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DEPARTMENT OF ND TRUST LANDS
INVESTING FOR EDUCATION

*Lance D. Gaebe, Commissioner*

TESTIMONY OF

Lance D. Gaebe, Commissioner
North Dakota Department of Trust Lands

To The Legislative Audit and Fiscal Review Committee

April 21, 2016

Members of the Legislative Audit and Fiscal Review Committee, I am Lance Gaebe. We met earlier.

The comments that I offer are in regard to the State Auditor's Performance Report relative to the "the effectiveness of Unclaimed Property administration".

The Department operates the State Unclaimed Property Division, which serves as the repository for financial accounts, cash assets, and securities that have been forgotten or abandoned by the rightful owners.

The Uniform Unclaimed Property Act (NDCC ch. 47-30.1) has been adopted in some form in all 50 states and three Canadian provinces and directs that unclaimed or abandoned funds be turned over to unclaimed property programs after a predetermined period of inactivity or lost contact between the business and the owner.

Since 1975 the Land Board has been responsible for this role in the State of North Dakota. The Department serves as a centralized custodial repository for unclaimed property (predominantly financial assets), with the objective to return the property to the rightful owner, their heirs or assigns. Once property is received and posted, the Department works to make individuals and businesses aware of unclaimed property and assists claimants with the process.

**What is Abandoned Property?**

**Financial Institutions**
- Savings Accounts
- Checking Accounts
- Cashier's Checks
- Certificates of Deposit
- Escrow Accounts
- Safe Deposit Boxes

**Insurance**
- Policy or Claim Benefits
- Group Policy Benefits
- Matured Policies
- Endowments or Annuities
- Premium Refunds
- Agent Credit Balances

**Securities**
- Stock and Dividends
- Mutual Fund Shares
- Matured Bond Principal
- Credit Balances
- Funds for Liquidation
- Principal Payments
- Unexchanged Stock

**Court Deposits**
- Bail Bond
- Escrow
- Missing Heirs
- Condemnation
- Tax Refunds
- Suspense Accounts

**Mineral Proceeds**
- Royalties
- Net Revenue Interest
- Production Payments
- Bonuses
- Delay Rentals

**Other**
- Wages, Payroll, Salary
- Overpayments
- Accounts Payable
- Credit Balances
- Vendor Checks
- Traveler's Checks
- Money Orders

The Statute requires names and last known addresses to be published annually in county newspapers, but the Department exceeds legal publication requirements by publishing names on

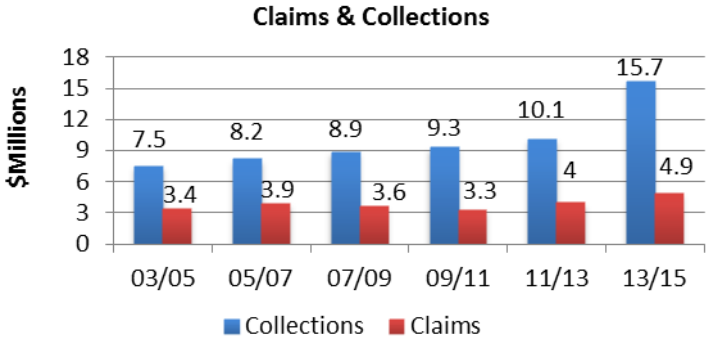
the Department's free searchable website {https://land.nd.gov/UnclaimedProperty/} and a national database {www.missingmoney.com}. Currently these sites are posting approximately 99,000 names.

In addition, the Division undertakes:

- E-mailing on-line user groups (state and county government, education system and others)
- Participating in television, radio and newspaper interviews, and doing service club presentations
- Purchasing address updates and initiating direct mailings to owners
- Data matching with Child Support Division of the North Dakota Department of Human Services

The Division is responsible not only for managing the claim process, but also for educating businesses about reporting responsibilities, assisting with the reporting process, and ensuring compliance with the law. With the increasing number of start-up businesses in the state over the past few years, increasing awareness has been important.

Recent collections and claims during the audit period:




- 2011-2013 biennium $1.5 million from unclaimed royalty proceeds
- 2013-2015 biennium $4.3 million from unclaimed royalty proceeds

During the 2013-2013 biennium an additional one and a quarter staff were added to the Division's efforts allowing increased owner outreach and holder education activities.

