



ATTORNEY GENERAL OF MISSOURI

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OPINION LETTER NO. 98-2000

Bob Holden  
State Treasurer  
P.O. Box 210  
Jefferson City, MO 65109

Dear Mr. Holden:

You have written this office asking the following question:

Are sales and use tax refunds distributed pursuant to Chapter 144 RSMo considered "unclaimed property" for the purpose of Chapter 447 RSMo?

Sections 447.500-595 RSMo deal with what constitutes unclaimed property and the disposition of such property. There are several provisions that identify the types of property that may be classified as presumed abandoned, including Section 447.505 RSMo, which deals with property held or owned by a banking or financial organization.

Chapter 144 RSMo sets the procedure for sales and use tax payments and refunds. Section 144.190 RSMo 1999 Supp. provides that overpayment of tax shall either be credited to "the person legally obligated to remit the tax" or "the balance shall be refunded to the person legally obligated to remit the tax." If a check is sent for a refund made to the "person legally obligated to remit the tax" and the check is returned as undeliverable, and the check remains uncashed for the time period set out in Chapter 447 RSMo, then the provisions of that chapter are implicated.

It is important to distinguish between "unclaimed property" under the statutory framework and property that escheats to the state. "[Escheat is] a procedure with ancient origins whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears." State of Texas v. State of New Jersey, 379 U.S. 674, 85 S.Ct. 626, 627[1], 13 L.Ed.2d 596 (1965). When the state takes

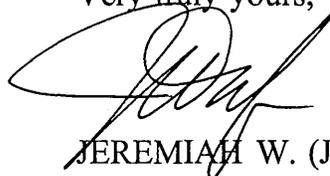
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property by escheat, its position is like that of an ultimate distributee, in default of other statutory distributees. Jacob v. Leggett, 295 S.W.2d 825, 830[4] (Mo. banc 1956). Title to the escheated property vests in the state. State ex inf. Kell v. Buchanan, 210 S.W.2d 359, 362[4] (Mo. 1948); Section 470.230, RSMo 1994. Property may escheat to the state under the circumstances described in the general escheat statutes, Sections 470.010 through 470.260, RSMo 1994, and under specific statutes as, for example, Sections 470.270 through 470.350, 475.325, 456.640 through 456.650, and 141.580, RSMo 1994 and Sections 474.010 and 630.320 RSMo 1999 Supp.

This office has previously concluded that abandoned money and other property does not accrue to the state "by escheat" when it is delivered to the state pursuant to the abandoned property provisions of Sections 447.500 to 447.595 RSMo. Attorney General Opinion 89-88. When there is a statutory scheme such as established in the above cited provisions, the state acts as a custodian of the "abandoned" property and the owner can make a claim at any time. See the Prefactory Note to the Uniform Disposition of Unclaimed Property Act, 8A U.L.A. 135, 136-137.

This office concludes that if there are such situations in which a refund is not deliverable to the person obligated to remit the tax, then the provisions of Sections 447.500 to 447.595 RSMo would take effect.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure