

State Law & State Taxation Corner

By John A. Biek

May a Holder's State of Corporate Domicile Claim Abandoned Property Exempted by the Owner's State?

Introduction

In the 1965 case of *Texas v. New Jersey*,¹ the United States Supreme Court announced that a holder's state of corporate domicile (generally its state of incorporation) is entitled to take custody of unclaimed property that the holder owes to persons as to whom the holder does not know their whereabouts or "whose last known address is in a state which does not provide for escheat of the property owed them."² When the Supreme Court adopted this secondary priority rule of its *Texas v. New Jersey* decision, there were a number of states that had not yet enacted abandoned property laws.

Today all of the states and the District of Columbia have adopted abandoned property laws, but a number of states have begun to provide exemptions under their abandoned property laws for certain types of property such as gift certificates and gift cards³ and property that the holder owes to a commercial customer or supplier.⁴ This raises the interesting question of whether the secondary priority rule of *Texas v. New Jersey* authorizes the holder's state of corporate domicile to step in and claim property that the owner's state of last known address will not claim because of its exemption. The courts have not yet addressed this issue and arguments could be presented based on language in the Supreme Court's abandoned property cases for and against such a secondary priority rule claim to property exempted by the owner's state of last known address.

However, a careful reading of the Supreme Court's priority rule cases indicates that the holder's state of corporate domicile should *not* be allowed to escheat



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items of unclaimed property that have been exempted by the owner's state of last known address. This issue is discussed in detail in this article.

General Principles of State Abandoned Property Laws

All fifty states and the District of Columbia have enacted abandoned property statutes that require a business (referred to as the "holder") to report and remit to the appropriate state the cash value of intangible personal property (a) that constitutes a debt or obligation owed by the holder, in the ordinary course of its business, to a payee such as a customer, vendor, employee or shareholder (referred to as the "owner") and (b) that has remained unclaimed by the owner throughout the "statutory dormancy period" prescribed in the state's abandoned property statutes.⁵ Many of these state abandoned property statutes are based on one or more of the three "uniform acts" that have been drafted by the National Conference of Commissioners on Uniform Laws.⁶ All of the state abandoned property laws are now custodial in nature, meaning that the state's assertion of a claim to the property does not cut off the owner's right to claim the property (which would be terminated under "escheat" laws). The state takes custody of the unclaimed property in perpetuity until the owner (or a holder that has reimbursed the owner) comes forward to present a claim to the state for payment of the property.⁷

State abandoned property laws serve several purposes. One is the objective of reuniting owners with their unclaimed property. Another is preventing the unjust enrichment or "windfall" that holders would enjoy if they were allowed to retain property that they owe to their customers, vendors, employees and shareholders.⁸ The United States Supreme Court explained in *Standard Oil Co. v. New Jersey*⁹ that:

As a broad principle of jurisprudence rather than as a result of the evolution of legal rules, it is clear that a state, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, belonging to unknown persons. Such property thus escapes seizure by would-be possessors and is used for the general good rather than for the chance enrichment of particular individuals or organizations.

A third legislative purpose of abandoned property statutes is raising revenue that will benefit the citizens

of the state that is claiming the property from the holder.¹⁰ State abandoned property administrators know from experience that only a small portion of the unclaimed property delivered to the state is ever likely to be claimed by owners. The remaining portion of the holder's unclaimed property remittances is typically transferred to the state's general revenue fund.

Determining Which State Is Entitled to Claim Items of Unclaimed Property

In the late 1940s and early 1950s, the United States Supreme Court was presented with cases in which states were attempting to require holders to report unclaimed property to the state based on the state's claim that the state had jurisdiction under the Due Process Clause to apply its abandoned property laws to the holder and the property was presumed abandoned under those laws. In *Connecticut Mutual Life Insurance Co. v. Moore*,¹¹ the Supreme Court upheld New York's right to take custody of unclaimed payments that the defendant insurance companies had made with respect to insurance policies issued on the lives of New York residents. Applying a due process analysis, the Supreme Court held that New York had jurisdiction to require the insurance companies to report the property to the state because the insurance companies were doing business in New York and the insureds had been located in New York.¹² The Supreme Court noted that the question of whether another state would also be able to claim the same property was not before the Court.¹³

