

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: State Treasurer's Office TITLE NUMBER: 112

RULE TYPE: Legislative; CITE AUTHORITY Chapter 36-8-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series V

TITLE OF RULE BEING PROPOSED: Rules for enforcement of the uniform
disposition of Unclaimed Property

DATE OF PUBLIC HEARING: August 9, 1990 TIME: 9:30 AM

LOCATION OF PUBLIC HEARING: State Capitol Complex
Conference Center - Building #7, Room B

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: ATTN: Jerry Simpson

WV State Treasurer's Office

State Capitol Complex - Room E-147

Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Gail B. Moore

The general purpose of these rules is to aid in the implementation and administration of the uniform disposition of Unclaimed Property Act. These rules should clarify any misunderstandings concerning the interpretation of W.Va. Code 36-8.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules from enforcement of the uniform disposition of Unclaimed Property

Type of Rule: Legislative Interpretive Procedural

Agency State Treasurer's Office Address _____
State Capitol Complex Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

This office has had responsibility for the Administration of the uniform disposition of Unclaimed Property Act since 1967. It is not anticipated that these rules will require the expenditure of any additional funds.

3. Objectives of these rules:

The general purpose of these rules are to aid in the implementation of the uniform disposition of Unclaimed Property Act as set forth in W.Va. Code 36-8.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

These proposed rules will allow this office to more efficiently administer the uniform disposition of Unclaimed Property Act.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.


These proposed rules should clarify any misunderstandings concerning the interpretation of the W.Va. Code concerning the administration of the uniform disposition of Unclaimed Property.

C. Economic Impact on Citizens/Public at Large.

(SAME AS 4A)

Date: JULY 6, 1990

Signature of Agency Head or Authorized Representative



WEST VIRGINIA ADMINISTRATIVE REGULATIONS
W. Va. State Treasurer
CHAPTER 36-8
SERIES V
(1990)

Title: Rules for Enforcement of the Uniform
Disposition of Unclaimed Property Act

- Section 1. General
- 1.01 Scope
 - 1.02 Authority
 - 1.03 Purpose
 - 1.04 Filing Date
 - 1.05 Effective Date
- Section 2. Definitions
- Section 3. Service Charges and Other Deductions
- Section 4. Stock and Other Intangible Business Interests
- 4.01 Presumption of Abandonment
 - 4.02 Delivery of Certificates
 - 4.03 Dividends and Other Distributions
- Section 5. Retirement Accounts
- Section 6. Property Held by Courts, Public Officers

and Agencies

- Section 7. Unknown Address of Owner

- Section 8. Negative Reports

- Section 9. Sale of Abandoned Property
 - 9.01 Sale of Securities
 - 9.01 Claims against the State
 - 9.03 Independent Appraisals

- Section 10. Examination of Records
 - 10.01 Issue Subpoena Duces Tecum
 - 10.02 Assessment of Costs
 - 10.03 Records Maintenance

- Section 11. Reregister Securities

- Section 12. Owner of Cashier's Check

- Section 13. Discontinuance of Payments

- Section 14. Non-Enforcement of Right

- Section 15. Alternative Reporting Forms

- Section 16. Records Estimations

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
W. Va. State Treasurer
CHAPTER 36-8
SERIES V
(1990)

Subject: Rules for Enforcement of the Uniform
Disposition of Unclaimed Property Act

Section 1. General

1.01 Scope - These rules implement the provisions of the Code of West Virginia, 1931 as amended, et seq. 36-8-1 relating to the Uniform Disposition of Unclaimed Property Act.

1.02 Authority - West Virginia Code §36-8-27

1.03 Purpose - The general purpose of these rules are to aid in the implementation of the Uniform Disposition of Unclaimed Property Act as set forth in W. Va. Code §36-8-1.

