



State Tax Today

FEBRUARY 13, 2015


Kansas Draws Praise for Transparency Around **Unclaimed Property** Procedures Maria Koklanaris

Summary by **taxanalysts**

The **Kansas** state treasurer has moved in recent days to shine a light on the state's procedures for dealing with the use of private firms in auditing **unclaimed property**, prompting the U.S. Chamber of Commerce to say that "the Sunflower State became the first to bring a measure of balance and transparency to the practice."

Full Text Published by **taxanalysts**


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In a section called "Just for Holders" (<http://bit.ly/1vH9sf0>) posted on the treasurer's website in January, Byron Harden, the **unclaimed property** director in the treasurer's office, said the treasurer will not allow a private firm to begin an audit without prior approval. The power of third-party auditors in **unclaimed property** procedures is the most common complaint of the holders of **unclaimed property** nationwide. (Prior coverage )

"It is very important to note that the **Kansas** Treasurer retains control of the audit process," Harden said in the post. "The **Kansas** State Treasurer's office will maintain a working relationship with the holder that is being audited throughout the audit process. This is part of our effort to balance making the auditing process as nonintrusive as possible with our mission of returning **unclaimed property** to its rightful owner."

Also, the treasurer named its current third-party auditor, which is Xerox State and Local Solutions Inc., and took the unusual step of posting online the contract between **Kansas** and Xerox. Finally, it promoted its voluntary disclosure program and posted a name, an e-mail address, and a phone number for businesses to contact if they discover that they are inadvertently out of compliance and want to file an **unclaimed property** report to rectify the situation.

"**Kansas** Treasurer Ron Estes spelled out safeguards his office is adopting to make sure that the interests of the state trump those of auditors," Harold Kim of the chamber of commerce wrote in a blog post February 6. "By taking these steps, Treasurer Estes has illuminated a path for other states to follow to ensure the fair and transparent enforcement of their **unclaimed property** laws."

In April 2014, the chamber published "**Unclaimed Property**: Best Practices for State Administrators and the Use of Private Audit Firms ", by Maeve O'Connor of Debevoise & Plimpton LLP. In the paper, O'Connor expressed the sentiment of many holders when she wrote that "while private auditors, if appropriately incentivized and supervised, can serve a useful role, the existing model of private auditor arrangements based on contingency fees, undisclosed contracts, opaque selection processes, and inadequate oversight creates an intolerable risk of

abuse."

Ashley Murdie, a spokeswoman for Estes, told Tax Analysts that the treasurer has considered these policies to be "best practices" since taking office in 2011, but the office recently decided to communicate them more explicitly.


"We are just formalizing these policies," Murdie said. "This letter is a philosophy statement."

Kimberly DeCarrera of Barganier and Associates LLC, which represents many holders, also praised **Kansas**.

"One of the important things that the holder community has asked for has been transparency from both the states and the third-party auditors that serve them," DeCarrera said in an e-mail to Tax Analysts. "**Kansas** has taken an important step in this process by posting and featuring the audit contract on the state website."

DeCarrera said the posting of the contract and the conditions within it is reassuring to holders. She said it specifies the procedures the auditor must follow, including the terms that must first be met before it can claim **property** on behalf of the state.

"These are often important questions for large multistate and multinational companies, where competing jurisdictions may make multiple claims to the same **property**," DeCarrera said. "Barganier hopes that more states will take **Kansas's** lead in promoting compliance and making their audit contracts readily available to the public."

Ferdinand Hogroian of the Council On State Taxation said **Kansas** generally scored well on COST's most recent **unclaimed property** scorecard , achieving an overall grade of B+. Eliminating the use of contingent fee arrangements with third-party auditors altogether would help the state perfect its score, he said.

"I think it's encouraging that the **Kansas** State Treasurer recognizes the need for transparency in the area of contract audits, and for the audit process in general," Hogroian said in an e-mail. "It is also important that the treasurer remain in control of the audits, from initiation through completion."

Bryan Quigley of the U.S. Chamber Institute for Legal Reform said the chamber hopes that the Uniform Law Commission at its next meetings on revising the 1995 Uniform **Unclaimed Property** Act, scheduled for February 27 and 28, will bring up the issue of transparency around third-party audits for **unclaimed property**.

"In regard to third-party auditors, that process has in some places become unhinged from due process issues and from the proper authority of the state treasurer," Quigley told Tax Analysts. "We liked the fact that what Estes has done is tried to ensure that there is control by the state in this process, and that [**Kansas**] allows for a company to engage with it."

Tax Analysts Information

Jurisdiction: Kansas

Subject Areas: **Unclaimed property**

Information reporting

Information disclosure

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Tax Analysts Document Number: Doc 2015-3304

Tax Analysts Electronic Citation: 2015 STT 30-2

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