

AMENDED IN SENATE MAY 24, 2007
AMENDED IN SENATE MARCH 29, 2007

SENATE BILL

No. 919

Introduced by Senator ~~Oropeza~~ Machado

February 23, 2007

~~An act to amend Section 5140 of the Revenue and Taxation Code, relating to taxation.~~ *An act to amend Sections 1531, 1540, 1560, 1563, 1565, and 1576 of, and to add Section 1531.5 to, the Code of Civil Procedure, relating to unclaimed property, and making and appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 919, as amended, ~~Oropeza Machado~~. ~~Property taxes: refunds.~~
Unclaimed property.

(1) The Unclaimed Property Law provides for the escheat to the state of abandoned property, including certain deposits, accounts, shares, or other interests with a banking or financial organization, business association, or other holder of personal property. The law requires the Controller to mail a notice to the apparent owner, as specified, and to publish a notice within one year after payment or delivery of escheated property in a newspaper of general circulation that the Controller determines is most likely to give notice to the apparent owner of the property.

This bill would require the Controller to mail a notice to each apparent owner within one year after the receipt of a report of escheated property and the escheated property. The bill would further require the Controller to establish and conduct an outreach program designed to inform owners about the possible existence of unclaimed property received pursuant to the law, and to establish a procedure to locate

and notify owners of unclaimed property. The bill would require a state or local governmental agency, upon the request of the Controller, to furnish to the Controller from its records the address or other identification or location information that could reasonably be used to locate an owner of unclaimed property. By increasing the duties of local governmental entities with respect to the provision of this information, the bill would impose a state-mandated local program.

(2) The Unclaimed Property Law requires that all money received pursuant to the law, including the proceeds from the sale of property, be deposited in the Abandoned Property Account in the Unclaimed Property Fund. That fund is continuously appropriated to the Controller, and existing law requires the Controller to transfer all money in the fund in excess of \$50,000 to the General Fund at the end of each month, as specified. The law authorizes any person who claims an interest in property paid or delivered to the Controller under the law to file a claim to the property or to the net proceeds from its sale. The law provides that no interest shall be payable on any claim paid under the law.

This bill would require the Controller to add interest, as specified, to the amount of any claim paid to the owner under this provision for the period the property was on deposit in the Unclaimed Property Fund, except that no interest shall be payable for any period prior to January 1, 2008. By requiring General Fund money in a continuously appropriated fund to be spent for a new purpose, this bill would make an appropriation.

(3) The Unclaimed Property Law provides that a person who pays or delivers escheated property to the Controller under the law is relieved of all liability to the extent of the value of the property paid or delivered for any claim regarding the property.

This bill would limit the application of this provision to those persons who have otherwise complied with the provisions of the law with regard to the property, including, for example, reporting requirements.

(4) The Unclaimed Property Law requires the Controller to sell all escheated property to the highest bidder at public sale, as specified.

This bill would specify the proceeds to which a person making a claim under the law is entitled with regard to securities that are delivered to the Controller under the law.

(5) The Unclaimed Property Law requires the Controller to retain any property delivered to the Controller pursuant to the law that has no apparent commercial value until he or she determines to destroy or otherwise dispose of it.

This bill would require the Controller to retain that property for a period of 18 months from the date the property is delivered to the Controller.

(6) The Unclaimed Property Law provides that any person who willfully fails to render any report or perform other duties required under the law shall be punished by a fine of \$100 for each day the report is withheld or the duty is not performed, but not more than \$10,000. The law also provides that any person who willfully refuses to pay or deliver escheated property to the Controller as required shall be punished by a fine of not less than \$5,000 nor more than \$50,000.

This bill would instead impose a civil penalty upon any person who fails to render any report or perform other duties required under the law of \$200 for each day the report is withheld or a duty is not performed, up to \$10,000. The bill would also impose a civil penalty upon any person who willfully refuses to report, pay, or deliver escheated property to the Controller as required, or willfully fails to perform other duties under the law, in addition to interest, of \$1,000 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to \$25,000, plus 25% of the value of any property that should have been, but was not, reported.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing property tax law allows a person who has paid an amount of property tax, or certain representatives of that person or his or her estate, to bring an action in superior court to recover that amount of tax in the case in which the claim for the refund of that amount has been denied.~~

~~This bill would prohibit a person who has paid an amount of property tax, or certain representatives of that person or his or her estate, from bringing an action in the small claims division of the superior court to recover that amount of tax in the case in which the claim for the refund of that amount has been denied.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~yes. Fiscal committee: yes. State-mandated local program: ~~no~~yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1531 of the Code of Civil Procedure is*
2 *amended to read:*

3 1531. (a) Within one year after payment or delivery of
4 escheated property as required by Section 1532, the Controller
5 shall cause a notice to be published, in a newspaper of general
6 circulation ~~which~~ *that* the Controller determines is most likely to
7 give notice to the apparent owner of the property.

