

LCB File No. R162-09

**PROPOSED REGULATION OF
THE STATE TREASURER**

2009 – Proposed Amendments to Nevada Administrative Code

CHAPTER 120A - DISPOSITION OF UNCLAIMED PROPERTY

Chapter 120A is hereby amended by adding thereto a new section to read as follows:

NEW

NAC 120A___ Interest and Penalties. (NRS 120A.140, 120A.730)

- 1. The Administrator may, for good cause, waive in whole or in part penalties and interest pursuant to NRS 120A.730(5) if in his judgment circumstances exist that show the holder acted in good faith and without negligence, and the holder provides a written request that:
 - (a) Describes the facts and circumstances that led to the noncompliance;*
 - (b) Requests a waiver of interest and penalties in whole or in part; and*
 - (c) Includes the Holder Identification Number and Tax Identification Number.**
- 2. Holders that are not undergoing an audit and have failed to file a UP-1 Report of Unclaimed Property in prior reporting periods, but wish to file for the first time to become compliant with reporting requirements pursuant to NRS 120A.500, may request a waiver of interest and penalties by submitting a Voluntary Disclosure Agreement form UP- 49.
 - (a) For purposes of this section, Voluntary Disclosure Agreement refers to form UP-49, which requests the Administrator to waive interest and penalties for failure to report based on the holders' good faith effort to voluntarily disclose past and present unclaimed property.**

NEW

NAC 120A Gift Certificates. (NRS 120A.140, 120A.520, 598.0921)

- A gift certificate that is presumed abandoned pursuant to NRS 120A.520 is subject to the custody of the Nevada Unclaimed Property Division in any of the following circumstances:*
- (a) The records of the issuer indicate that the last known address of the purchaser or bearer is in a State that does not provide for the escheat or custodial taking of a gift certificate or is in a foreign country and the issuer is domiciled in Nevada.*
 - (b) The records of the seller or issuer show that the gift card or gift certificate was purchased or issued in Nevada, the issuer is domiciled in a State that does not provide for the escheat or custodial taking of a gift certificate, and the last known address of the purchaser or bearer is unknown or in a State that does not provide for the escheat or custodial taking of a gift certificate.*

NEW

NAC 120A___ Audit Process. (NRS 120A.140, 120A.690)

- 1. Audits will be selected based on either:*

- (a) A risk based assessment using a weighted criteria, as established by the Administrator; or,*
- (b) A 5% random selection of all holders.*

The criteria is not a public record.

NEW

NAC 120A Positive Confirmation (NRS 120A.140, 120A.690)

- 1. A holder may prove that the property is not abandoned by a written statement. A written statement made by the apparent owner positively confirming that the holder does not owe the apparent owner any unclaimed property is sufficient to prove that the property is not abandoned.*
- 2. The holder must send the written statement to the apparent owner in a form prescribed by the Administrator. The written statement will be documented on the form, returned to the holder, and maintained as evidence. The form must include:*
 - (a) A statement that the letter is part of an ongoing unclaimed property examination and a credit balance or an outstanding check was identified as being potentially owed to them.*
 - (b) A request that the owner review his/her records and advise the holder of the findings.*
 - (c) When the property is an outstanding check, an Outstanding Check Confirmation form UP-50 must be used, which includes:*
 - (1) The check number, issue date, invoice #, invoice date, amount.*
 - (2) Whether or not:*
 - (i) The check was previously cashed or not actually owed, indicating the obligation is satisfied.*
 - (ii) A check was received, but uncashed, and should be reissued.*
 - (iii) A check was not received and the check should be reissued.*
 - (d) When the property is an outstanding credit balance, the Credit Balance Confirmation form UP-51 must be used, which:*
 - (1) Includes the credit balance and the transaction dates that gave rise to the credit balance.*
 - (2) Identifies if:*
 - (i) Records were reviewed by the owner and the credit balance is owed.*
 - (ii) Records were reviewed by the owner and the credit balance is not owed.*
 - (iii) Records were reviewed by the owner and the owner has been unable to determine if the credit balance is owed.*
 - (iv) Records were reviewed by the owner and the credit balance was settled through a settlement agreement, which must include settlement date.*
 - (e) When the property as described in subsections (c) or (d) above is with another business that the holder has an ongoing business relationship with, the form only needs to include information in subsection (a), (b) and the amount in question. An ongoing business relationship means another business in which the holder has conducted business with during the last 12 months.*
 - (f) A signature line for the holder:*
 - (1) Printed name and title of signer.*
 - (2) Signature.*

- (3) *Date.*
- (4) *Telephone number.*

Chapter 120A.020 is hereby amended to read as follows:

NAC 120A.020 Reports of unclaimed property. (*NRS 120A.140, ~~120A.250~~*)

1. A form UP-1, Report of Unclaimed Property, including a completed verification pursuant to ~~NRS 120A.250~~ *120A.560, ~~may~~ shall* be filed:

- (a) Using form UP-1;
- (b) Using a computer printout that contains the same information as requested on form UP-1;

or

(c) Electronically using the NAUPA standard electronic file format for holders.

(d) Verification of the report must be made by:

(1) A partner, if the holder is a partnership.

