



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Treasurer TITLE-SERIES: 112-16
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Reporting and Claiming Unknown and Unlocatable
Interest Owners Reserved Interests
CITE STATUTORY AUTHORITY: §37B-2-7

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/27/2018 12:00 noon
PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Diana Stout, WV State Treasurer's Office
ADDRESS: 1900 Kanawha Blvd., E. Bldg. 1 Room E145
Charleston, WV 25305
EMAIL: diana.stout@wvsto.com

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule implements the provisions of West Virginia Code §37B-2-1 et seq., the Unknown and Unlocatable Interest Owners Act, by establishing the processes and requirements for reporting and claiming property under the Act.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

This is a new rule that 37B-2-7 requires the Treasurer, as Unclaimed Property Administrator, to promulgate to effectuate the purposes of the Act.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Engrossed Committee Substitute for House Bill 4268 (2018), which encompasses various Code changes and adds two new acts, the Cotenancy Modernization and Majority Protection Act and the Unknown and Unlocatable Interest Owners Act, is expected to encourage oil and gas development in West Virginia. The Unknown and Unlocatable Interest Owners Act is an integral part of that encouragement by enabling developers to deal with problems they have had for over 100 years in attempting to ensure payment is received by owners. Both Acts are expected to generate additional funds for the state (general revenue by tax collections and moneys for the Oil and Gas Reclamation Fund and PEIA Stability Fund), but there is no way of anticipating the actual dollar impact at this time.

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

See Section A. In addition, if there is more oil and gas development, employment will increase in the industry. With the increased employment will come increased revenues for businesses throughout the state that provide goods and services to developers and their employees.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	65000	50000
Personal Services	0	30000	45000
Current Expenses	0	5000	5000
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	30000	0
2. Estimated Total Revenues	0	65000	50000

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The Act creates the Unknown and Unlocatable Interest Fund and authorizes the Administrator to deduct expenses from the Fund. After paying claims and deducting expenses, beginning July 1, 2023, the Administrator is to transfer moneys from the Oil and Gas Reclamation Fund and the PEIA Stability Fund, each to receive 50% of the moneys transferred.

In 2019, we anticipate that time of two to three employees will be required to process holder reports and pay claims (segregation of duties) at a cost of \$30,000; current expenses of \$5,000 to cover overhead, advertising and other costs of maintaining the reports and data; and other costs of \$30,000 to have our software enhanced to provide for the holder reports, property received and claims. In subsequent years, there will be only minimal software development required, but we anticipate additional time of employees will be required as more entities report more property, generating more claims.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Wilma L Harrison -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 16
REPORTING AND CLAIMING
UNKNOWN AND UNLOCATABLE INTEREST OWNERS RESERVED INTERESTS

§112-16-1. General.

1.1. Scope. -- This rule implements the provisions of West Virginia Code §37B-2-1, et seq., relating to the Unknown and Unlocatable Interest Owners Act.

1.2. Authority. -- W. Va. Code §37B-2-7.

1.3. Filing Date. -- _____.

1.4. Effective Date. -- _____.

1.5. Sunset Provision. - This rule shall terminate and have no further force or effect five years from the effective date.

§112-16-2. Definitions.

For the purposes of this rule, the definitions and use of terms contained in W. Va. Code §37B-1-1 et seq., §37B-2-1 et seq. and §36-8-1 et seq., have the same use and meaning as prescribed to them by the Code, unless a different meaning is clearly required by the context. Additionally, for purposes of this rule, the following definitions apply:

2.1. "Act" means the Unknown and Unlocatable Interest Owners Act, W. Va. §37B-2-1, et seq.

2.2. "Holder" means a person or entity obligated to hold for the account of, or deliver or pay to, the owner of reserved interests from minerals produced in West Virginia.

2.3. "Negative report" means a report for which there is no property or information required to be reported under the Act.

2.4. "Owner" means the person or entity that owns a Reserved Interest.

2.5. "Property" means a reserved interest under the Act.

2.6. "UUPA" means the Uniform Unclaimed Property Act, W. Va. Code §36-8-1, et seq., and the rules promulgated in accordance with the UUPA.

§112-16-3. Conflict.

The Act and the UUPA are to be read in conjunction with each other and not in conflict. In the event of a conflict, the administrator shall establish the controlling provision.

§112-16-4. Presumption of Abandonment.

Reserved interests are presumed abandoned and reportable under the Act when a holder has not paid the owner and is unable to identify or locate the owner.

§112-16-5. Due Diligence and Reporting.

5.1. Holders shall make reasonable efforts to identify and locate every owner of a reserved interest in the possession of the holder not less than sixty days before submitting a report to the administrator. Holders may not charge the expenses of identifying or locating an owner against the amount owed the owner.

5.2. Holders shall file reports in the form and format established by the administrator.

5.3. Holders of a reserved interest presumed abandoned each calendar quarter shall file a verified report with the administrator by the first day of the month following that calendar quarter and containing the following:

(a) any information that identifies the reserved interest, including without limitation, the legal description of the real property interest, name of the county and district in which the mineral property is located, and division orders;

(b) a designation of the reserved interest as belonging to an unknown or unlocatable owner and all information known about the unknown or unlocatable owner, including, without limitation, any names, addresses, social security number or taxpayer identification number, date of birth, date of death,

driver's license number, telephone numbers and e-mail addresses;
and

(c) date or dates which the reserved interest became payable under the Act.

