

Tax Trends

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

Co-Editors' Note

BY DAVID DORNER & MEGAN LISTON MAHALIK

This edition of *Tax Trends* features an article written by David J. Kupiec and Natalie M. Martin of Kupiec and Martin, LLC titled "United State Supreme Court Issues Unclaimed Property Opinion Escheating Intangible Property to the State of Purchase, Not the State of Incorporation *Delaware v. Pennsylvania*." This article summarizes a recent United State Supreme Court 9-0 decision regarding which states have the right to escheat two financial

products, agent checks and teller's checks, sold by MoneyGram. The question was if these abandoned financial products escheat to Delaware, the state of MoneyGram's incorporation, or to the state in which the product was purchased. ■

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U.S. Supreme Court Issues Unclaimed Property Opinion Escheating Intangible Property to the State of Purchase, Not the State of Incorporation: *Delaware v. Pennsylvania*

BY DAVID J. KUPIEC, JD, CPA & NATALIE M. MARTIN, JD

On February 28, 2023, the United State Supreme Court issued a 9-0 opinion in *Delaware v. Pennsylvania, et al.*, 598 U.S. 115 (2023), holding that certain intangible instruments should generally escheat to the state of purchase under section 2503 of the Disposition of Abandoned Money Orders and Traveler's Check Act ("Federal Disposition Act" or "FDA"). Being a case

of original jurisdiction, the United States Supreme Court was asked to decide which states have the power to escheat the proceeds of the abandoned financial products at issue which MoneyGram Payment Systems, Inc. ("MoneyGram") possesses. The state of Delaware argued that the abandoned proceeds should go to Delaware under the Court's common-

law rules of escheatment as Delaware is MoneyGram's state of incorporation. Other states, including Pennsylvania, argued that section 2503 of the FDA governs the intangible products at issue and requires, as a general matter, that resulting abandoned property should escheat to the state where the intangible products were purchased.

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The United State Supreme Court unanimously held that the FDA covers the intangible instruments in question and that such instruments should generally escheat to the state of purchase under section 2503 of the FDA.

Before the Court was the question of which states have the right to escheat two financial products, agent checks and teller's checks, sold by banks on behalf of MoneyGram. Both are intangible products operating like money orders as both products are prepaid financial instruments used to transfer funds to a named person. If these products are not presented for payment within a certain period of time, they are deemed abandoned and under common law practices are transmitted to Delaware, the state MoneyGram was incorporated. MoneyGram does not keep records of creditor addresses for the two products at issue so it cannot follow the primary common-law rule of escheating the funds to the state of the creditor's last known address. Since the primary rule of creditor address is not available, MoneyGram applied the secondary common-law rule and transmitted the abandoned proceeds to its state of incorporation, Delaware.

The state of Pennsylvania and a number of other states initiated cases invoking the Supreme Court's original jurisdiction claiming that they were entitled to the abandoned proceeds from the agent checks and teller's checks at issue as the provisions of the FDA not common-law apply to the escheatment of such products. Section 2503 of the FDA provides that a "money order ... or other similar written instrument," other than a third-party check, should generally escheat to "the State in which such ... instrument was purchased." 12 U.S.C. Section 2503. The Supreme Court consolidated the cases and appointed a special master. The special master issued a report concluding that the products at issue should be escheated under the FDA. Notwithstanding, the special master issued

a second report after oral arguments before the Supreme Court stating that the products at issue could be "third party bank check[s]," which section 2503 expressly excludes from the FDA resulting in escheatment under common-law to the state of incorporation.

The Supreme Court began by addressing whether the products at issue are "money order[s] or other similar written instrument[s] (other than a third-party bank check)" under section 2503 of the FDA. The Court noted that under the express language of section 2503 of the FDA they are not required to determine if the products at issue are "money orders" but need only determine if such products are "similar" to "money orders." The Court explained that the disputed products at issue are "similar" to money orders in that such products are: 1) similar in function and operations of money orders; and 2) also similar to the "money orders" the FDA targets because they inequitably escheat in the manner that the text of the FDA specifically identifies as warranting statutory intervention. In short, the Court noted that the products at issue have similar "money order" features including prepayment of a specified amount of money to be transmitted to a named payee and inadequate recordkeeping features of the entity issuing and holding on to the prepaid funds. The Court also noted that the FDA regulates the escheatment of abandonment financial instruments and based on the abandonment likelihood of such prepaid products, the FDA would naturally apply to prepaid instruments such as money orders. Accordingly, the Court determined that the intangible products at issue are "similar" to "money orders" within the provisions of the FDA.

The Court next addressed the objections raised by the state of Delaware which it found unpersuasive. The state of Delaware first claimed that "money order" refers to a specific product but was unable to present even a dictionary definition to support the term as

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described. Next, Delaware asserted that the FDA was actually concerned with dissuading states from adopting costly recordkeeping requirements which they contend would be passed on to consumers. However, the Court held that the FDA provisions provide no support for this argument. Finally, Delaware contended that section 2503 of the FDA is to be read narrowly to avoid surplusage and unintentionally sweeping in other financial products. However, the Court noted that it need not address the issue of a narrow reading of “money order” as the FDA allows for instruments that are “similar.”

The Supreme Court adopted the special master’s recommendations in the First Interim Report, along with his initial proposed order that the products at issue should be escheated to the state in which such products were purchased as set forth in the FDA, to the extent consistent with this Opinion. The Court also overruled Delaware’s exceptions to the First Interim

Report and remanded the matter to the special master for further proceedings consistent with this opinion.

This case is of significant importance not only with regards to the agent checks and teller’s checks that are similar to “money orders,” but also with regards to the escheatment of other intangible instruments or products that may also be similar to “money orders.” Moreover, this case may also be of interest to states and businesses with escheat issues involving increasing amounts of prepaid intangible instruments and products purchased outside the state of Delaware. ■

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Chicago

June 8-10, 2023
Renaissance Chicago Downtown Hotel

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More details will be available in the coming months.
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