Three years later, in *Standard Oil Co. v. New Jersey*,¹⁴ the Supreme Court allowed New Jersey to claim custody of unclaimed dividends, wages and vendor checks from a holder on the grounds that the holder was incorporated in New Jersey, even though the holder's books and records showed that many of the owners of the unclaimed property were residing in other states. The Supreme Court again found that the holder had due process nexus with the claimant state: "[W]e see no reason to doubt that, where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt."¹⁵ The Court ruled only upon the constitutionality of New Jersey's escheat of the property at issue and emphasized that "[t]he claim of no other state to this property is before us and, of course, determination of any right of the claimant state against New Jersey

for the property escheated by New Jersey must await presentation here."¹⁶

In *Western Union Telegraph Co. v. Pennsylvania*,¹⁷ the Supreme Court held that the Due Process Clause would preclude more than one state from claiming the same item of property from the holder. However, the issue of which state possessed the superior right to claim the property was not before the Court, although the record established that New York had already escheated some of the funds claimed by Pennsylvania. The Court ultimately held that Pennsylvania could *not* claim the property from Western Union because Pennsylvania would not be able to protect the company from the double liability that would ensue if and when New York and other states laid claim to the same property.¹⁸

In *Texas v. New Jersey*,¹⁹ the Supreme Court was finally presented with the question of which state had the best right to escheat intangible property: "The issue before us is not whether a defendant has had sufficient contact with a State to make him or his property rights subject to the jurisdiction of its courts, a jurisdiction which need not be exclusive. . . . [W]e are faced here with the very different problem of deciding which State's claim to escheat is superior to all others."²⁰

New Jersey was claiming the property in its capacity as the state of incorporation of the holder, Sun Oil Company. Pennsylvania contended that it should be allowed to claim custody of all of the property because it was the state of commercial domicile of Sun Oil. Meanwhile, Florida and Texas were claiming some of the property on the grounds that the owners of the property resided in that state, or in the case of Texas, that the unclaimed property was on the books and records of two Sun Oil offices located in Texas.²¹

The Supreme Court recognized in its *Texas v. New Jersey* opinion that the Court needed to create a straightforward set of rules for states to follow when claiming abandoned property from holders. The court explained that "[s]ince the States separately are without constitutional power to provide a rule to settle this interstate controversy and since there is no applicable federal statute, it becomes our responsibility in the exercise of our original jurisdiction to adopt a rule which will settle the question of which State will be allowed to escheat the intangible property."²² The Supreme Court also emphasized the importance of establishing priority rules that would be easy for holders and the states to administer. For example, the Court rejected Pennsylvania's suggestion that the unclaimed property should be subject

to escheat by the state of the holder's principal place of business because:

[A]pplication of the rule Pennsylvania suggests would raise in every case the sometimes difficult question of where a company's 'main office' or 'principal place of business' or whatever it might be designated is located. Similar uncertainties would result if we were to attempt in each case to determine the State in which the debt was created and allow it to escheat. Any rule leaving so much for decision on a case-by-case basis should not be adopted unless none is available which is more certain and yet still fair.²³

Under the priority rules that the Supreme Court adopted in its *Texas v. New Jersey* decision, unclaimed property escheats, first, to the state of the last known address of the apparent owner of the property, as shown in the holder's books and records.²⁴ The Court explained that:

Adoption of such a rule involves a factual issue simple and easy to resolve, and leaves no legal issue to be decided. . . . And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified.²⁵

The Supreme Court then provided a secondary priority rule that is applicable to "property owed persons (1) as to whom there is no record of any address at all, or (2) whose last known address is *in a State which does not provide for escheat of the property owed them*."²⁶ The Supreme Court decided that the holder's state of corporate domicile (*i.e.*, its state of incorporation) would be allowed to claim the property under this secondary priority rule, with the caveat that the state of last known address of the owner of the property could subsequently claim the property from the state of the holder's corporate domicile if the owner's state was able to prove that the owner resided in that state or "*if and when its law made provision for escheat of such property*."²⁷ When the *Texas v. New Jersey* case was being decided in 1965, many states had not yet enacted abandoned property laws (and the state abandoned property laws that did exist provided few exemptions).²⁸

The Supreme Court reaffirmed its *Texas v. New Jersey* priority rules when it was again presented

with competing claims of two states to unclaimed property in *Pennsylvania v. New York*.²⁹ Pennsylvania was asking the Supreme Court to create a special priority rule for unclaimed money orders that, by their nature, typically had no record of a last known address of the payee. Pennsylvania urged the Court to prevent a “windfall” to New York, the holder’s state of incorporation, by giving the first priority claim to the state where the money orders had been purchased (and where the purchaser of the money order presumably resided).

