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APA Asks Illinois to Reinstate Escheatment Deadline for Paycards

APA has asked the Illinois State Treasurer to clarify its rules regarding when funds deposited into a payroll card account are to be considered abandoned [https://www.americanpayroll.org/docs/default-source/government-relations/18m12-apa-comments-ruupa.pdf]. Specifically, APA requested that Illinois recognize a three-year period for payroll cards that have been activated and a one-year period for payroll cards that have not been activated. The request was made in response to a call for comments on proposed rules to implement changes to the Illinois Revised Uniform Unclaimed Property Act (RUUPA).

The law of unintended consequences

The RUUPA is a uniform act drafted by the Uniform Law Commission. Illinois enacted its own version in 2017. The original RUUPA applied a three-year inactivity period before funds on a payroll card would be considered abandoned. The timeframe was consistent with that of funds held in depository accounts at a financial institution. Notably, federal banking law has long supported the treatment of funds held in prepaid accounts as demand deposit accounts. In 2018, Illinois amended its version, removing payroll cards from the definition of stored value cards and applying a presumed abandonment period of one year after payment, as applies to abandoned wages (see *The Payroll Source®*, §5.5, Table 5.6).

APA believes the change will have unintended and unnecessarily burdensome consequences. “Under the Proposed Rules, employees with payroll cards would have funds escheated from their cards merely because the money hasn’t been spent in a year – even if the employee is actively using his or her card,” APA said.
“The Act states that employment-related compensation is presumed abandoned a year after the amount *becomes payable*.” In other words, payroll card program managers would need to treat wages as abandoned one year after the wages are placed on the payroll card, regardless of whether the employee is using the funds, either by spending a portion or transferring them to a savings feature available through the payroll card account.

The one-year presumed abandonment period is not only unjust; it is impractical. “Many payroll cards are capable of receiving loads from other sources (e.g., tax refunds or cardholder cash loads),” APA said. Illinois’ proposed rule would apply different presumed abandonment periods to different deposits into the same account.
For example, if an employee has a payroll card with a $2,000 balance, $1,000 of which is from a tax refund and the other $1,000 is from wages, the program manager may be required to escheat half of the balance after a year and escheat the remaining half two years later. “Given that money is inherently fungible, tracking which dollar is being spent in any particular transaction simply isn’t possible,” APA said.

Reasonable solutions

“The ‘becomes payable’ provision makes sense when applied to a check cut by the employer but never cashed by the employee,” APA said. In that situation, the employee has failed to claim his or her wages, and escheatment after one year is reasonable. However, when the employee is actively using his or her payroll card, requiring the program manager to escheat funds that haven't been spent in a year is unexpected and unfair. "Employees should not be required to spend their hard earned money before an unexpected deadline in order to avoid having it escheated to the state," APA said.

APA suggested that Illinois apply the one-year presumptive abandonment period only to unclaimed wages and base the determination of whether funds in a payroll card account are unclaimed on whether the payroll card has ever been activated. If the payroll card has never been activated, then the funds should be treated as unclaimed and subject to the one-year presumptive abandonment period. "The situation in which an employee does not receive or activate her payroll card is analogous to the case where an employee does not cash a payroll check; it is reasonable in both cases to presume the wages are abandoned after one year," APA said. If the payroll card has been activated, then the funds have been claimed and should be subject to the same three-year presumptive abandonment period applied to bank accounts.