



This Week in State Tax (TWIST)

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Multistate: Special Master in Unclaimed Property Dispute Revises Recommendation on Treatment of MoneyGram's Checks

A special master in the multistate dispute involving escheatment of MoneyGram's official checks has recently changed his recommendation to the U.S. Supreme Court. As background, the consolidated cases, *Delaware v. Pennsylvania and Wisconsin* and *Delaware v. Arkansas*, address which state is entitled to unclaimed MoneyGram official checks. The issue hinges on whether the official checks are "money orders, traveler's checks, or similar written instruments." If they are, then the checks are subject to the federal Disposition of Abandoned Money Orders and Traveler's Checks Act (Disposition Act), which was enacted in 1974 to specifically change the reporting and escheatment priority rules for money orders, traveler's checks, and similar written instruments, not including a third-party bank check. Under the Disposition Act, the checks would be escheated first to the state where the instrument was purchased and second to the holder's state of incorporation. If the checks are not money orders, traveler's checks, or similar written instruments, then they would be escheated to Delaware, MoneyGram's state of incorporation, under the normal priority rules set forth in *Texas v. New Jersey*. There are two types of official checks at issue-agent's checks and teller's checks. Both types of instruments are sold only at financial institutions, and in all cases, MoneyGram holds the proceeds from the sales until the check is presented for payment or deemed abandoned. In the case of teller's checks, the selling financial institution is designated as the "drawer" of the instrument. Nonetheless, MoneyGram's agreements with its selling financial institution customers describe teller's checks as "drawn by" both the financial institution and MoneyGram.

Not surprisingly, Delaware has taken the position that MoneyGram's agent's checks and teller's checks are not akin to money orders covered by the federal Disposition Act. A number of states, including the named parties of Arkansas, Pennsylvania, and Wisconsin, argue that the MoneyGram checks are money orders that are escheated to the place of purchase under federal law. After Delaware refused to return checks escheated to it, certain states filed suit demanding the return of the checks. The cases were eventually consolidated before the U.S. Supreme Court, which has original jurisdiction in suits between states. A special master was appointed by the high court to provide a recommendation in the case. In a July 2021 report, the special master concluded that the official checks were covered by the 1974 Disposition Act and should be escheated to the state where the purchase occurred. On October 3, 2022, the U.S. Supreme Court heard oral arguments as to whether the special master's recommendation should be adopted. Just weeks later, in a rather unusual move, the special master issued an order stating that as a result of reading transcripts of the oral arguments, he is revising his earlier recommendation. "It is my intention to advise the Court that I now believe, contrary to my earlier recommendation, that MoneyGram Teller's Checks are not subject to the Federal Disposition of Abandoned Money Orders and Traveler's Checks Act, while I continue to believe that Agent Checks should escheat pursuant to the directive of the Act."

The special master's reversal of his earlier recommendation after the oral arguments is unusual and creates additional uncertainty for all parties involved in this litigation. KPMG will continue to monitor this case. For more information, please contact **Will King** at (214) 840-6107 | williamking@kpmg.com or **Marion Acord** at (404) 222-3053 | marionacord@kpmg.com.



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