Reviewing its *Texas v. New Jersey* decision, the Supreme Court explained that “[w]e therefore held [in *Texas v. New Jersey*] that the State of the creditor’s last known address is entitled to escheat the property owed him, adding that if his address does not appear on the debtor’s books *or is in a State that does not provide for escheat of intangibles*, then the State of the debtor’s incorporation may take custody of the funds ‘until some other State comes forward with proof that it has a superior right to escheat.’”³⁰ The Supreme Court declined Pennsylvania’s request that the Court create a special exception to its two priority rules for money orders because:

If the abandoned property laws of the state of last known address of the owner provide an exemption for the property, that should put an end to the holder’s unclaimed property compliance obligations with respect to that property.

[T]o vary the application of the *Texas* rule according to the adequacy of the debtor’s records would require this Court to do precisely what we said should be avoided—that is, “to decide each escheat case on the basis of its particular facts or to devise new rules of law to apply to ever developing new categories of facts.”³¹

It appears that the Supreme Court intended its two *Texas v. New Jersey* priority rules to be universally applied to provide guidance as to which state has the right to claim or receive delivery of unclaimed property from a holder—and as to which state the holder should report that property in the first place.

In *Delaware v. New York*,³² the Court was again asked to vary its application of the *Texas v. New Jersey* priority rules, this time to determine which state was entitled to take custody of unclaimed dividends, interest and other securities distributions that had originated with the issuer of the securities with

respect to which the distributions had been made. These securities distributions were often channeled through financial intermediaries such as banks, brokers and depositories that held title to the securities as “record owners” for the beneficial owner of the securities. As the record owner of the securities, the financial intermediary was legally entitled to receive the securities distributions, but the financial intermediary was then also legally obligated to pass the securities distributions on to the next owner in the chain of title to the securities.³³ Because most of the unclaimed securities distributions could not be traced to an identifiable beneficial owner, let alone to a state of last known address, the question before the Court in the *Delaware v. New York* case was how the secondary priority rule of *Texas v. New Jersey* should be applied to the unclaimed securities distributions.

The Supreme Court again summarized the two priority rules that the Court had created in *Texas v. New Jersey* and reaffirmed in *Pennsylvania v. New York*. The Supreme Court explained that:

[I]f the [first] priority rule fails because the debtor’s records disclose no address for a creditor or because the creditor’s last known address is *in a state whose laws do not provide for escheat*, the secondary rule awards the right to escheat to the State in which the debtor is incorporated.³⁴

Several pages later in its *Delaware v. New York* opinion, the Supreme Court emphasized how limited the circumstances were in which the secondary priority rule would apply: “It must be remembered that we refer to a debtor’s State of incorporation only when the creditor’s last known address is unknown or *when the creditor’s State does not provide for escheat*.”³⁵

The Supreme Court then went on to determine that the holders of the unclaimed securities distributions in the *Delaware v. New York* case were the financial intermediaries rather than the issuers of the securities because the securities issuers had satisfied their legal obligations by making the distributions to the next record owner (*i.e.*, the financial intermediaries) in

the chain of title to the securities. The Court held that unless New York could prove that specific unclaimed distributions were owed to specific beneficial owners (or other financial intermediaries) located in New York, the secondary priority rule would award custody of unclaimed distributions to the state of incorporation (most likely Delaware) of the holder of the unclaimed distributions.³⁶

Does the Secondary Priority Rule of *Texas v. New Jersey* Allow the Holder's State of Corporate Domicile to Claim Property that Is Owed to a Payee Located in a State that Exempts the Property?

Under the Supreme Court's holding in *Texas v. New Jersey*, as reaffirmed in *Pennsylvania v. New York* and *Delaware v. New York*, it is clear that if the last known address of the owner of an item of unclaimed property is unknown, or, as was often the case when *Texas v. New Jersey* was decided, if the state of the owner's last known address does not have abandoned property laws addressing outstanding liabilities of holders to owners, then the secondary priority rule will permit the state of corporate domicile of the holder to claim the property under its abandoned property laws. What happens, however, if the holder's books and records do indicate that the owner of the property is located in a particular state that has enacted abandoned property laws, but those laws provide an exemption for the type of property at issue? Under such circumstances, the state of the owner's last known address would have "laws governing the escheat of intangible property," as the Supreme Court put it in *Pennsylvania v. New York* and *Delaware v. New York*, but it is also true that the abandoned property administrator of the state of last known address of the owner will never assert a claim to the property because of the exemption in that state's abandoned property laws.

