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Lost & Found: Unclaimed Property Issues for Texas Oil & Gas HADOA Conference, Houston TX March 4, 2010

[Texas v NJ \(1965\)](#) (CTRL + click to go to web site)

In 1965 the Supreme Court issued rules in a case where the State of Texas sued the Sun Oil Company, New Jersey and Pennsylvania over the escheatment of intangible property including mineral proceeds. The rules do not apply to tangible assets (the minerals themselves)

- First priority rule: holder must escheat assets to the state of owner's last known address
- Second priority rule: if the holder does not have an address on file for the owner, the holder escheats the assets to the state where it is incorporated

[State of Texas Requirements: Property Code Chapters 72-76](#) (CTRL + click for PDF copy)

Chapter 75 of the Texas Property Code covers mineral proceeds specifically:

- All obligations to pay resulting from production & sale of minerals
 - Net revenue interests
 - Royalties
 - Overriding royalties
 - Production payments
 - Joint operating arrangement
- All obligations to pay for the acquisition & retention of a mineral lease
 - Bonuses
 - Delay rentals
 - Shut-in royalties
 - Minimum royalties
- Assets presumed abandoned 3 years after obligations are payable or distributable

Chapter 74 of the Texas Property Code covers the Report, Delivery and Claims Process

- Property presumed abandoned on June 30th is reportable on Nov 1st
 - Name, Social Security number, Driver's License number, Email address, Last Known address
 - Property description & balance of account
 - Date the property became payable
 - Date of last transaction with the owner
- Amounts less than \$50 may be aggregated
- Notice requirements apply to property over \$250
 - Mail to last known address by Aug 1
 - Not required if notice provided under other regulations by Aug 1
 - Not required if no address on record

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- Penalties & Interest
 - 10% interest annually
 - Penalty: 5% of amount if late
 - Penalty: Additional 5% of amount if more than 30 days late
 - Civil Penalty: \$100 per day
 - Comptroller authorized to waive penalty or interest
 - Willful failure to file or deliver is a Class B misdemeanor

Comments on other States

Other states make extensive use of 3rd party auditors paying them a percentage of the amount they discover. Audit periods typically cover 10 to 15 years, but some can be longer. Delaware, for example, audits back to 1981.

Each state has its own search and notification requirements.

Journal of Accountancy Estimates of Liability (CTRL + click to access website)

Using the Journal of Accountancy guidelines to estimate unclaimed property liability, a company with \$2500 a year in unreported unclaimed property has an exposure of principal, interest and penalties of \$98,712 in a ten-year audit, and \$234,862 in a 15-year audit.

Recommendations

- Check to make sure you are escheating to the state of the owner's last known address
- Make sure you are meeting each state's search and notification requirements
- Update you owner database with current address information
- Identify deceased owners
- Locate lost owners and reunite them with their assets rather than turning them over to the state

Web Links

Texas v NJ: <http://supreme.justia.com/us/379/674/case.html>

TX Property Code: <http://www.window.state.tx.us/up/forms/96-376.pdf>

Journal of Accountancy: <http://www.journalofaccountancy.com/Issues/2004/Feb/UnclaimedProperty.htm>