

Opinion No. 60-102

June 2, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Honorable Joe Callaway State Treasurer Santa Fe, New Mexico

QUESTION

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1. Do the provisions of the New Mexico Disposition of Unclaimed Property Act Chapter 132, Laws of 1959; §§ 22-22-1 et seq., N.M.S.A., 1953 Comp. (P.S.), apply to unpaid wages still in the hands of business employers for more than 10 years?
2. Is a deposit left in a bank for more than 10 years "unclaimed" within the purview of the act when interest has been earned on, but not credited to, the deposit during such 10 years?
3. Is a deposit left in a bank for more than 10 years "unclaimed" within the purview of the act when service charges have been made on the deposit during such 10 years?
4. Is property "unclaimed" if no activity has been made on it by the owner for more than 10 years when the owner's whereabouts is known to the holder or annual statements are mailed to him and not returned unclaimed?
5. What is the reporting period in regard to the initial report as required by Chapter 132, § 12, Laws of 1959 §§ 22-22-12, N.M.S.A., 1953 Comp., (P.S.)?

CONCLUSIONS

1. Yes.
2. Yes.
3. Yes.
4. See analysis.
5. See analysis.

OPINION

{*470} **ANALYSIS**

In answer to your first question, we cite § 22-22-10, N.M.S.A., 1953 Comp. (P.S.), which reads as follows:

"All intangible personal property, not otherwise covered by the Uniform Disposition of Unclaimed Property Act (22-22-1 to 22-22-29), including by way of illustration, money, stocks, bonds, certificates of membership in corporations, securities, bills of exchange, deposits, interest, dividends, income, amounts due and payable under the terms of insurance policies not covered by section 4 (22-22-4) of the Uniform Disposition of Unclaimed Property Act, pension trust agreements, profit-sharing plans, credit balances on paid wages, security deposits, refunds, funds deposited to redeem stocks, bonds, coupons and other securities, or to make a distribution thereof, together with any interest or increment thereon, and any income or increment thereon, and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than ten (10) years after it became payable or distributable is presumed abandoned."

{*471} "Holder" is defined generally as any person in possession of property subject to the provisions of the act belonging to another. § 22-22-2 D. "Person" is defined to include any business association. § 22-22-2 G. And a "business association" includes any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

Reading the above definitions together, it is clear that unpaid wages held for more than 10 years by business employers, individual, corporate or otherwise, are presumed abandoned and subject to the reporting, and if applicable, custody turnover provisions of the Act. Wages earned, but not yet paid because unclaimed by the wage earner, must at least be considered as "money" or "credit balances on paid wages" under § 22-22-10 and, therefore, subject to its provisions.

Your second question must also be answered in the affirmative. Under § 22-22-3 A, bank deposits are presumed abandoned unless the owner has, within 10 years, (1) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest, or (2) corresponded in writing with the bank concerning the deposit, or (3) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the bank. Assuming that the depositor has not taken the action contemplated by (2) and (3), the mere fact that interest has been earned does not prevent the deposit from being presumed abandoned. Such interest must actually be credited in the passbook or similar evidence of deposit before the presumption of abandonment for deposits more than 10 years old with which the depositor has had no activity.

In answer to your third question, suffice it to say that under §§ 22-22-3 A, lawfully made service charges may be withheld during the 10 year period prior to the time of presumed abandonment on the part of the owner. Nothing in such section, or any other portion of the act, stops the running of the 10 year period merely because service charges are

made. On the contrary, the fact that such charges, if lawful, can be withheld indicates a contrary intent in the act.

Your fourth question is answered as follows. Under §§ 22-22-3 through 10, setting forth the standards of presumed abandonment of property held by banking or financial institutions, life insurance corporations, utilities, business associations, fiduciaries, state courts, public officers and agencies, or any holder, the burden is on the owner to claim, in some manner or other, ownership of the property concerned. However, § 22-22-12 E requires that the holder of the property, before making the annual report of presumed abandoned property required by § 22-22-12 B (1) through (5) and C, communicate with the owner and take necessary steps to prevent abandonment from being presumed. Thus, if the owner's whereabouts is known or annual statements of the status of the property are mailed to him and are not returned unclaimed, the holder is required, before making the report, to take affirmative action to prevent a presumption of abandonment. We construe this to mean that the holder must at least attempt to get the owner to take whatever action is required under § 22-22-3 through 10, as the case may be, to keep the presumption from abandonment from occurring. For example, if a bank knows the owner's whereabouts, it must at least inform the owner that unless he takes such action as is contemplated by § 22-22-3 A (1) through (3) before the reporting date, his property will have to be reported as presumed abandoned.

Our opinion in regard to your fifth question is that the initial report must contain the information required by § 22-22-12 B (1) through (5) as to all property presumed {**472*} abandoned still held by the holder since the inception of the particular holder in the business or other activity it or he is now engaged in and not just that property which was presumed abandoned, as defined by the act, during the past 10 years. This is despite the provisions of § 22-22-12 G stating that the initial report shall include all items of property that would have been presumed abandoned if the act had been in effect during the ten year period preceding its effective date. The precise meaning of this language is not clear, but at least it does not alleviate the necessity of the holder to report all such property, since if property now fits the definition of "presumed abandoned," it obviously would have fit such definition had the act been in effect 10 years prior to its effective date.

By: Philip R. Ashby

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