It does not appear that any court has yet addressed this issue. However, it should be significant that the majority opinions in both *Pennsylvania v. New York* and *Delaware v. New York* described the secondary priority rule of *Texas v. New Jersey* as giving custody of unclaimed property to the holder's state of corporate domicile only if the holder's books and records do not include a last known address of the owner of

the property or if the holder's books and records show a last known address that "*is in a State that does not provide for escheat of intangibles.*"³⁷ Justice Powell's dissenting opinion in *Pennsylvania v. New York*, used similar language, stating that "[i]n the infrequent case in which no record of last known address was available or in which the appropriate State's laws did not provide for the escheat of abandoned intangibles, the property was to go to the State of the debtor's corporate domicile."³⁸ The Supreme Court appears to be describing a scenario in which the state of last known address of the property owner does not have any abandoned property laws at all rather than one in which the owner's state will not claim the particular item of property at issue because of an exemption.

As noted earlier, there were a significant number of states that had not yet enacted abandoned property laws in 1965, when *Texas v. New Jersey* was decided, so it is quite plausible that the Supreme Court intended its secondary priority rule to apply only in situations where the holder did not know the whereabouts of the owner of the property, or the state of last known address of the property owner did not have any abandoned property laws. Under such circumstances, the state of last known address of the owner of the property would not be in a position to claim the property from the holder, although that state might be quite willing to claim the property if it knew of the property's existence or if the state's legislature had gotten around to enacting some abandoned property laws. If the holder's state of corporate domicile was not allowed to claim the property under these circumstances, the holder would enjoy the type of windfall that the state abandoned property laws are intended to prevent.

There should not be the same policy concern, however, if the item of unclaimed property at issue has been affirmatively exempted by the state where the owner of the property is located. Here the state of last known address of the owner has laws that "provide for the escheat of intangibles," in the words of *Pennsylvania v. New York* and *Delaware v. New York*, but the state's legislature has decided for whatever reason that it is not appropriate for the state to claim the property. A holder can make a strong argument that its state of corporate domicile should be required to respect this decision of the legislature of the state of last known address of the owner. Moreover, the holder's state of corporate domicile could not argue that the holder would be unjustly enriched if it were allowed to retain the exempted property because the

legislature of the state of last known address of the owner has already determined that it is appropriate for the holder to keep the property.

A successful claim by the holder's state of corporate domicile to the property would also undermine the "ease of administration" of the Supreme Court's priority rules. In *Texas v. New Jersey*, the Court acknowledged that:

We realize this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States.³⁹

Abandoned property compliance is hardly enhanced by the holder having to employ a decision tree that considers whether other states are entitled to claim property that is exempted by the state that was given the best right to claim that property under the *Texas v. New Jersey* priority rules. If the abandoned property laws of the state of last known address of the owner provide an exemption for the property, that should put an end to the holder's unclaimed property compliance obligations with respect to that property.

Do the Priority Rules Apply If Only One State is Claiming an Item of Property from the Holder?

The abandoned property administrator in the holder's state of corporate domicile could attempt to argue that if it is the only state claiming an item of unclaimed property from the holder (because the owner's state exempts the property), then the *Texas v. New Jersey* priority rules do not apply at all, and the holder's state is entitled to claim the property under due process principles. The Supreme Court decided *Texas v. New Jersey* pursuant to the original jurisdiction powers that the United States Constitution confers on the Court to decide disputes among the states.⁴⁰ There is nothing in the *Texas v. New Jersey* opinion, however, to suggest that the Court intended that its priority rules would apply only in situations in which a holder is facing claims from more than one state to the same items of

unclaimed property. The Court declared in its *Texas v. New Jersey* opinion that "[s]ince the states separately are without constitutional power to provide a rule to settle this interstate controversy and since there is no applicable federal statute, it becomes our responsibility in the exercise of our original jurisdiction to adopt a rule which will settle the question of which State will be allowed to escheat this intangible property."⁴¹ Recognizing that the "contacts test" that the Court had applied in its earlier *Connecticut Mutual Life* and *Standard Oil* cases "is not really any workable test at all,"⁴² the Court fashioned a set of two priority rules that it considered to be "the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States."⁴³ The Supreme Court undoubtedly recognized that if holders and state abandoned property administrators uniformly applied the *Texas v. New Jersey* priority rules, it would substantially reduce the number of multistate unclaimed property cases that came before the Court.