8 (b) Each published notice shall be entitled “notice to owners of
9 unclaimed property.”

10 (c) Each published notice shall also contain a statement that
11 information concerning the amount or description of the property
12 may be obtained by any persons possessing an interest in the
13 property by addressing any inquiry to the Controller.

14 (d) If an account paid or delivered to the Controller pursuant to
15 Section 1532 includes a social security number, the Controller
16 shall request the Franchise Tax Board to provide a current address
17 for the apparent owner on the basis of that number. ~~The~~ *Within*
18 *one year after the receipt of the report and property as required*
19 *by Sections 1530 and Section 1532, the Controller shall mail a*
20 *notice to the each* apparent owner for whom a current address is
21 ~~obtained if the address is different than the address previously~~
22 ~~reported to the Controller.~~

23 *SEC. 2. Section 1531.5 is added to the Code of Civil Procedure,*
24 *to read:*

25 1531.5. (a) *The Controller shall establish and conduct an*
26 *outreach program designed to inform owners about the possible*
27 *existence of unclaimed property received pursuant to this chapter.*

28 (b) *The Controller shall establish a procedure to locate and*
29 *notify owners of unclaimed property received pursuant to this*
30 *chapter. Any notice sent pursuant to this section shall not contain*
31 *a photograph of an elected official.*

32 (c) (1) *Notwithstanding any other law, upon the request of the*
33 *Controller, a state or local governmental agency shall furnish to*
34 *the Controller from its records the address or other identification*
35 *or location information that could reasonably be used to locate*
36 *an owner of unclaimed property.*

37 (2) *If the address or other identification or location information*
38 *requested by the Controller is deemed confidential under any laws*

1 *or regulations of this state, it shall nevertheless be furnished to*
2 *the Controller. However, the Controller and any officer, agent, or*
3 *employee of the Controller shall not use or disclose that*
4 *information except as may be necessary in attempting to locate*
5 *the owner of unclaimed property.*

6 *(3) This subdivision shall not be construed to require disclosure*
7 *of information in violation of federal law.*

8 *(4) If a fee or charge is customarily made for the information*
9 *requested by the Controller, the Controller shall pay that*
10 *customary fee or charge.*

11 *(d) Costs for administering this section shall be paid by an*
12 *appropriation in the annual Budget Act.*

13 *SEC. 3. Section 1540 of the Code of Civil Procedure is*
14 *amended to read:*

15 1540. (a) Any person, excluding another state, who claims an
16 interest in property paid or delivered to the Controller under this
17 chapter may file a claim to the property or to the net proceeds from
18 its sale. The claim shall be on a form prescribed by the Controller
19 and shall be verified by the claimant.

20 (b) The Controller shall consider each claim within 180 days
21 after it is filed and may hold a hearing and receive evidence. The
22 Controller shall give written notice to the claimant if he or she
23 denies the claim in whole or in part. The notice may be given by
24 mailing it to the address, if any, stated in the claim as the address
25 to which notices are to be sent. If no address is stated in the claim,
26 the notice may be mailed to the address, if any, of the claimant as
27 stated in the claim. No notice of denial need be given if the claim
28 fails to state either an address to which notices are to be sent or an
29 address of the claimant.

30 (c) *Except as otherwise provided in this subdivision, the*
31 *Controller shall add interest to the amount of any claim paid to*
32 *the owner under this section for the period the property was on*
33 *deposit in the Unclaimed Property Fund. The interest rate to be*
34 *paid for the current fiscal year shall be established on August 1*
35 *of each year and shall be set at 5 percent or the annual yield of*
36 *the Pooled Money Investment Account for the immediately*
37 *preceding fiscal year, whichever is lower. Any interest required*
38 *to be paid pursuant to this section shall be computed as simple*
39 *interest. No interest shall be payable on any claim paid under this*
40 *chapter for any period prior to January 1, 2008.*

1 (d) For the purposes of this section, “owner” means the person
 2 who had legal right to the property prior to its escheat, his or her
 3 heirs, his or her legal representative, or a public administrator
 4 acting pursuant to the authority granted in Sections 7660 and 7661
 5 of the Probate Code.

6 (e) Following a public hearing, the Controller shall adopt
 7 guidelines and forms that shall provide specific instructions to
 8 assist owners in filing claims pursuant to this article.

