

HB

240

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 5, 1991

The Honorable Dave Donley  
Chair, House Judiciary Committee  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: HB 240, Unclaimed Property

Dear Rep. Donley:

I would like to request that you schedule a hearing for HB 240, which proposes a minor amendment to the Alaska Unclaimed Property Act.

Approximately two years ago, Delaware sued New York in an original action in the United States Supreme Court over the appropriate treatment of dividends and other payments on stocks and bonds held by New York brokerage houses, where the rightful owner of the payment is unknown. Forty-four other states, including Alaska, and the District of Columbia have intervened in the action. Our position, supported by 38 states, is that these unclaimed funds should be returned to the state of the issuer of the bonds (in most cases a state agency or municipality), or of incorporation for private corporations, and that the brokerage houses are simply intermediaries that have no legitimate possessory interest in the money. New York argues that the funds are held by brokerage houses in New York and therefore should "escheat" to New York.

The purpose of this legislation is to amend the Alaska Unclaimed Property Act to clearly provide that Alaska has the authority to recover any money it wins in the litigation. Otherwise, even if Alaska is successful in its argument in the Supreme Court, Alaska's current Act may not permit us to receive the funds, thereby permitting them to escheat to New York despite the court's ruling.

Although this is not a particularly high-profile issue,

RECEIVED APR 08 1991

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
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P.O. BOX K— STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

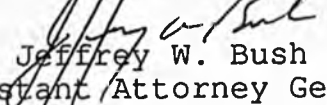
Hon. Dave Donley, Alaska State Representative  
Re: HB 240, Unclaimed Property

April 5, 1991  
Page 2

we are aware of no opposition to it, at least outside of New York.  
Thank you for your consideration of this request.

Sincerely,

CHARLES E. COLE  
ATTORNEY GENERAL

By:   
Jeffrey W. Bush  
Assistant Attorney General

CEC:JWB:cl

cc: Carl A. Meyer, Chief  
Audit Appeals  
Department of Revenue

Explanation of Proposed Amendment to  
Alaska Unclaimed Property Statute  
Providing for Recovery of Unclaimed Property

1. The Amendment is necessary to permit the State to recover the unclaimed property at issue in Delaware v. New York, No. 111 Original, pending before the United States Supreme Court.

2. Although current State law may cover dividends, interest and similar property at issue in the litigation, it does not permit recovery from most out-of-state holders when such holders did not originate the unclaimed funds and are merely intermediaries.

3. The amendment is limited to circumstances where the address of the unclaimed property owner is unknown.

4. The amendment applies only to property and situations not otherwise covered by existing State law.

5. (a) The dormancy period is three years because the New York dormancy period is three years. If this becomes a problem with the legislature, the litigation will not be undermined by modifying the three year dormancy period to conform to the traditional State dormancy period.

(b) In circumstances where the same property would be covered both by existing law and this Amendment, and there are different dormancy periods, existing law controls.

6. The Amendment applies to property held at the date of enactment, irrespective of when the property became abandoned, as well as to property becoming abandoned after enactment.

November 29, 1990

DICKSTEIN, SHAPIRO & MORIN

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202 785-9700

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NEW YORK OFFICE  
598 MADISON AVENUE  
NEW YORK, N. Y. 10022  
212 832-1800

November 29, 1990

Patty Smith  
Unclaimed Property Administrator  
Income & Excise Audit Division  
Department of Revenue  
P.O. Box SA  
Juneau, Alaska 99811-0400

Re: Delaware v. New York, No. 111 Original:  
Amendment of Alaska Unclaimed Property Act

Dear Ms. Smith:

In connection with our representation of Alaska in Delaware v. New York, we have undertaken a review of Alaska's unclaimed property statute in light of the defenses raised and legal positions taken by the various parties in the case. We have concluded that the statute should be amended to ensure that Alaska will be authorized to recover all of the property to which it is entitled.

Alaska and thirty-seven other States contend that when the last known address of the owner of unclaimed dividends or interest payments is unknown, the property is subject to the custody of the State which issued the underlying security, the State in which a political subdivision issued the underlying security, or the State in which the corporation which issued the underlying security is incorporated. Alaska and thirty-seven States reject the contention of Delaware that 100% of the funds belongs to the State of incorporation of the brokerage firm or other intermediary which is merely holding dividend or interest payments, the contention of New York that 100% of the property belongs to New York because most of the brokerage firms are headquartered in New York, and the contentions of California, five other States and the District of Columbia that the Supreme Court's prior decisions should be discarded in favor of some contrived "commercial activity" formula.