In *American Petrofina Co. of Texas v. Nance*,⁴⁴ the United States District Court for the Western District of Oklahoma and the Tenth Circuit Court of Appeals held that the priority rules of *Texas v. New Jersey* constitute federal common law that preempted the Oklahoma Tax Commission from taking custody of unclaimed mineral interest payments from the plaintiff holders even though Oklahoma was the only state that was claiming the property from those holders. The Oklahoma Uniform Disposition of Unclaimed Property Act had been amended in 1984 (the "1984 Act") to require that holders report and deliver unclaimed payments from mineral interests located in Oklahoma after one year. The reported funds were placed in the state's Abandoned Mineral Interest Revolving Fund until the seven-year dormancy period in the Oklahoma Uniform Act had passed, at which point the funds would be presumed abandoned and escheat to the state.⁴⁵ This special Oklahoma unclaimed property law for mineral interests was plainly contrary to the *Texas v. New Jersey* priority rules because the law based Oklahoma's claim to the funds on the physical location of the mineral interest being in Oklahoma rather than on the location of the owner of the unclaimed mineral interest funds or on the state of corporate domicile of the holder.

The federal district court found the 1984 Act to be unconstitutional because it "expressly conflicts with the scheme for escheat or custodial taking outlined by the Supreme Court in *Texas v. New Jersey*."⁴⁶ The district court concluded that "[t]he rules of federal

common law developed in resolving disputes between states have been applied not only to suits between states but to suits between private litigants as well⁴⁷ and that “state laws are preempted to the extent they conflict with federal common law set out in a decision based upon the Supreme Court’s original jurisdiction and rendered for the purpose of national uniformity.”⁴⁸

In October 1988, the Court of Appeals for the Tenth Circuit affirmed the district court’s opinion in the *American Petrofina* case. The Court of Appeals explained that:

A lengthy discussion is unwarranted, for the district court’s reasoning is in accord with our views. Suffice it to say that, to ensure ease of administration and the free flow of commerce, the Supreme Court in *Texas v. New Jersey*, 379 U.S. at 680-83, limited the states’ power to take custody of unclaimed intangible property. See also *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71, 79-80, 7 L. Ed. 2d 139, 82 S. Ct. 199 (1961) (state is without power to provide a rule to settle an interstate escheat controversy). The scheme at issue here, Okla. Stat. Ann. tit. 60, §§ 658.2-658.8 (Supp. 1988), conflicts with the decision’s holding. See *Wilburn Boat Co. v. Fireman’s Fund Ins. Co.*, 348 U.S. 310, 314, 99 L. Ed. 337, 75 S. Ct. 368 (1955) (“States can no more override [federal] judicial rules validly fashioned than they can override Acts of Congress”).⁴⁹

A few state courts have interpreted *Texas v. New Jersey* more narrowly as applying only to a proceeding in which more than one state is claiming the same property from the holder. For example, in *Texas v. Liquidating Trustees of Republic Petroleum Co.*,⁵⁰ the Texas Supreme Court was presented with a situation in which the *Texas resident* liquidating trustees of Republic Petroleum Company clearly had no intention of reporting and delivering unclaimed securities to the states of last known address of the former shareholders of the liquidated corporation, yet the trustees argued that Texas was barred from claiming the property because the liquidating trustees had record of last known addresses of the shareholders in other states.⁵¹ The Texas Supreme Court held that the *Texas v. New Jersey* priority rules did not prevent Texas from claiming the funds, basing its decision on the Supreme Court’s statement in *Texas v. New Jersey* that, under the secondary priority rule “the State of

corporate domicile should be allowed to cut off the claims of private persons only, retaining the property for itself only until some other State comes forward with proof that it has a superior right to escheat.” The Texas Supreme Court interpreted this statement to mean that “in a suit strictly between the domiciliary State and a resident stakeholder, the State is entitled to a judgment against the stakeholder for custody of the property, subject to some other State coming forward at a subsequent time with proof that it has a superior right to escheat or custody.”⁵² The Texas Supreme Court reasoned that the shareholder states could subsequently assert claims against Texas to recover the property that they were entitled to under the privacy priority rule of *Texas v. New Jersey*. However, the Texas Supreme Court made it clear that its real concern was that because the states in which the former shareholders resided lacked jurisdiction over the liquidating trustees to claim the property, those states would not be able to claim the property directly from the liquidating trustees, and, therefore, Texas was the only state in a position to prevent a windfall to the trustees.⁵³