1.04 Filing Date -

1.05 Effective Date -

Section 2. Definitions

For the purpose of these rules, the definitions and use of terms contained in the Code of West Virginia, 1931, as amended, §36-8-1 and 3(b), shall have the same use and meaning as prescribed to them by said Code, unless the context in which the same are used clearly requires a different meaning. Additionally, for the purpose of the rules the following definitions shall be used:

"Act" means W.Va. Code §36-8-1 et seq., entitled
"Uniform Disposition of Unclaimed Property Act."

"Last known address" means the last known description of the location of the owner sufficient for the purpose of the delivery of mail.

Section 3. Service Charges and Other Deductions

There must be a valid, written contract between the holder and the owner to permit the lawful withholding of charges described in Section 2(g) of the Act. No holder may seek to implement the terms of any contract against any abandoned property subject to the Act if he does not implement the terms of such contract against the owners who claim their assets prior to the presumption of abandonment. The holder shall provide the following information as part of any remittance report filed pursuant to the Act from which charges have been deducted:

- (a) A copy of the contract authorizing such charges;
- (b) The value or amount of each item or property, prior to deduction of charges as well as the total amount of charges deducted from each item. The holder shall maintain a record for three years from the date or date on which charges were deducted; and
- (c) Other information or documentation as the State Treasurer may require to substantiate the deduction of charges. This may include correspondence, signature cards, regulations, by-laws or any other documentation concerning any agreement between the holder and the owner.

Section 4. Stock and Other Intangible Business Interests

- 4.01 Pursuant to Sections 5 and 9 of the Act, any intangible interest in a business association, as evidenced by the stock records or membership records of the association, is presumed abandoned if:
- (a) The interest in the association is owned by a person who, for more than seven years, has neither claimed a dividend or other sum referred to in Section 5 of the Act nor corresponded in writing with the association or otherwise indicated an interest as evidence by a memorandum or other record on file with the association; and
 - (b) The association does not know the location of the owner at the end of such seven-year period. With

respect to such intangible interest, the business association shall be deemed the holder.

4.02 The holder of an interest under Section 5 of the Act of these rules, shall deliver a duplicate certification or other evidence of ownership (if the holder does not issue certificates of ownership) to the State Treasurer. Upon delivery of a duplicate certificate to the State Treasurer, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved from liability in accordance with the provisions of Section 14 of the Act.

4.03 Any dividends or other distributions held for or owing to a person at the time the stock or other security to which they attache is presumed abandoned, shall also be presumed abandoned as of the same time, and therefore subject to the provision of the Act.

Section 5. Retirement Accounts

Accounts established pursuant to Section 26 U.S.C. 401(a), et seq. (commonly known as Self-Employed Retirement or Keogh Plans) and Section 26 U.S.C. 408(a) et seq. (commonly known as Individual Retirement Accounts or IRA's) are presumed abandoned when the owner or beneficiary has made no contact in writing with the holder for a period of seven years from such time as distribution of all or part of the property constituting the respective account shall be mandatory under the terms of the retirement plan.

Section 6. Property Held by Courts, Public Officers and Agencies

All intangible personal property in the custody of a state court receiver which is presumed abandoned under Section 8 must be reported to the State Treasurer pursuant to Section 11 of the Act. The State Treasurer may petition the court to order such property delivered to the Treasurer as provided under Section 13 of the Act.

Section 7. Unknown Address of Owner

Unless otherwise provided for in the Act or these rules, intangible property is subject to the custody of this State as abandoned property if the conditions raising a presumption of abandonment under the Act are satisfied and the last address of the owner is unknown.

Section 8. Negative Reports

Every person that has previously filed an abandoned property report, that in any year does not hold property subject to being reported under the Act shall file a statement to this effect.

Section 9. Sale of Abandoned Property

9.01 Securities listed on an established stock exchange shall be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold at over-the-counter prices prevailing at the time of sale. Such sales may be performed by brokerage firms or financial institutions selected by the Treasurer.

9.02 A person making a claim under this Act after the sale of securities is entitled to the proceeds received from sale, but no person may claim under this Act against the State, the holder, andy transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the State. Nor is any person entitled to any appreciation in the value of said securities occurring between the time of the sale of the securities and the time the person make the claim.