9 *SEC. 4. Section 1560 of the Code of Civil Procedure is*
 10 *amended to read:*

11 1560. (a) Upon the payment or delivery of escheated property
 12 to the ~~State~~ Controller, the state shall assume custody and shall be
 13 responsible for the safekeeping of the property. ~~Any~~ A person who
 14 pays or delivers escheated property to the ~~State~~ Controller under
 15 this chapter, *and has complied with the provisions of this chapter*
 16 *with regard to the property*, is relieved of all liability to the extent
 17 of the value of the property ~~so~~ paid or delivered for any claim
 18 ~~which~~ *that* then exists or ~~which~~ *that* thereafter may arise or be
 19 made in respect to the property. Property removed from a safe
 20 deposit box or other safekeeping repository shall be received by
 21 the ~~State~~ Controller subject to any valid lien of the holder for rent
 22 and other charges, ~~such~~ *that* rent and other charges to be paid out
 23 of the proceeds remaining after the ~~State~~ Controller has deducted
 24 ~~therefrom his~~ *the* selling cost.

25 (b) ~~Any~~ A holder who has paid moneys to the ~~State~~ Controller
 26 pursuant to this chapter may make payment to ~~any~~ a person
 27 appearing to ~~such~~ *the* holder to be entitled ~~thereto~~ *to payment*, and
 28 upon filing proof of ~~such~~ payment and proof that the payee was
 29 entitled ~~thereto~~ *to payment*, the ~~State Controller~~ *Controller* shall
 30 ~~forthwith~~ reimburse the holder for the payment without deduction
 31 of ~~any~~ a fee or other charges. ~~Where~~ *charge*. If reimbursement is
 32 sought for a payment made on a negotiable instrument ~~(including,~~
 33 ~~including~~ a travelers check or money ~~order)~~ *order*, the holder shall
 34 be reimbursed under this subdivision upon filing proof that the
 35 instrument was duly presented to him *or her* and that payment was
 36 made thereon to a person who appeared to the holder to be entitled
 37 to payment.

38 (c) The holder shall be reimbursed under this section even if he
 39 *or she* made the payment to a person whose claim against ~~him~~ *the*

1 holder was barred because of the expiration of ~~any such~~ a period
2 of time as ~~those~~ described in Section 1570.

3 (d) ~~Any~~A holder who has delivered personal property, including
4 a certificate of ~~any~~ interest in a business association, to the ~~State~~
5 Controller pursuant to this chapter may reclaim ~~such the~~ personal
6 property if still in the possession of the ~~State~~ Controller without
7 payment of ~~any a~~ fee or other ~~charges~~ charge upon filing proof
8 that the owner ~~thereof~~ has claimed ~~such the~~ personal property from
9 ~~such the~~ holder. The ~~State~~ Controller may, in his or her discretion,
10 accept an affidavit of the holder stating the facts that entitle the
11 holder to reimbursement under this subdivision as sufficient proof
12 for the purposes of this subdivision.

13 *SEC. 5. Section 1563 of the Code of Civil Procedure is*
14 *amended to read:*

15 1563. (a) Except as provided in subdivisions (b) and (c), all
16 escheated property delivered to the Controller under this chapter
17 shall be sold by the Controller to the highest bidder at public sale
18 in whatever city in the state affords in his or her judgment the most
19 favorable market for the property involved, or the Controller may
20 conduct the sale by electronic media, including, but not limited
21 to, the Internet, if in his or her judgment it is cost effective to
22 conduct the sale of the property involved in that manner. The
23 Controller may decline the highest bid and reoffer the property for
24 sale if he or she considers the price bid insufficient. The Controller
25 need not offer any property for sale if, in his or her opinion, the
26 probable cost of sale exceeds the value of the property. Any sale
27 of escheated property held under this section shall be preceded by
28 a single publication of notice thereof, at least one week in advance
29 of sale, in an English language newspaper of general circulation
30 in the county where the property is to be sold.

31 (b) Securities listed on an established stock exchange within
32 two years following receipt by the Controller shall be sold at the
33 prevailing prices on that exchange. Other securities may be sold
34 over the counter at prevailing prices or, with prior approval of the
35 California Victim Compensation and Government Claims Board,
36 by any other method that the Controller may determine to be
37 advisable. *If securities are sold by the Controller before the*
38 *expiration of 18 months after delivery to the Controller, a person*
39 *making a claim under this chapter that is received by the Controller*
40 *before the end of the 18-month period is entitled to the proceeds*

1 of the sale of the securities or the market value of the securities at
2 the time the claim is made, whichever is greater, plus dividends,
3 interest, and other increments thereon up to the time the claim is
4 made, less any deduction for expenses of sale. A person making a
5 claim under this chapter after the expiration of the 18-month period
6 is entitled to receive the securities delivered to the Controller by
7 the holder, if they still remain in the custody of the Controller, or
8 if sold, the net proceeds received from sale, and is not entitled to
9 receive any appreciation in the value of the property occurring
10 after delivery to the Controller. United States government savings
11 bonds and United States war bonds shall be presented to the United
12 States for payment. Subdivision (a) does not apply to the property
13 described in this subdivision.