In *New Jersey v. Chubb Corp.*,⁵⁴ the State of New Jersey asserted a broad claim under its abandoned property laws to all of the uncashed drafts that the defendant property and casualty insurance companies had not yet paid to other states, on the grounds that the insurance companies were subject to the jurisdiction of the State of New Jersey.⁵⁵ Citing the *Liquidating Trustees* case, the New Jersey trial court concluded that the *Texas v. New Jersey* priority rules “relate only to conflicts among the states,”⁵⁶ although the trial court acknowledged that the New Jersey Supreme Court’s earlier holding in *State v. Amsted Industries, Inc.*⁵⁷ would bar New Jersey from claiming uncashed drafts as to which the defendant insurance companies had a record of the owner’s last known address.⁵⁸ Like the *Liquidating Trustees* case, the *Chubb* case appears to have involved holders that had failed to report and deliver unclaimed property to the appropriate states, and the New Jersey trial court concluded that “[t]he public policy supporting escheat is vastly superior to any claim defendants have, as holders, to refuse to report and to refuse to deliver all provable unclaimed refunds to the custody of the State Treasurer. Defendants’ interests are at odds with the general welfare.”⁵⁹ This would not have been a valid concern on the part of the New Jersey court if the owner states had exempted the uncashed drafts at issue in the *Chubb* case.

*TXO Products Corp. v. Oklahoma*⁶⁰ raised the question of whether the Oklahoma Unclaimed Pooled Monies Act, a law similar to the Oklahoma mineral interest statute that was reviewed in *American Petrofina*, impermissibly conflicted with the *Texas v. New Jersey* priority rules. Citing the *Liquidating Trustees* case, the Oklahoma Supreme Court stated that the *Texas v. New Jersey* priority rules “are binding only where there are multiple states with claims to the same property. Nothing in *Texas* prohibits a state from claiming temporary custody of unclaimed property until some other state comes forward with proof that it has a superior right to it.”⁶¹ The Oklahoma Supreme Court declined to follow the holdings of the federal courts in Oklahoma in the *American Petrofina* case and upheld Oklahoma’s claim to the property.

The *Liquidating Trustees*, *Chubb* and *TXO Production* decisions give an unduly narrow interpretation to the *Texas v. New Jersey* priority rules and, if broadly applied, would seriously undermine the orderly reporting of unclaimed property by multistate holders. Any state with a short statutory dormancy period and due process jurisdiction over a holder could claim custody of all of the holder’s abandoned property, forcing other states to engage in litigation against the claimant state to enforce their rights under *Texas v. New Jersey* to recover the property. It is hard to believe that the United States Supreme Court intended states to have to bring original jurisdiction actions before the Supreme Court as the sole means of implementing the *Texas v. New Jersey* priority rules. This would hardly be the “ease of administra-

tion” that the Supreme Court cited as the objective of its priority rules. *American Petrofina* is the better reasoned opinion, finding that the *Texas v. New Jersey* priority rules constitute federal common law that bars the states from asserting claims to abandoned property that are at variance with the *Texas v. New Jersey* priority rules.

Conclusion

Although the courts have not yet addressed the issue, holders should have a strong argument that the holder’s state of corporate domicile may not claim an item of unclaimed property that is covered by an exemption in the abandoned property laws of the state of last known address of the property owner. The United States Supreme Court’s priority rules in *Texas v. New Jersey* give the owner’s state of last known address the best right to claim custody of the property. Moreover, the Supreme Court intended that its priority rules be uniformly applied by holders and state abandoned property administrators to ease administration of state unclaimed property laws. If the legislature of the owner’s state has made the determination that the state should not treat a particular type of holder liability as unclaimed property, the holder’s state of corporate domicile should respect that legislative decision. To allow the holder’s state of corporate domicile to claim the property from the holder would negate the owner state’s exemption and unduly complicate the reporting of unclaimed property by multistate holders.

