

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Treasurer's Office TITLE NUMBER: 112

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.

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

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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

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- 1.02 Authority
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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 W.Va. Code §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 contract between the holder of abandoned property 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 of abandoned property 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 of the abandoned property 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, previously existing contract between the abandoned property holder and the owner, by-laws or any other documentation concerning any agreement between the abandoned property 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 is 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 which are associated with stocks which are presumed abandoned, shall also be presumed abandoned as of the same time, and are 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 of the Act shall 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 State 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. Sale of Abandoned Property

- 8.01 Securities listed on an established stock exchange shall be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold at over-the-counter prices prevailing at the time of sale. Such sales may be preformed by brokerage firms or financial institutions selected by the State Treasurer.
- 8.02 A person making a valid claim of ownership 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, any 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.
- 8.03 Pursuant to the Act, the State Treasurer shall sell any property delivered to the State Treasurer which the State Treasurer determines, by any means necessary, has obvious commercial value, unless the expenses of conducting the sale are equal to or greater than the value of the property to be sold. If the property has no obvious commercial value, then such property may be disposed of by the State Treasurer pursuant to the Act.

Section 9. Examination of Records

- 9.01 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 deuces tecum to review the records.
- 9.02 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.

- 9.03 The State Treasurer may, employ independent auditors to examine the records of any person.
- 9.04 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.
- 9.05 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 10. 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 11. 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 12. 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 13. Alternative Reporting Forms

The State Treasurer may accept alternative reporting forms. Provided, that the holder first receives the approval of the State Treasurer to use alternative reporting forms. Additionally, the State Treasurer may accept computer disk or tape reporting from the holder, with the State Treasurer's prior approval.

Section 14. Records Estimations

If a holder fails after the effective date of the Act to maintain the records necessary to accurately report to the State Treasurer pursuant to the Act, the State Treasurer may require the holder to report and pay such amounts as the State Treasurer may reasonably estimate from any available records.