



Unclaimed Revenue Held in Suspense Accounts

By: [Patrick Ivy](#)

From time to time, producers of oil and gas may find themselves in possession of revenues held in accounts that have been placed in suspense due to uncured title requirements. Depending on the reason, producers may be obligated to turn these funds over to the unclaimed property program of one of the states. In order to avoid potential fines and penalties, it is important for producers to actively monitor the status of funds held in suspended accounts, and to turn those funds over to the correct state when required. This article provides a general overview of unclaimed property law, and answers the following questions with respect to the laws of Colorado and North Dakota:

- How long may a producer hold oil and gas revenues in suspense;
- What is the procedure for turning over oil and gas revenues to the state; and
- Can the period of time before a producer must turn over oil and gas revenues to the state be extended?

Relevant to the issue of unclaimed property are the Colorado and North Dakota statutes requiring that royalties be paid within a specified period of time after production is sold. In Colorado proceeds from the sale of oil or gas must be paid within six months after production is sold,¹ and in North Dakota payment must be made within 150 days after production is sold or else interest begins to accrue at a rate of 18% per year.² However, both statutes have exceptions to the payment deadline for interest owners who cannot be located.³ The North Dakota statute requires a “reasonable inquiry” but provides no guidance as to what that entails. As a result of these exceptions to the royalty payment statute, the primary limitation on a producer’s ability to retain revenue held in suspense accounts is provided by unclaimed property law.

At common law, when property was abandoned it became “unclaimed property” which was subject to ownership by whomever possessed it. Overlaid on the framework of abandonment law was the law of escheat, which provided that if a person died without heirs, their property became property of the state. However, most states (including Colorado and North Dakota) have changed

¹ C.R.S. § 34-60-118.5(2)(a)

² N.D.C.C. § 47-16-39.1

³ C.R.S. § 34-60-118.5(3)(a)(II); N.D.C.C. § 47-16-39.1

the common law by adopting a version of the Uniform Unclaimed Property Act (the “UPA”).⁴ In general, unclaimed intangible property (e.g., money held in suspense accounts) no longer simply becomes the property of the person holding it, nor does it escheat to the state. Instead the UPA prescribes that after a specified period of time the holders of such property must turn it over to the state which then acts as a custodian of the property for the missing owners in perpetuity. According to the National Association of Unclaimed Property Administrators, states currently hold about \$41.7 billion worth of unclaimed property waiting to be returned to its owners.⁵ Most states maintain a website for their unclaimed property program which provides both a means by which owners may search for property held in their name,⁶ and guidance for businesses reporting unclaimed property.⁷

How long may a producer hold oil and gas revenues in suspense? Under the UPA, the period of time a producer may hold unclaimed revenue after it has become payable usually depends on the state of the owner’s last-known address (other rules apply if the address or identity of the owner is unknown).⁸ For owners whose last-known address is in Colorado, the dormancy period is five years, and for North Dakota the period is three years.⁹ Once the dormancy period lapses, the money is presumed abandoned.¹⁰

What is the procedure for turning over oil and gas revenues to the state? By November 1 of each year, every holder of abandoned property must file a report with the administrator of the applicable state’s unclaimed property program identifying any abandoned property held.¹¹ At the time the report is filed, the holder must turn the property over to the administrator.¹² With the administrator’s permission, a holder may choose to turn over property before the dormancy period expires.¹³ The laws of Colorado and North Dakota protect a holder from liability for turning over property if the holder complies with the UPA in good faith.¹⁴

Not more than 120 days before turning the property over, a holder must conduct “due diligence” by sending notice to the last-known address of the owner.¹⁵ A holder is required to maintain records identifying the owner and their last known address for five years after property becomes reportable in Colorado, and ten years after it becomes reportable in North Dakota.¹⁶ The website maintained by the Colorado Department of the Treasury to assist holders with reporting compliance emphasizes the importance of maintaining adequate records.¹⁷

⁴ See C.R.S. § 38-13-101 et seq.; N.D.C.C. § 47-30.1-01 et seq.

