

The State of South Carolina



Office of the Attorney General

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September 17, 1991

The Honorable Grady L. Patterson, Jr.
Treasurer of the State of South Carolina
Post Office Drawer 11778
Columbia, South Carolina 29211

Dear Mr. Patterson:

At the request of the South Carolina Department of Social Services (DSS), you asked that this Office advise you as to the legal requirements for handling checks which are presumably received by the payee but never cashed and also checks which are returned, undelivered, by the post office. Your present practice, in accordance with past audit recommendations, is to write off such checks after a period of two years. Whether the Uniform Unclaimed Property Act, S.C. Code Ann. § 27-18-10 et seq., should apply to these checks has also been questioned.

By way of background, we understand that DSS collects child support from absent parents through family courts and then sends child support checks from the money collected to the custodial parent. If the custodians are recipients of public assistance, they are entitled to the first \$50.00 collected and any amounts collected in excess of a sum deducted to repay the assistance grant. If the custodians are not public assistance recipients, they are entitled to the entire amount received by the agency. DSS also remits checks to non-custodial parents for amounts in excess of the support obligation received by intercepting an individual's tax refund or unemployment benefits. DSS administers these funds in a fiduciary capacity.

Child support checks are sometimes returned to DSS and are designated by the post office as "undeliverable" because the custodian cannot be located. Other checks are designated "outstanding" because they have been issued and mailed but never presented to the State for payment.

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Section 11-5-110

The statute presently being followed, which is in accordance with audit recommendations, is § 11-5-110, which provides as follows:

If any check issued by the Treasurer for the payment of claims shall not be presented for payment within two years from the date thereof, the amount thereby represented shall be covered back into the State Treasury and such check written off of the books of the Treasurer. But any check may be reissued upon satisfactory proof of nonpayment.

If a check is issued and mailed to a payee but is not presented for payment within two years of its issue date, we understand that the check is written off the books. We further understand that DSS is furnished a fiche and/or computer tape listing the check number, voucher number, warrant number, and issue date. The payee's name is apparently not provided but could be located by matching the Treasurer's records with DSS records.

Checks issued but returned as undeliverable by the post office are similarly written off after two years.

Uniform Unclaimed Property Act (1981)

Under the Uniform Unclaimed Property Act (1981), adopted as a part of Act No. 658, Part II, § 34A of 1988, codified as § 27-18-10 et seq., checks are considered "intangible property" according to § 27-18-20(10)(a). A presumption of abandonment as to certain intangible property is created by § 27-18-140, which provides:

Intangible property held for the owner by a court, state, or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

Clearly, DSS would be a governmental agency of this State.

Another portion of the Uniform Unclaimed Property Act, § 27-18-40, specifies the conditions under which intangible unclaimed property may be taken into custody; in part, that section provides:

Unless otherwise provided in this chapter or by other statute of this State, intangible property is subject to the custody of this State

as unclaimed property if the conditions raising a presumption of abandonment under Sections 27-18-30 and 27-18-60 through 27-18-170 are satisfied and: [Emphasis added.]

Arguably, § 11-5-110 would be considered as an "other statute of this State."

Discussion

The term "unclaimed" is not defined in the Uniform Unclaimed Property Act. Giving the term its plain and ordinary meaning, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980), suggests that such be applied to those checks returned by the post office as undeliverable. The term "unclaimed" is defined as "not called for by an owner or consignee." Webster's Third New International Dictionary 2485 (1976). Judicial decisions seem to call "unclaimed" those pieces of mail returned by the post office as "addressee unknown," "insufficient address," or refused by the addressee. Yates v. Sluder, Pa., 10 Chest. 198, 199; La Vallee v. Peer, 104 Misc.2d 943, 429 N.Y.S.2d 383, 385; cases collected in 43 Words and Phrases, "Unclaimed."

As to litigation matters, our courts have said that

the mailing of a properly stamped and addressed letter which is not returned by the postal authorities gives rise to a rebuttable presumption that the letter was received by the addressee in the due course of mail.

State v. Langston, 275 S.C. 439, 441, 272 S.E.2d 436 (1980). Thus, a check which has not been returned by the post office is presumed to have been received by the addressee, though the presumption is rebuttable. The reasons for failure to present such checks for payment are legion and can only be speculated; too, a check may have gotten lost or destroyed in the mail and because such never gets to the owner or is never returned by the post office, the owner never knows to claim the check. There is no way of knowing why these checks remain outstanding. Due to the presumption stated above and the plain meaning of "unclaimed," it cannot be said with absolute certainty that these outstanding checks could come within the Uniform Unclaimed Property Act, as it cannot be concluded with absolute certainty that such are unclaimed.

Conclusion

For the foregoing reasons, it is our opinion that checks returned by the post office as undeliverable could be treated as unclaimed intangible property under the Uniform Unclaimed Property Act, while checks presumably received by the addressee but never

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presented for payment could continue to be written off under § 11-5-110. Such an interpretation would permit both statutes to be given effect while simultaneously giving much weight to the administrative interpretation given to § 11-5-110. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984) (as to reconciling apparently conflicting statutes); Emerson Elec. Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986) (weight to be accorded construction of a statute by agency charged with its administration). In so concluding, we are mindful of the purpose of the Uniform Unclaimed Property Act and the opportunity it would afford to locate payees who have not presented their checks for payment, in the event such checks have been lost, destroyed, or stolen (as examples); legislative clarification might be desirable in this regard, as well as reconciling any conflicts between that Act and § 11-5-110. The foregoing is not intended as a comment on past practices of any state officer or agency and should be viewed only as prospective legal guidance.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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