5.4. Holders shall remit the amount of any reserved interest concurrently with the filing of the associated report.

5.5. A report is not considered an adequate report if the administrator determines the report is incomplete or missing information or the remittance does not match the report. If the administrator determines the report is not adequate, the administrator shall notify the holder and the holder shall file a corrected report or remittance with the administrator within twenty calendar days after the administrator returned the report or remittance.

5.6. The administrator shall create an account for each owner of property reported after determining the report and remittance appear correct.

5.7. If the administrator is unable to locate an owner within one year of receiving the report, the administrator may contact the holder and obtain any other information from the holder that the holder may have pertaining to the reserved interest. The holder shall provide any information requested by the administrator if known or available to the holder, including, without limitation, any prior payments to the owner, information about the lease under which the reserved interest was created, permits, title opinions, filings with any governmental entity, and the names and any other available information pertaining to family members, guardians, conservators, joint owners, co-owners, co-tenants and beneficiaries.

5.8. Records of a holder failing to submit an adequate report or remittance within the time required by the Act are subject to examination.

5.9. The administrator may assess interest and penalties against a holder failing to file a report and remittance on or before the time specified in the Act.

5.10. A holder discovering unreported property shall file a report immediately upon discovery of the omission. The holder shall identify the property as being reported late and the reason for the omission.

5.11. A holder does not have to file a negative report, but may choose to do so for recordkeeping purposes.

5.12. A holder seeking an extension of time in which to report or remit shall file a request with the administrator for receipt by the administrator a minimum of thirty (30) calendar days prior to the due date using the extension form provided by the administrator.

(a) A request by a holder for an extension of time to report or remit the amount due shall include a reasonable cause for delaying the report or remittance. Reasonable cause includes, but is not limited to, a natural disaster, criminal activity related to the holder's books and records, or a recent change in the form of ownership of the holder through merger, acquisition or reorganization. Reasonable cause does not include the failure of a holder to perform the due diligence required under subsection 5.1. of this rule.

(b) The administrator shall respond to each request for extension within twenty (20) days after receipt of the request.

(c) Unless otherwise authorized by the administrator, the holder shall submit a payment of 80% of the estimated amount due upon receipt of the extension.

(d) The administrator may grant the holder an extension of not less than thirty (30) days and no more than ninety (90) days from the date the report and/or remittance are due.

§112-16-6. Payment or Delivery.

Holders shall remit the amount of a reserved interest in the manner determined by the administrator, including, without limitation, by electronic funds transfer.

§112-16-7. Advertising.

In addition to the published notice required in W. Va. Code §36-8-9, the administrator may use other forms of advertising that, in the judgment of the administrator, would be in the best interests of the reported owners of the unclaimed property.

§112-16-8. Crediting interest to owner's account.

The administrator may invest the moneys deposited in an owner's account with the West Virginia Board of Treasury Investments, and then credit any earnings received to the account. Interest shall accrue to an owner's account from the date the funds are invested to the third anniversary of the receipt by the administrator.

§112-16-9. Claims.

9.1. After property has been paid or delivered to the administrator, another state may recover any property subject to W. Va. Code §36-8-4.

9.2. A person, excluding another state, claiming property paid or delivered to the administrator shall file a claim on a form prescribed and provided by the administrator. In addition to the prescribed form, the claimant shall:

(a) provide a photo copy or documentation of his or her driver's license, or other acceptable form of identification approved by the administrator;

(b) complete an affidavit or an electronic verification prescribed by the administrator;

(c) complete a claim form electronically; and

(d) provide any other evidence the administrator may require in order to authorize and pay the claim.

§112-16-10. Holder paying claim.

10.1. In the event a holder pays a claim to an owner for property previously paid to the administrator, the holder may file a request for reimbursement with the administrator. The administrator will verify the payment is for property previously reported and paid. The holder shall provide the documentation requested by the administrator and then the administrator shall reimburse the holder.

10.2. The administrator shall remit any earnings on the owner's account to the owner paid by the holder.

§112-5-11. Periods of Limitation.

11.1. The administrator shall commence an action against a holder within ten years after the time the property was first reported or specifically placed in issue.

11.2. A holder which conceals property, willfully or otherwise, does not have the protection of the stated limitations period provided in W. Va. Code §36-8-19.

§112-5-12. Requests for Reports and Examination of Records.

12.1. The administrator shall notify the holder in writing ten (10) days prior to an examination of the holder's records, conducted pursuant to §36-8-20 of the UUPA. The administrator may waive the ten-day notice, prior to performing an examination, if the administrator determines that the existence of the records may be in jeopardy by use of the advance notice provision.

12.2. The administrator may require a holder to report and pay unclaimed property that the administrator reasonably estimates is due based upon the examination of the records or by any other reasonable method of estimation.

§112-16-13. Descent and Distribution.

If there is no taker under the provisions of W. Va. Code §42-1-3c, the intestate estate passes to the state. Any personal property passes to the administrator for disposition by public sale in accordance with W. Va. Code §36-8-12. The administrator shall deposit the proceeds of the sale of the personal property to the credit of the general revenue fund.