- Collections and Claims to-date 2015-17 Biennium
  - $9.2 Million in Total Collections
  - $3.5 Million in Claims Paid

The Department agrees that the unclaimed property program should be administered in an effective manner and that the mission of the program should be accomplished, but the Department disagrees that the mission is not being accomplished.

As trustees for the permanent trust funds, the Department staff and Land Board are keenly aware of their responsibility as a fiduciary for multiple beneficiaries. This applies to management of the permanent trusts and to the interests of unclaimed property owners. We believe that the Legislature entrusted unclaimed property administration to the Department because of its responsibility to the Common Schools Trust Fund, not in spite of it.

The Department will continue to work to reconnect property with the rightful owners, while it continues to take steps to improve holder compliance and ensure the integrity of the data in the unclaimed property system. Since the year 2000, the Department has returned $30 million of previously lost property to rightful owners; this represents 39% of the $77.1 million of assets it has collected on behalf of owners.

Since the audit commenced in January 2015, Unclaimed Property personnel have been interviewed and responded to innumerable requests for information from audit staff. Its processes and policies, and practices have been examined. In this area, several hundred hours have been dedicated to providing the requested documentation, explanation, and background to the auditors.

On January 15, 2016 the State Auditor's Performance Audit Division presented draft reports of its audit findings for the Unclaimed Property Division. The Department was directed to respond to the findings by February 16, 2016.

The Department took advantage of the invitation to submit draft responses to State Auditor staff in advance of submitting the final responses. In a subsequent meeting, Department staff were advised that many of the responses were too long or contained information not addressing the recommendation, and that they would likely be removed completely and summarized or placed into an appendix by SAO staff. Thus, Department staff made significant edits to reduce the information provided to SAO in the final submission.

For the Committee's record, I am submitting the detailed Management Responses prepared in reaction to the findings as originally prepared for the auditors. These responses contain more detail and context to the topics addressed in the audit findings.

**PERFORMANCE AUDIT**
**DRAFT REPORT RESPONSES**
**UNCLAIMED PROPERTY**

## MAKING IMPROVEMENTS RELATED TO OWNERS

### Improving Property Searches

Recommendation 1-1

- We recommend the Department of Trust Lands ensure complete and accurate resources are available to those searching for unclaimed property.

The Department agrees that the internet is the primary tool for the public to discover abandoned property. Internet outreach efforts exceed the statutory advertising obligation, with the Department posting more than 100,000 names to multiple free public search sites.

In many cases, the information received from reporting entities (holders) is inaccurate or incomplete, and is often the reason the property was "lost" in the first place. Data entry errors also occur when manual data entry is required. The Department will work to improve its efforts to review information received from holders for possible corrections as it is entered into the system and will research options for standardizing zip codes and cities.

Names (and at times only initials) are reported with no personal identifying information, such as last known address or social security number. Due to the potential for fraudulent claims being submitted on these types of properties, they are not posted to the public web sites. Posting these properties and providing an avenue for deceit in a claim would be irresponsible.

The Department has created additional reports to better identify properties suited to web posting and has plans to automate that process to help ensure that only property without identifying information is excluded from internet searches. The Department has disclosed its searchable web site, , that searches using these tools may not find all property held and that the only conclusive search would require contacting the Department directly.

### Increasing Efforts to Locate Owners

Recommendation 1-2

- We recommend the Department of Trust Lands:
    a) Increase efforts to locate owners of Unclaimed Property; and
    b) Ensure efforts to locate owners is done in a fair and consistent manner.

The Department agrees with this recommendation. The Department continues to exceed the statutory requirement set in North Dakota Century Code 47-30.1 of publishing in the official county newspaper by publishing in every newspaper in the state, by posting more than 100,000 names on the Department website and on the national site, http://www.missingmoney.com/ , providing public service announcements, distributing awareness e-mails to targeted user groups, and participating in cooperative agreements for data matching.

The Department will continue to explore additional options for increased exposure to a larger audience, including the possibility of participating in joint communications projects with other state agencies.

In 2014, additional staff was hired and support staff reassigned to full-time unclaimed property responsibilities. In 2015, the Department purchased address updates and completed direct mailings to owners of all property types in which a social security number was provided. Starting with the most current report year contacts have been made with these owners and similar efforts continue into previous reporting years. Previously, address updates were purchased only for owners of securities.

These efforts are part of the reason the number of properties paid in calendar year 2015 increased by 37% over 2014.