Although Sections 34.45.110, 34.45.120, and 34.45.200 of the Alaska statute cover unclaimed dividends and interest, the

Patty Smith  
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Page 2

statute authorizes recovery of unclaimed dividends and interest only in circumstances in which the holder of the dividends and interest is domiciled (incorporated) in Alaska. Because our litigation involves brokerage firms incorporated in Delaware (and therefore not domiciled in Alaska) which are holding the dividends and interest, the Alaska statute needs to be amended to authorize recovery of dividends and interest held by non-domiciliaries of Alaska, provided that the issuer of the underlying security is Alaska, a political subdivision of Alaska, or a corporation incorporated (domiciled) in Alaska. Section (a) of our proposed amendment provides this necessary modification.

Section (b) of our proposed amendment ensures that the amendment applies only to property not otherwise covered by the Alaska statute, and is necessary for the rare case where a brokerage firm incorporated in Alaska is the holder of the unclaimed property.

Section (c) of our proposed amendment provides that the amendment also applies to property that became abandoned prior to enactment. This provision is necessary to cover property unlawfully taken by New York in past years.

As you also will note, the amendment shortens the dormancy period for unclaimed property covered by the proposed section to three years. This provision is important because the dormancy period of New York is three years. A longer dormancy period for Alaska would allow New York to retain custody of the property for several years after judgment. Although the disparity in dormancy periods will not prevent Alaska from eventually obtaining the unclaimed property, we recommend adoption of the three year dormancy period.

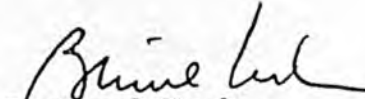
Copies of the recommended amendment and an explanation of the amendment are enclosed for your convenience. We also are providing the materials to Attorney General Douglas B. Baily. Because of the sensitive nature of this amendment to the pending litigation, please try to limit publicity and discussion with other States.

During the most recent legislative session, nine states adopted our proposed amendment into law. We expect all of our clients to adopt this amendment in the next legislative session.

Patty Smith  
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Please call me if you have any questions, or if you believe it would be helpful for me to communicate with any of your legislative or executive branch officials.

Very truly yours,

  
Bernard Nash

BN:fgd  
Enclosure  
cc: Hon. Douglas B. Baily

FISCAL NOTE

No. 1

Bill Version: HB 240

(H) Publish Date: 4/3/91

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Title: An Act relating to Unclaimed Property

Sponsor: House Labor & Commerce

Requestor: House Labor & Commerce

Department Affected: Department of Revenue

BRU: Revenue Operations

Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING              | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      |       |       |       |       |       |       |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            |       |       |       |       |       |       |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LANDS & STRUCTURES     |       |       |       |       |       |       |
| GRANTS, CLAIMS         |       |       |       |       |       |       |
| MISCELLANEOUS          |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b> | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |
| <b>CAPITAL</b>         | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |
| <b>REVENUE</b>         | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |

FUNDING: (Thousands of Dollars)

|               |     |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND  | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| FEDERAL FUNDS |     |     |     |     |     |     |
| OTHER         |     |     |     |     |     |     |
| <b>TOTAL</b>  | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TEMPORARY | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of current year impact: 0.0

ANALYSIS: Attach a separate page for analysis.

SEE ATTACHED

Prepared By: Carl Meyer, Chief of Appeals

Division: Income and Excise Audit Division

Phone: (907) 465-2320

Date: March 29, 1991

Approved by Commissioner: Lee E. Fisher

Agency: Department of Revenue

Date: 4-1-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

March 29, 1991

HB 240  
FISCAL NOTE ANALYSIS  
DEPARTMENT OF REVENUE

HB 240 would add a new section to AS 34.45 pertaining to intangible property subject to the state unclaimed property provisions. Pursuant to the legislation all intangible property held by persons located both within and outside Alaska would be presumed abandoned and deemed to constitute unclaimed property subject to Alaska custody if:

1. the address of the owner is unknown,
2. the owner has not claimed the property within 3 years, and
3. the issuer of the property is this state, a subdivision of this state, or a person incorporated, organized or created in this state.

This section would not apply to property otherwise subject to Alaska custody under another section of the unclaimed property law that provides for a dormancy period different from the three year period established in the bill. The legislation would also apply to property that is considered abandoned prior to the effective date of the act but still in the possession of a holder on the effective date.

The Unclaimed Property Act provisions (AS 34.45) currently cover intangible property. However, in those situations where the address of the owner is unknown, the provisions may only authorize recovery where the holder of the property is domiciled or incorporated in the state. It is our understanding that the legislation is intended to extend the Unclaimed Property Act to brokerage firms located outside Alaska that hold dividends and interest attributable to securities issued by Alaska or Alaska corporations.

