
OFFICE OF THE ATTORNEY GENERAL
Official Opinion No. 2008-4

August 22, 2008

OFFICIAL OPINION 2008-4

Mr. Bruce Hartman
State Examiner, State Board of Accounts
Indiana Government Center South – Rm. E418
302 West Washington Street
Indianapolis, Indiana 46204

Re: Disposition of Uncashed Indiana Tax Refund and Prisoner Discharge Checks

Dear Mr. Hartman:

You have requested our opinion regarding the proper handling of uncashed Indiana tax refund checks and uncashed prisoner discharge checks. Your question is occasioned by a possible inconsistency between Indiana's Unclaimed Property Act ("IUPA") at Indiana Code section 32-34-1-1, *et seq.*, and Indiana's Warrant Cancellation Statute at Indiana Code section 4-10-10-1, *et seq.*

Brief Answer

The funds represented by uncashed Indiana tax refund checks and uncashed prisoner discharge checks should be paid over to Indiana's Abandoned Property Fund, which is administered by the Office of the Attorney General and kept by the Treasurer of State in the Abandoned Property Fund.

Legal Analysis

The purpose of IUPA is to place abandoned intangible property into the custody and safekeeping of the State for possible recovery by the owner.

IUPA defines a "holder" as "a person obligated to deliver or pay to the owner property that is subject to this chapter"¹ and "person" includes "a government, a governmental subdivision, agency, or instrumentality..."² "Property" means an interest in intangible personal property, except an unliquidated claim, and all income or increment derived from the interest, including an interest that is referred to as or evidenced by: (1) money, a check, a draft, a deposit, an interest, or a dividend...." Ind. Code § 32-34-1-17. Although some types of intangible property are excluded from the IUPA, there is no specific exclusion for state-held property. Ind. Code § 32-34-1-1(b).

IUPA also is specific on when property becomes abandoned. Indiana Code § 32-34-1-20 provides, in pertinent part (emphasis supplied):

(c) Property that is held, issued, or owed in the ordinary course of a holder's business is presumed abandoned if the owner or apparent owner has not communicated in writing with the holder concerning the property or has not otherwise given an indication of interest in the property during the following times:...

(7) For property held by a state or other government, governmental subdivision or agency, or public corporation or other public authority, one (1) year after the property becomes distributable.

The holder, after filing a report of the unclaimed property as required by Indiana Code § 32-34-1-26, "shall pay or deliver to the attorney general the property that is described in the report as unclaimed." Ind. Code § 32-34-1-27.³

In addition, Indiana Code § 32-34-1-47 provides:

All officers, agencies, boards, bureaus, commissions, divisions, and departments of the state, including any body politic and corporate created by the state for public purposes, and every political subdivision of the state shall do the following:

- (1) Cooperate with the attorney general upon the attorney general's request to further the purposes of this chapter.
- (2) Make their records available to the attorney general for the purposes of discovering property that is

presumed to be abandoned under this chapter.

(3) Compile from their records, upon the attorney general's request, reports that would aid the attorney general in identifying the holders of property presumed to be abandoned under this chapter and in discovering property that is presumed to be abandoned.

The foregoing evidences the General Assembly's intent that all instrumentalities of the State identify and submit abandoned property to Indiana's Abandoned Property Fund.

On the other hand, Indiana Code chapter 4-10-10 relating to the cancellation of outstanding warrants, which is essentially unchanged since its adoption in 1953, requires that state agencies make a list of warrants which have been outstanding more than 2 years and, at Indiana Code § 4-10-10-5, provides that

Upon the treasurer of state's transmitting the list of such outstanding state warrants to the auditor of state, such auditor shall enter the amounts so listed by the treasurer as a receipt into a cancelled warrant holding account in which account the funds shall be held for a period of five (5) years. The treasurer of state shall enter such amounts in his records as a receipt into the same fund as was done by the auditor of state and shall also remove the warrants from the record of outstanding warrants. All warrants that have been outstanding seven (7) years as of December 31 of any year shall be receipted into the fund from which they were originally drawn: Provided, however, That if the fund from which the warrants were originally drawn is not in existence, or cannot be ascertained, the amounts of such outstanding warrants shall be receipted into the general fund of the state.

An earlier opinion of this office concluded that the Uniform Disposition of Unclaimed Property Act (as it was in effect in 1975) "supersedes those earlier sections of the Indiana Code dealing with the disposition of unclaimed warrants and or checks held by the state." 1975 OAG No. 19. The legal analysis set forth in that opinion is still correct.

When a taxpayer has paid more tax for a taxable year than legally due, the Department of Revenue "shall refund the excess amount to the person." Ind. Code § 6-8.1-9-2. Paying the funds represented by uncashed refund checks into the Abandoned Property Fund maximizes the opportunity to notify the taxpayer that money is owed, during which time the funds are kept in the State's treasury.

Inmate trust funds are dealt with in Indiana Code chapter 4-24-6. They are typically comprised of funds donated by a family member or other donor for the use of the inmate while incarcerated. The statutes make specific provision for the distribution of these funds when an inmate has died while incarcerated or escaped. Ind. Code §4-24-6-5. But absent those circumstances, the proceeds of an uncashed check should be paid over to the Abandoned Property Fund.

Conclusion

The funds represented by uncashed Indiana tax refund checks and uncashed prisoner discharge checks should be paid over to Indiana's Abandoned Property Fund, which is administered by the Office of the Attorney General and kept by the Treasurer of State in the Abandoned Property Fund. The agencies involved may contact the Unclaimed Property Division for guidance on the mechanics of this transfer.

We appreciate the opportunity to provide this legal analysis.

Sincerely,

Stephen Carter,
Attorney General

Susan Gard,
Deputy Attorney General

Philip Thompson,
Deputy Attorney General

¹ Ind. Code § 32-34-1-8.

² Ind. Code § 32-34-1-15 (emphasis supplied).

³ The property, however, may be turned over sooner than one year. Indiana Code § 32-34-1-39 provides "A

holder, with the written consent of the attorney general . . . may report and deliver property before the property is presumed abandoned."

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