## MAKING IMPROVEMENTS WITH HOLDERS

### Ensuring Property is Submitted

Recommendation 1-3

- We recommend the Department of Trust Lands:
  a) Monitor abandoned property reporting information from entities in the state; and
  b) Have audits of entities in the state conducted to ensure abandoned property is appropriately turned over to the Department.

The Department agrees with this recommendation. As such, it has requested additional unclaimed property audit staff in each of the past three budget cycles. Since the Department has not received authorization to hire a stand-alone auditor for unclaimed property, the Department will utilize part of another existing position to help with unclaimed property audit responsibilities.

Regarding contract audits, in 2013 the Department successfully requested legislative changes which removed language that prohibited third party auditors to audit North Dakota based businesses. The Department's contracted compliance auditors were informally notified of the change in 2013 and a formal contract amendment was released by the Office of Management and Budget Procurement Division in December 2015.

**Providing Guidance to Holders**

Recommendation 1-4

- We recommend the Department of Trust Lands provide training and current guidance on unclaimed property requirements to North Dakota entities.

  The Department agrees with this recommendation. The Department will continue to post relevant information on its website, as well as on the "New Business" tab of http://www.nd.gov/ . The practice of e-mailing the educational information and training opportunities to the holder community will continue as the e-mail data set grows. Compliance and reporting information will continue to be sent with every claim paid to a business. Periodic contact with accounting and other professionals who assist firms with financial management will continue. Staff hired in 2014 bolstered education by utilizing the Secretary of State's "New Business List" to inform holders of reporting requirements and by identifying non-compliant industry trade groups to contact. The Department has provided information to the Secretary of State for inclusion in the next publication of its business "Green Book" and will continue to explore additional opportunities for interaction with holders.

  The Department will evaluate tools, including those used by other states, to determine which industry sectors have low compliance and will use this information to target their trade groups with educational materials and instruction.

**Making Changes with Negative Reports**

Recommendation 1-5

- We recommend the Department of Trust Lands eliminate language related to negative reporting for unclaimed property or take appropriate action to require negative reports and track holder compliance.

  The Department is in partial agreement with this recommendation. There was ambiguous information on a web site which inferred that these reports are a requirement; the Department will continue to encourage voluntary submission of negative reports

  The statute does not require the filing of negative reports, nor does it preclude them. Since reporting histories are important when holder compliance is being analyzed, it is appropriate to maintain a complete reporting history. The Department will continue to suggest that holders consistently report, even if the submittals indicate no abandoned property, and are thus negative. This will help the Department identify compliance patterns for the audit selection process.

Contradictory language on the website is an oversight and has been updated to provide consistency in terminology.

**Improving Early Acceptance of Property**

Recommendation 1-6

- We recommend the Department of Trust Lands comply with state law requirement and:
  a) Provide written consent to holders when property is submitted to the Department prior to it meeting the definition of being abandoned; and
  b) Ensure property is not presumed abandoned until requirements are met.

The Department agrees that the law has not been followed as it relates to the submission of early reported property and that property is being published and made available for claim as soon as it is received, as opposed to waiting for the statutory dormancy period to mature. The Department's procedures accomplish the mission of returning property to the rightful owner.

Holders often submit property prior to it being presumed abandoned and there is not an opportunity for the Department to give written consent ahead of time. It would not be practical to reject an entire report because some of the properties in it had been submitted early.

Timely posting is a factor in the success of reuniting property with the rightful owner. It is statistically proven that the longer property goes unclaimed, the less likely that a claim will ever be made. Therefore, the Department will request a law change to allow holders to report property early without written permission, as long as due diligence requirements have been met.

**MAKING IMPROVEMENTS WITH PROPERTY HELD BY THE DEPARTMENT**

**Improving Data Integrity**

Recommendation 1-7

- We recommend the Department of Trust Lands ensure unclaimed property data is complete, accurate, and consistently entered.

The Department agrees that complete, accurate and consistently entered data is important.

However, making "corrections" to information submitted by holders will be approached with caution and considered only on a case-by-case basis. Unless a correction is verifiable, the Department is very reluctant to modify data provided by holders.

The Department has implemented processes to further review the data received by holders in an effort to increase the likelihood an owner would find their property. The Department will make additional efforts to work with holders in obtaining more accurate data.

**Improving Receiving and Maintaining Processes**

Recommendation 1-8

- We recommend the Department of Trust Lands consistently and appropriately receipt and maintain a complete list of unclaimed property.