Alaska, along with 37 other states, contends that when the last known address of the owner of unclaimed property is unknown, the property should be subject to the custody of the state from which the security was issued. Delaware asserts the property is subject to the custody of the state of incorporation of the holder. New York asserts the property is subject to the custody of the state of the holder's headquarters. California, the District of Columbia, and the remaining five states assert the property is subject to the custody of the state based on the holder's commercial activity. The dispute is presently before the United States Supreme Court in Delaware v. New York and the legislation is designed to ensure that Alaska will be in a position to recover any property in the event of a favorable decision.

Assuming the favorable decision by the Court, the legislation would bring in additional revenues. However, the department cannot at this time make any reasonable estimate of the extent of those revenues.

HOUSE COMMITTEE REPORT

(7) Date Referred: April 3, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 4-16-91

The JUDICIARY Committee considered: HB 240

HOUSE BILL NO. 240 UNCLAIMED INTANGIBLE PROPERTY

"An Act relating to unclaimed property."

RECOMMENDATIONS: be replaced with CSHB 240 (JUD)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) Dept. of Revenue

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | DNP | NR | AM |
|-----------------|----|-----------------------|-----|----|----|
| Mike Miller     | ✓  |                       |     |    |    |
| Mark Hanken     | ✓  |                       |     |    |    |
| Dave Dowley     | ✓  |                       |     |    |    |
| J. Ellis        | ✓  |                       |     |    |    |
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*Dave Dowley*  
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

4/3/91

(7)

Date Referred: March 27, 1991

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 4-2-91

The LABOR AND COMMERCE Committee considered:

HB 240

HOUSE BILL NO. 240

UNCLAIMED INTANGIBLE PROPERTY

"An Act relating to unclaimed property."

RECOMMENDATIONS: [ ] the same title  
be replaced with \_\_\_\_\_ [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[ ] no recommendations

individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

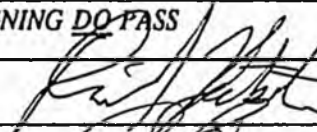
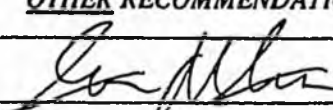
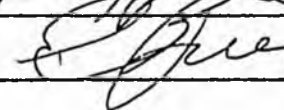
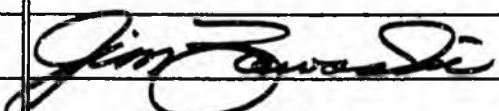
APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

zero fiscal note Revenue

[ ] zero fiscal note(s) \_\_\_\_\_

| SIGNING DO PASS   | DP | OTHER RECOMMENDATIONS   | DNP | NR | AM |
|---|----|---|-----|----|----|
|  FINKELSTEIN |    |  IVAN |     | X  |    |
|  BRUCKMAN    |    |  Jim  |     | X  |    |
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CHAIRMAN'S SIGNATURE FINKELSTEIN

HOUSE COMMITTEE REPORT

4/3/91

(7)

Date Referred: March 27, 1991

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 4-2-91

The LABOR AND COMMERCE Committee considered:

HB 240

HOUSE BILL NO. 240

UNCLAIMED INTANGIBLE PROPERTY

"An Act relating to unclaimed property."

RECOMMENDATIONS:

be replaced with \_\_\_\_\_ [ ] the same title

[ ] have attached amendments(s) [ ] a new title

[ ] do pass

[ ] do not pass

[ ] no recommendations

[x] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

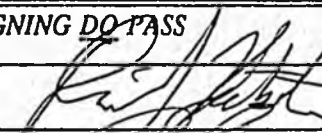
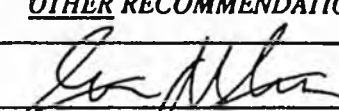
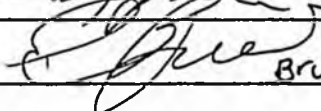
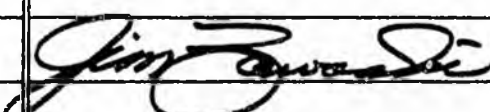
APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact \_\_\_\_\_

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[x] zero fiscal note Revenue

[ ] zero fiscal note(s) \_\_\_\_\_

| SIGNING DO-PASS   | DP | OTHER RECOMMENDATIONS   | DNP | NR | AM |
|---|----|---|-----|----|----|
|  FINKELSTEIN |    |  IVAN |     | X  |    |
|  BRUCKMAN    |    |       |     | X  |    |
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CHAIRMAN'S SIGNATURE  
FINKELSTEIN