⁵ <http://www.naupa.org/what/>

⁶ See, e.g., <https://www.colorado.gov/apps/treasury/ucp/claims/index.faces>

⁷ See, e.g., <http://www.colorado.gov/treasury/gcp/holderrep.html>

⁸ C.R.S. § 38-13-103; N.D.C.C. § 47-30.1-02

⁹ *Id.*

¹⁰ *Id.*

¹¹ C.R.S. § 38-13-110; N.D.C.C. § 47-30.1-17

¹² C.R.S. § 38-13-112; N.D.C.C. § 47-30.1-17

¹³ C.R.S. § 38-13-120; N.D.C.C. § 47-30.1-27

¹⁴ C.R.S. § 38-13-113; N.D.C.C. § 47-30.1-20

¹⁵ C.R.S. § 38-13-110; N.D.C.C. § 47-30.1-17

¹⁶ C.R.S. § 38-13-124; N.D.C.C. § 47-30.1-31

¹⁷ <http://www.colorado.gov/treasury/gcp/generalreportinginfo.html>

Can a producer extend or toll the dormancy period? Based on our reading of the versions of the UPA in effect in Colorado and North Dakota, property that is not “unclaimed” or “payable” is not presumed abandoned. However, after limited review we have not found any cases, regulations or other guidance as to the meaning of those terms. An important consideration bearing upon whether property is “unclaimed” is likely to be whether the records of the holder reflect any owner-initiated activity during the dormancy period.¹⁸ One can speculate that revenue owned by known individuals but held in suspense pending satisfaction of curative measures like probating an estate may not be “unclaimed” if the owner is in contact with the holder. Representatives of the Colorado Department of the Treasury have indicated in telephone conversations that, ultimately, determining whether property is unclaimed is a fact-dependent inquiry, and that generalizations are difficult because an account may be suspended for many different reasons. Representatives of the Department further indicated that they sometimes assist companies with auditing their records to identify unclaimed property.

The versions of the UPA in effect in North Dakota and Colorado provide for potentially large civil penalties or even criminal sanctions for failing to file required reports or failing to turn over abandoned property.¹⁹ Colorado provides a safe harbor for business having gross receipts of less than \$500,000 which act in good faith, but it is unlikely that a producer would have receipts below that dollar limit. An older article discussing unclaimed property laws indicates that some states have voluntary compliance programs, provide amnesty to first-time filers, or will only seek to enforce penalties when confronted with evidence of a holder’s willful failure to comply with the state’s UPA.²⁰

The website maintained by the Colorado Department of Treasury provides some guidance as to what the Department expects from holders of unclaimed property. The following statements appear on the website:

Note: Good faith compliance requires that you have a reasonable understanding of what unclaimed property is, and that you conduct an appropriate review of the records as a basis for determining that you have no unclaimed property to report. It is not enough to “guess” that you have no unclaimed property. The Unclaimed Property Act provides for interest and penalties for non-compliance.^[21]

Also:

Good faith compliance requires you to review your records annually to identify any unclaimed property.^[22]

¹⁸ Presumptions of Abandonment., Unif. Unclaimed Property Act 1995 § 2

¹⁹ C.R.S. § 38-13-127; N.D.C.C. § 47-30.1-34

²⁰ Paula Smith, *Unclaimed Property Statutes and the Management of Production Proceeds*, 44 Rocky Mt. Min. L. Inst. 18 (1998)

²¹ <http://www.colorado.gov/treasury/gcp/ifunclaimedisnew.html>

²² <http://www.colorado.gov/treasury/gcp/generalreportinginfo.html>

In conclusion, it is important for companies holding oil and gas revenues in suspended accounts to make a good faith effort to comply with the unclaimed property laws of any state which may be entitled to have those revenues turned over. Most states require an annual review of a company's accounts and annual reporting on the status of any unclaimed funds being held. The time period a company may hold the revenues before turning them over depends on state law, and may be extended depending on the circumstances, but a base line time period of between three and five years is not uncommon. Importantly, failure to comply with applicable unclaimed property laws can result in potentially serious fines and penalties.

For more information regarding treatment of suspended accounts, please contact [Patrick Ivy](#).

Copyright © 2015 Beatty & Wozniak, P.C. All Rights Reserved.

This newsletter does not constitute legal advice. The views expressed in this newsletter are the views of the authors and not necessarily the views of the firm. Please consult with legal counsel for specific advice and or information.

[Read our complete legal disclaimer](#)