  The Department agrees with this recommendation. The procedure of separating contents and preparing a generalized inventory, limited to internal use, was implemented with the objective of simplifying the processing of items for possible sale, by already having them categorized as saleable vs. non-saleable. This is still a common sense, valid approach.

  Should a future sale be contemplated, items categorized as saleable would be reviewed by a professional appraiser to determine authenticity and value at that time.

  The Department will implement additional steps to further validate that contents, previously certified by multiple members of the reporting financial institution, are in fact received.

**Performing Timely Inventorying of Property**

Recommendation 1-9

- We recommend the Department of Trust Lands ensure unclaimed tangible property received is inventoried/accounted for timely and comply with requirements for publishing notice in the newspaper.

  The Department agrees with this recommendation. Tangible property received as of January 12, 2015 has been processed and will be included in the 2016 newspaper publication.

**Making Changes with Aggregate Reporting**

Recommendation 1-10

We recommend the Department of Trust Lands:

a) Enter owner information into the unclaimed property database when the holder provides adequate owner information regardless of property value.

b) Take appropriate action to lower the aggregate reporting amount.

The Department disagrees with the recommendation. Statute states items of value under fifty dollars may be reported without owner names. This is also known as aggregation. These properties do not need to be published. Since the law does not require holders to provide specific ownership information on properties valued at less than $50.00, some holders provide it, others do not. While the Department has a process in place wherein "aggregate" properties can be, and are claimed, posting "aggregate" property for some owners and not others would not be fair and would constitute inconsistent treatment of owners.

According to undated information obtained from the National Association of Unclaimed Property Administrators, among the 50 states, eight have an aggregate report requirement set at $100, six have specific levels below $50 while the remaining have a $50 threshold. The Department will consider revisions to the current legal aggregate amount and may suggest legislative modifications if it is determined appropriate.

## PROTECTING PROPERTY

Recommendation 1-11

- We recommend the Department of Trust Lands adequately safeguard unclaimed property submitted to the Department.

  The Department agrees with this recommendation and it will continue to protect the property in a limited access secured area which requires two employees to access. The Department will also investigate additional safekeeping and fire protection options.

## SAFEGUARDING SENSITIVE INFORMATION

Recommendation 1-12

- We recommend the Department of Trust Lands adequately safeguard confidential and sensitive information obtained by the Department.

  The Department agrees and is taking additional steps to safeguard against unauthorized access to confidential information. It is nearing completion on a technology upgrade that will encrypt and digitize sensitive information and require hard copy information to be contained within the Department's closed processing area and destroyed following imaging validation.

In addition to the Department's practice of background checks of new employees, the Department will review system permissions for staff not involved in processing unclaimed property and if necessary, implement access limitations.

## IMPROVING THE CLAIMS PROCESS

### Increasing the Consistency of the Claims Process

Recommendation 1-13

- We recommend the Department of Trust Lands consistently and appropriately process claims for unclaimed property.

The Department agrees with this recommendation.

The Department asserts that all claims are not the same and that different documentation and verification processes are required for each owner circumstance. Effective processing requires matching unique personal information reported by the holder with unique documentation provided by the owner. While certain standards of documentation apply to all claims, there is significant variability in combinations of property types (uncashed checks, stocks, safe deposit box contents, refunds, etc.) and owner/claimant status (living, deceased, guardians, power-of-attorney, executors, etc.). Additional information is requested if staff is unable to verify the submitted information or if there are conflicting facts. The Department recognizes that documentation improvements can be made.

The Department will continue to use professional judgment related to the type of contact best suited to the type of claimant and claim. Since much of the contact with owners relating to claims is unwritten, the Department will work to improve the process of documenting contact in the context of the 90-day written response statute.

### Eliminating a Fee to Obtain Property

Recommendation 1-14

- We recommend the Department of Trust Lands not require owners to pay a fee to receive their unclaimed property which has not been sold or liquidated by the Department.

The Department does not agree with the recommendation.

For approved claims involving securities, claimants are given an option to have the security sold or to have it reregistered to the name of the original owner(s). Both of those actions result in a fee charged by a third-party securities custodian.

Statute specifically states that a fee may be charged for the sale, however it does not specifically authorize - or prohibit - a fee for transfer. In the context of fair and consistent treatment of securities claimants, the Department asserts that passing on the custodial fee is appropriate. In a transfer scenario, the entire number of shares reported is being transferred back to the claimant as required by NDCC 47-30.1-24(3) which states that ". . . the administrator pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator."