9.03 Any property delivered to the State Treasurer pursuant to the Act which the State Treasurer determines has obvious commercial value, or if it is questionable whether or not said property has obvious commercial value, then the State Treasurer is authorized to employ the services of competent appraisers to determine the value, if any, of the delivered property. If the appraisers determine the property has no obvious commercial value, then such property may be disposed of by the State Treasurer pursuant to the Act. All property which has been determined to have obvious commercial value shall be sold pursuant to the Act.

Section 10. Examination of Records

10.01 If the Treasurer has reason to believe that a person has failed to report property which should have been reported the State Treasurer, his agents and employees, may at reasonable times and upon reasonable notice examine the records of any person to determine if said person has complied with the provisions of the Act. In the event such person

refuses to permit the State Treasurer to examine such records, the State Treasurer may issue a subpoena duces tecum to review the records.

- 10.02 Whenever the State Treasurer has reason to believe that a person has failed to report property which should have been reported pursuant to the provisions of the Act, he may issue written interrogatories requiring such person to answer the questions set forth. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reason for objection shall be stated in lieu of an answer. The answers and objections are to be signed by the person making them. The person answering the interrogatories shall deliver a copy of the answers and objections if any, to the State Treasurer within thirty (30) days after receipt of the interrogatories. The State Treasurer may, upon a showing of good cause, grant an extension of the time to answer said interrogatories.
- 10.03 The State Treasurer may, employ independent auditors to examine the records of any person.
- 10.04 If an examination of the records of a person results in the disclosure of property reportable and delivered under the Act, the State Treasurer may assess the cost of the examination against the holder at the rate of One Hundred Seventy-Five Dollars (\$175.00) a day for each staff examiner, and the rate of Four Hundred Dollar (\$400.00) a day for each independent auditor, but in no case may the charges exceed the value of the property found to be reported and deliverable.
- 10.05 Every person required to file a report under the Act, shall maintain records necessary for the filing of the report required under Chapter 36, Article 8, Section 11 of the Act. The holder shall retain the aforesaid records for a period of at least three (3) years from the date any abandoned property is reportable to the State Treasurer under the Act.

Section 11. Reregister Securities

Whenever the State Treasurer shall receive securities under the Act in the name of the owner, he may, take appropriate action to transfer the record of ownership of said securities into the title of the State of West Virginia or the Street name of a financial institution handling the security.

Section 12. Owner of Cashier's Check

Any banking or financial organization or business association which has issued a cashier's check which is presumed abandoned under this Act shall report the name and address, if known, of both the payee and purchaser of the check in accordance with Section 11 of the Act.

Section 13. Discontinuance of Payment

If payment of interest or dividends on property subject to the Act is discontinued at any time during the period of inactivity, the Holder shall include or attach as part of the report filed pursuant to the Act:

- (a) A copy of a valid, enforceable contract which authorizes such discontinuance of payment of interest or dividends; or
- (b) The citation of the statute which authorized such discontinuance of payments of interest or dividends; or

Section 14. Non-Enforcement of Right

A contract or statute may not be considered as authorizing discontinuance of payment of interest or dividends if such payment would not have been discontinued, or would otherwise have accrued to the benefit of the owner, in the event the property had been claimed by the owner prior to being reported or delivered to the State Treasurer under the Act.

Section 15. Alternative Reporting Forms

The State Treasurer may accept computer printouts as unclaimed property reports in lieu of the designated forms provided that the printouts contain the information specified on the forms. Verification as required under the Act shall be submitted with the print-outs. Before a holder may substitute alternative reporting forms, he must first receive the approval of the State Treasurer. Additionally, the State Treasurer may accept computer disk or tape reporting from the holder, with the Treasurer's prior approval.

Section 16. Records Estimations

If a holder fails after the effective date of the Act to maintain the records necessary to report to the State Treasurer pursuant to the Act or the records of the holder available for the periods subject to the Act are insufficient to permit the preparation of an accurate report, the State Treasurer may require

the holder to report and pay such amounts as the Treasurer may reasonably estimate from any available records.