounts, rather than the one year holding period for unpaid compensation being held by the employer."⁴

Payroll card accounts often serve as the primary transaction account for employees. Many payroll card accounts are capable of receiving funds from sources other than the employer and may be used by the employee after the employment relationship has ended. As a result, payroll card accounts often hold funds other than wages. Hence, the funds held in those accounts should be subject to the presumptive abandonment period for other consumer asset accounts.

Finally, payroll card accounts are recognized as consumer accounts under federal banking law. Payroll cards are "accounts" under federal Regulation E and, therefore, are subject to the same consumer protections as other consumer asset accounts.⁵ Similarly, the Federal Deposit Insurance Corporation (FDIC) recognizes payroll cards as accounts eligible for FDIC insurance coverage up to the statutory limits.⁶

APA recognizes that both "demand, savings or time deposits" and "wages" are subject to a five year presumptive dormancy period under Delaware's UPL. We are concerned, however, that this could change in the future or that other states will look to the Delaware regulations for guidance. For this reason, we request that the proposed regulations be further revised so that they more accurately reflect the nature of payroll card accounts and how they operate.

The APA appreciates the opportunity to submit these comments. Please contact Bill Dunn (202-232-6889) or Cathy Beyda (408-973-8215) with any questions or to discuss this issue further.



Cathy Beyda, Esq.
Chair, GRTF Payroll Cards Subcommittee
American Payroll Association



William Dunn, CPP
Director, Government Relations
American Payroll Association

⁴ Revised Uniform Unclaimed Property Act with Prefatory Notes and Comments (December 5, 2016).

⁵ 12 C.F.R. § 1005.2(b)(1) and (2). These protections include disclosure requirements, error resolution procedures, access to account information, change in terms notices, and limited liability for unauthorized use.

⁶ FDIC General Counsel Opinion No. 8, 73 Fed. Reg. 67157 (November 13, 2008).