The Department pays a fee to compliance auditors for identifying North Dakota properties that would otherwise not have been reported to North Dakota. Fees are not paid to contract auditors for properties located in other states. These fees are not passed on to owners when assets are claimed.

**Making Changes with State Agency Properties**

Recommendation 1-15

- We recommend the Department of Trust Lands ensure compliance with state law requirements related to unclaimed property in a state agencies name, and:
  a) Ensure budget section is provided a complete list of state agencies not submitting a claim for property after a year of being notified.
  b) Not provide state agencies the "donation" option.
  c) No longer publish state agencies in the annual notice of property.

The Department agrees with this recommendation. Data validation components related to identifying state agency property are in place within the electronic reporting system. A similar review has been conducted for manually entered properties and is scheduled for automation as well. The Department will eliminate the donation option for state agencies and include all non-claiming agencies in the report to the Budget Section.

## CONDUCTING PROPERTY SALES

Recommendation 1-16

- We recommend the Department of Trust Lands conduct periodic sales of tangible property and dispose of property with insubstantial commercial value.

The Department partially agrees with this recommendation. The Department recognizes that items such as wills, receipts, titles, certificates, etc. may not have monetary value. However, the legal and nonmonetary value of those materials is not easily determined by the Department.

The Department receives an average of less than 50 physical properties each year. While state law authorizes the Department to conduct sales, the Department's safekeeping area is not space constrained and can continue to manage the contents received. Sale or disposition of the property would forever eliminate the possibility of the owner to reclaim the original contents and sale proceeds would often be less than the back rent and drilling fees owed to the financial institutions which reported the physical property.

## ESTABLISHING ADMINISTRATIVE CODE

Recommendation 1-17

- We recommend the Department of Trust Lands establish Administrative Code for aspects of unclaimed property including requirements related to holders, owners, and the Department.

  The Department agrees with the recommendation and will research and implement the steps to codify policies and procedures as appropriate.

## ESTABLISHING ADEQUATE RECORD SERIES

Recommendation 1-18

- We recommend the Department of Trust Lands ensure proper records management series and appropriate disposal of records exist for Unclaimed Property.

  The Department agrees with the recommendation. The Department will establish policy and procedures regarding records management as prescribed in the findings.

## FULFILLING THE MISSION OF UNCLAIMED PROPERTY

Recommendation 1-19

- We recommend the Department of Trust Lands ensure the unclaimed property program operates in an effective manner and the mission of the program is accomplished. If the department is unable to operate the unclaimed property program in this manner, we recommend the Department of Trust Lands take appropriate action to attempt to remove the function from its responsibilities.

The Department agrees that the unclaimed property program should be administered in an effective manner and that the mission of the program should be accomplished, but the Department does not agree that the mission is not being accomplished. "Effective" administration of an unclaimed property program is not possible to quantify. No matter how efficiently a program is administered, there is always room for improvement. The following excerpt is taken from the prefatory note of the June 2015 revision of the Uniform Unclaimed Property Act:

> *"In 1954, when the Uniform Law Commission undertook to create the first Uniform Disposition of Unclaimed Property Act, unclaimed property taken into custody was not initially intended to be a significant source of state revenue, but rather was intended to create uniformity in the means by which states could provide protection of the unclaimed property of consumers and residents. Nevertheless, when the state becomes the custodian of unclaimed property, regardless of how diligently and effectively the administrator acts to return the property to the owner, it will always be the case that a significant portion, if not the majority of the funds held in the custodial account, will never be returned to an owner."*

The Department acknowledges possible perception of a conflict of interest between the Common Schools Trust Fund and unclaimed property owners. Thus, these two functions have necessary segregation of duties. Managing personnel in the unclaimed property division are not directly involved in the management of the Common Schools Trust Fund.

As trustees for the permanent trust funds, the Department staff and Land Board are keenly aware of their responsibility as a fiduciary for multiple beneficiaries. This applies to management of the permanent trusts and to unclaimed property owners. The Legislature recognized this fact in 1975 when unclaimed property administration was entrusted to the Department. The Department will continue to exceed legislative requirements to reconnect property with the rightful owners, while it continues to take steps to improve holder compliance and ensure the integrity of the data in the unclaimed property system.