

Meaningful Statute of Limitations for Unclaimed Property Audits and Enforcement Actions? Michigan Court of Appeals Says Yes!

Article By:

Stephen P. Kranz

Mary Kay McCalla Martire

Richard C. Call

On January 19, 2023, the [Michigan Court of Appeals affirmed](#) two 2022 trial court orders, holding that initiating an unclaimed property audit does not toll (or freeze) the running of the statute of limitations (time-bar) for the Michigan State Treasurer to commence “an action or proceeding” with respect to a duty of a holder.^[1] As most holders are well aware, unclaimed property audits are extremely invasive and burdensome and, unlike other types of audits conducted by states, often drag on for a decade or more before the state will issue a formal notice and demand—covering multiple years and looking back from the date of the original audit notice (often 10 or 15 years). This dynamic has created an audit framework that sets holders up for failure (really, who has complete books and records that far back?) and results in millions of unclaimed property being reported to states because of record limitations alone and third-party audit firms being handsomely paid for their time spent.

The Michigan Court of Appeals’ decision calls this entire model (some would say scheme) into question and could drastically change how holder audits look, feel and proceed in the unclaimed property world going forward. Even more importantly for holders currently under audit, these decisions could drastically narrow the scope of the open periods covered by the audit for Michigan and other states with similar unclaimed property statute of limitations.

Practice Note: While the common sense holding in this case is well established in the tax realm, it has long been the position of unclaimed property administrators and their third-party audit firms that the commencement of an audit alone freezes the statute of limitations and allows them to enforce the duties of holders looking back from that date. This (now precedential) Michigan Court of Appeals decision flies in the face of that long-standing view and calls into question whether peer states with similar unclaimed property statute of limitations are barred from enforcing transaction years being reviewed under pending audits. Because the Michigan unclaimed property statute of limitations is modeled off a provision contained in the 1981 Uniform Unclaimed Property Act (which has been adopted by many states and incorporated in the Revised Uniform Unclaimed Property Act approved in 2016), this is not a Michigan-specific victory and one that should be explored further for holders

under audit by other states as well. Showing the nationwide importance of these Michigan cases, the National Association of State Treasurers filed an amicus brief through its affiliate, the National Association of Unclaimed Property Administrators, with the Michigan Court of Appeals in July 2022; however, their arguments were not enough to convince the Court to modify the trial court decision interpreting the plain language of the statute of limitations and uphold the trial court ruling in favor of the holders.

The State Treasurer filed an application for leave to appeal the Michigan Court of Appeals opinion to the Michigan Supreme Court (the state court of last resort, which has discretion to accept or reject cases like the Supreme Court of the United States and receives more than 2,000 applications each year). The holder's answer to the State Treasurer's application is due later this month, and we will continue to closely follow this case for further developments.

[1] *Dine Brands Glob., Inc. v. Eubanks*, No. 360293, 2023 WL 324426 (Mich. Ct. App. Jan. 19, 2023); *Walt Disney Co. v. Eubanks*, No. 360291, 2023 WL 324594 (Mich. Ct. App. Jan. 19, 2023).

© 2024 McDermott Will & Emery

National Law Review, Volumess XIII, Number 70

Source URL: <https://natlawreview.com/article/meaningful-statute-limitations-unclaimed-property-audits-and-enforcement-actions>