14 (c) (1) All escheated property consisting of military awards,
15 decorations, equipment, artifacts, memorabilia, documents,
16 photographs, films, literature, and any other item relating to the
17 military history of California and Californians that is delivered to
18 the Controller is exempt from subdivision (a) and shall be held in
19 trust for the Controller at the California State Military Museum
20 and Resource Center. All escheated property held in trust pursuant
21 to this subdivision is subject to the applicable regulations of the
22 United States Army governing Army museum activities as
23 described in Section 179 of the Military and Veterans Code. Any
24 person claiming an interest in the escheated property may file a
25 claim to the property pursuant to Article 4 (commencing with
26 Section 1540).

27 (2) The California State Military Museum and Resource Center
28 shall be responsible for the costs of storage and maintenance of
29 escheated property delivered by the Controller under this
30 subdivision.

31 (d) The purchaser at any sale conducted by the Controller
32 pursuant to this chapter shall receive title to the property purchased,
33 free from all claims of the owner or prior holder thereof and of all
34 persons claiming through or under them. The Controller shall
35 execute all documents necessary to complete the transfer of title.

36 *SEC. 6. Section 1565 of the Code of Civil Procedure is*
37 *amended to read:*

38 1565. Any property delivered to the State Controller pursuant
39 to this chapter ~~which~~ that has no apparent commercial value shall
40 be retained by the State Controller ~~until such time as he determines~~

1 ~~to destroy or otherwise dispose of it for a period of 18 months from~~
2 ~~the date the property is delivered to the Controller. If the State~~
3 ~~Controller determines that any property delivered to him or her~~
4 ~~pursuant to this chapter has no apparent commercial value, he or~~
5 ~~she may at any time thereafter destroy or otherwise dispose of the~~
6 ~~property, and in that event no action or proceeding shall be brought~~
7 ~~or maintained against the state or any officer thereof or against the~~
8 ~~holder for or on account of any action taken by the State Controller~~
9 ~~pursuant to this chapter with respect to the property.~~

10 *SEC. 7. Section 1576 of the Code of Civil Procedure is*
11 *amended to read:*

12 1576. (a) ~~Any~~A person who ~~willfully~~ fails to render ~~any~~ a
13 report or perform other duties, including *the notice requirements*
14 *prescribed in Sections 1513.5, 1516, and 1520 and use of the report*
15 *format described in Section 1530, required under this chapter shall*
16 ~~be punished by a fine of one~~ *liable for a civil penalty of two*
17 *hundred dollars* ~~(\$100)~~ *(\$200)* for each day ~~such~~ *the* report is
18 withheld or ~~such~~ *the* duty is not performed, but not more than ten
19 thousand dollars (\$10,000).

20 (b) ~~Any~~A person who willfully refuses to *report, pay, or deliver*
21 *escheated property to the Controller as required under this chapter*
22 ~~shall be punished by a fine of not less than five thousand dollars~~
23 ~~(\$5,000) nor more than fifty thousand dollars (\$50,000), or who~~
24 ~~willfully fails to perform other duties imposed by this chapter,~~
25 ~~shall be liable for, in addition to interest as provided in Section~~
26 ~~1577, a civil penalty of one thousand dollars (\$1,000) for each~~
27 ~~day the report, payment, or delivery is withheld, or the duty is not~~
28 ~~performed, up to a maximum of twenty-five thousand dollars~~
29 ~~(\$25,000), plus 25 percent of the value of any property that should~~
30 ~~have been, but was not, reported.~~

31 (c) No person shall be considered to have willfully failed to
32 report, pay, or deliver escheated property, or perform other duties
33 unless he or she has failed to respond within a reasonable time
34 after notification by certified mail by the Controller's office of his
35 or her failure to act.

36 (d) *The Controller for good cause may waive, in whole or in*
37 *part, the civil penalty imposed under subdivision (a).*

38 *SEC. 8. If the Commission on State Mandates determines that*
39 *this act contains costs mandated by the state, reimbursement to*
40 *local agencies and school districts for those costs shall be made*

1 *pursuant to Part 7 (commencing with Section 17500) of Division*
2 *4 of Title 2 of the Government Code.*

3 ~~SECTION 1. Section 5140 of the Revenue and Taxation Code~~
4 ~~is amended to read:~~

5 ~~5140. The person who paid the tax, his or her guardian or~~
6 ~~conservator, the executor of his or her will, or the administrator~~
7 ~~of his or her estate may bring an action only in the superior court,~~
8 ~~but not in the small claims division of the superior court, against~~
9 ~~a county or a city to recover a tax that the board of supervisors of~~
10 ~~the county or the city council of the city has refused to refund on~~
11 ~~a claim filed pursuant to Article 1 (commencing with Section 5096)~~
12 ~~of this chapter. No other person may bring such an action; but if~~
13 ~~another should do so, judgment shall not be rendered for the~~
14 ~~plaintiff.~~