ENDNOTES

¹ *Texas v. New Jersey*, 379 US 674, 85 S Ct 626 (1965).

² *Id.* at 682.

³ See, e.g., Cal. Civ. Code §1520.5 and Cal. Civ. Proc. Code §1749.5; 765 Ill. Comp. Stat. 1025/10.6.

⁴ See, e.g., 765 Ill. Comp. Stat. 1025/2a(b).

⁵ Statutory dormancy periods vary by state and by type of property at issue. These periods currently range from as short as one year for unclaimed payroll checks or five years for other types of unclaimed property. The trend has been for states to adopt shorter dormancy periods in order to accelerate the reporting of unclaimed property by holders.

⁶ The three uniform acts are the 1954 Uniform Disposition of Unclaimed Property Act, which was revised in 1966; the 1981 Uniform Unclaimed Property Act; and the 1995 Uniform Unclaimed Property Act.

⁷ Although the actual likelihood of the owner

presenting a claim for payment of the unclaimed property is remote, state abandoned property laws are designed to put the owner on notice of his or her right to claim the property. All three of the Uniform Acts require the holder, before filing its annual report with the state, to send written “due diligence” notices to owners of unclaimed property if the holder has record of a last known address of the owner and the property has sufficient value. See 1995 Uniform Act §7(e) (holder must send due diligence letters to owners of unclaimed property valued at \$50 or more, 60 to 120 days before the date on which the holder files the annual report); 1981 Uniform Act §17(e) (holder must send due diligence letters to owners of unclaimed property valued at \$50 or more, up to 120 days before the date on which the holder files the annual report); 1954/1966 Uniform Act §11(e) (if the holder knows of the whereabouts of the

owner of unclaimed property, the holder is required to “communicate with the owner and take necessary steps to prevent abandonment from being presumed”). The annual report that the holder files with the state includes the names and addresses of owners who did not respond to the holder’s due diligence notices. 1995 Uniform Act §7(b); 1981 Uniform Act §17(b); 1954/1966 Uniform Act, §11(b). The state abandoned property administrator then publishes this information in a newspaper of general circulation in the area where the owner’s last known address is located. 1995 Uniform Act §9; 1981 Uniform Act §18; 1954/1961 Uniform Act §12.

⁸ See Commissioners’ Prefatory Note to the 1981 Uniform Act.

⁹ *Standard Oil Co. v. New Jersey*, 341 US 428, 435-36, 71 S Ct 822 (1951).

¹⁰ See 1 D. Epstein, *Unclaimed PROPERTY LAW AND REPORTING FORMS*, § 1.07 (Matthew-

ENDNOTES

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- ¹¹ *Connecticut Mutual Life Insurance Co. v. Moore*, 333 US 541, 68 S Ct 682 (1948).
- ¹² 333 US at 548.
- ¹³ *Id.*
- ¹⁴ *Standard Oil Co. v. New Jersey*, 341 US 428 (1951).
- ¹⁵ *Id.* at 439.
- ¹⁶ *Id.*
- ¹⁷ *Western Union Telegraph Co. v. Pennsylvania*, 368 US 71, 82 S Ct 199 (1961).
- ¹⁸ *Id.* at 76-77.
- ¹⁹ *Texas v. New Jersey*, 379 US 674, 85 S Ct 626 (1965).
- ²⁰ *Id.* at 678-79.
- ²¹ *Id.* at 675-76.
- ²² *Id.* at 677.
- ²³ *Id.* at 680.
- ²⁴ *Id.* at 680-81.
- ²⁵ *Id.* at 681.
- ²⁶ *Id.* at 682 (emphasis added).
- ²⁷ *Id.* (emphasis added).
- ²⁸ The Prefatory Note to the 1966 revisions to the 1954 Uniform Act states that when the 1954 Uniform Act was being drafted “only ten states had adopted really comprehensive legislation covering the entire field of unclaimed property.” In addition, the Supreme Court noted in its 1961 *Western Union Telegraph* decision that several states were in the process of enacting or amending their abandoned property laws.
- ²⁹ *Pennsylvania v. New York*, 407 US 206, 92 S Ct 2075 (1972).
- ³⁰ *Id.* at 210-11 (emphasis added).
- ³¹ *Id.* at 215. Subsequent to the *Pennsylvania v. New York* decision, Congress enacted special priority rules for traveler’s checks and money orders. P.L. 93-495, Act Sec. 603 (1974), codified as 12 USC §2503. This federal statute substituted the state in which the uncashed traveler’s check or money order was purchased and, if none, then the state of commercial domicile of the holder, as the two priority rules that states are to utilize for asserting claims to uncashed traveler’s checks and money orders.
- ³² *Delaware v. New York*, 507 US 490, 113 S Ct 1550 (1993).
- ³³ *Id.* at 495.
- ³⁴ 507 US at 500 (emphasis added).
- ³⁵ *Id.* at 507 (emphasis added).
- ³⁶ *Id.* at 500.
- ³⁷ *Pennsylvania v. New York*, 407 US at 210-211. See also *Delaware v. New York*, 507 US at 507.
- ³⁸ *Pennsylvania v. New York*, 407 US at 217 (Powell, J., dissenting) (emphasis added).
- ³⁹ *Texas v. New Jersey*, 379 US at 683.
- ⁴⁰ US Const., art. III, § 2.
- ⁴¹ *Texas v. New Jersey*, 379 US at 677.
- ⁴² *Id.* at 679.
- ⁴³ *Id.* at 683 (emphasis added).
- ⁴⁴ *American Petrofina Co. of Texas v. Nance*, DC Okla., 697 F Supp 1183, 99 Oil & Gas Rep. 416 (1986), *aff’d*, CA-10, 859 F2d 840, 101 Oil & Gas Rep. 508 (1988).
- ⁴⁵ 697 F. Supp. at 1184.
- ⁴⁶ *Id.* at 1186-87.
- ⁴⁷ *Id.* at 1187 (citing *Hinderlider v. LaPlata River & Cherry Creek Ditch Co.*, 304 US 92, 58 S Ct 803 (1938); *U.S. v. Champlin Refining Co.*, CA-10, 156 F2d 769 (1946), *aff’d sub nom. Oklahoma v. U.S.*, 331 US 788, 67 S Ct 1346 (1947); *Texas v. Pankey*, CA-10, 441 F.2d 236 (1971); 1A MOORE’S FEDERAL PRACTICE, ¶ 0.320 at p. 3257).
- ⁴⁸ *American Petrofina*, 697 F. Supp. at 1187. It is interesting that the federal district court also described the secondary priority rule of *Texas v. New Jersey* as requiring a holder “to transfer unclaimed property to its state of incorporation in the absence of a last known address of the owner or *in the absence of escheat or custodial taking laws in the state in which the last known address of the owner is located.*” 697 F. Supp. at 1189. That summary of the secondary priority rule is consistent with the view expressed in this article that the secondary priority rule applies in situations when the property owner’s state does not have any abandoned property laws at all—rather than situations in which the owner’s state will not claim the particular item of property at issue because of an exemption.
- ⁴⁹ *American Petrofina*, 859 F.2d at 842.
- ⁵⁰ *Texas v. Liquidating Trustees of Republic Petroleum Co.*, S Ct Tex., 510 S.W.2d 311, 17 TexSupJ 232 (1974).
- ⁵¹ *Id.* at 315.
- ⁵² *Id.*
- ⁵³ The Texas Supreme Court could have applied the *Texas v. New Jersey* priority rules and held that Texas was entitled to claim the property from the Texas domiciled trustees under the secondary priority rule.
- ⁵⁴ *New Jersey v. Chubb Corp.*, NJ Super., 239 NJ Super 257, 570 A2d 1313 (1989).
- ⁵⁵ 239 N.J. Super. at 262, 570 A.2d at 1315.
- ⁵⁶ 239 N.J. Super. at 263, 570 A.2d at 1315.
- ⁵⁷ *State v. Amsted Industries, Inc.*, NJ S Ct, 48 NJ 544, 226 A2d 715 (1967).
- ⁵⁸ *Chubb*, 239 N.J. Super. at 263, 570 A.2d at 1316.
- ⁵⁹ 239 N.J. Super. at 265, 570 A.2d 1317.
- ⁶⁰ *TXO Products Corp. v. Oklahoma*, Okla S Ct, 1992 OK 39, 829 P2d 964, 118 Oil & Gas Rep. 510 (1992).
- ⁶¹ *Id.* at 971.

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