(2) An officer, director or chief fiscal officer, if the holder is an unincorporated association, corporation or public entity.

2. A form UP-2, Report of Unclaimed Property Details, must accompany each report filed pursuant to subsection 1 and may be filed:

- (a) Using form UP-2;
- (b) Using a computer printout that contains the same information as requested on form UP-2;

or

(c) Electronically using the NAUPA standard electronic file format for holders.

(d) if securities are being escheated, a hardcopy UP-2 report shall also accompany the filing.

3. In addition to the provisions of ~~NRS 120A.250~~ *NRS 120A.560*, the Administrator may require a person reporting ~~15~~ *11* or more items of property to file the report electronically using the NAUPA standard electronic file format for holders.

4. Failure to provide a report as required by subsections 1, 2 or 3 will be considered a failure to report. Interest and penalties may be levied for such failure in accordance with NRS 120A.730. In addition to compliance with the subsections above, the following is required for an acceptable report:

(a) In addition to the individual items reported, holders shall provide summary information showing the total(s) for each stock, bond and mutual fund included in the report.

(b) All UP-2 reports received shall reconcile with the securities, safe keeping and amounts received by the State. The State will be responsible for posting accrued dividends.

(c) Checks must be made payable to "Nevada Unclaimed Property."

(d) Any corrections to a UP-1 report shall be dated and initialed by the official signing the UP-1 report.

(e) Liquidated securities shall be reported as stock.

(f) If the security is undeliverable, this fact shall be documented on the UP-2 form or noticed in the filing.

(g) Book shares and certificate shares shall be separately identified on the UP-2 form.

5. *If a holder who is located in this State or who conducts business in this State does not have any property presumed abandoned:*

(a) The holder shall file with the Administrator an annual negative report indicating the holder does not have any property presumed abandoned:

(1) Before November 1st of each year; or

(2) Before May 1st of each year if the holder is an insurance company.

6. A holder filing a negative report may request the Administrator extend the time for filing the report, and the Administrator may grant the extension for good cause.

7. If a security is worthless or nontransferable, holders should not report such securities to the Nevada Unclaimed Property Division. However, if at a later date the securities become transferable or gain value, those securities should be reported at that time. For the purpose of this statute, worthless securities are defined as stocks, stock rights, and bonds with a marked value of zero.

~~[4]~~ 8. As used in this section, "NAUPA" means the National Association of Unclaimed Property Administrators.

Chapter 120A.050 is hereby amended to read as follows:

NAC 120A.050 Attempts to locate owner of property. (NRS 120A.140, ~~[120A.260]~~ 120A.560)

~~[1-]~~ In exercising the due diligence required by ~~[NRS 120A.260]~~ NRS 120A.560 to locate owners and prevent abandonment of their property from being presumed, each holder shall mail a form to the owner's last known address in the holder's records, *unless the holder knows that the last known address is inaccurate*. The form must include:

(a) Owner's name;

(b) Owner's last known address;

(c) The type of account or other property;

(d) If an account, the *partial account* number *or other information sufficient to identify the account*;

(e) Amount; and

(f) A statement that the property will be turned over to the State for custody if not claimed within a specified time period.

~~[2- If the form is returned to the holder as undelivered, the holder shall then make an examination of the telephone directory in the city or area of the owner's last known address to locate a current address. If such a current address is found, the holder shall communicate with the person at the new address, verify that he is the owner, and either make a memorandum in the holder's record of the owner's desire or send the form to the new address.]~~

Chapter 120A.060 is hereby amended to read as follows:

NAC 120A.060 Claims for property presumed abandoned. (NRS 120A.140, ~~[120A.380]~~ 120A.640, 120A.740)

1. Any person claiming or interested in any property delivered to the State must file form UP-5, Claim for Property Presumed Abandoned. Specific documents and supporting information, as determined for each case by the Administrator, must be filed with form UP-5.

2. In addition to the provisions of ~~[NRS 120A.390]~~ **NRS 120A.650**, the Administrator may deny a claim that remains incomplete for 90 days after it is filed. A person may file a new claim at any time using form UP-5.

3. Before allowing a claim, the Administrator may require an owner or other person, including an attorney, to provide the Administrator with a copy of any agreement to locate,

deliver, recover or assist in the recovery of property that is presumed abandoned. If the Administrator requests a copy of such an agreement, failure to provide the agreement is grounds to deny the claim.

Chapter 120A.090 is hereby amended to read as follows:

NAC 120A.090 Owner's indication of interest in deposit which is automatically renewable. *(NRS 120A.140, ~~120A.160~~ 120A.500)*

1. If a demand, savings or matured time deposit or other certificate of deposit which is automatically renewable is held or owing by a banking or financial organization or by a business association, the owner thereof shall be deemed to have indicated an interest in the property or otherwise indicated his consent to the renewal of his account for the purposes of ~~NRS 120A.160~~ *NRS 120A.500* if an employee of the organization or association:

(a) Prepares and sends or causes to be prepared and sent to the owner by first-class mail:

(1) A notice of maturity no later than 10 days before the date of renewal and the notice is not returned unclaimed or undelivered; or

(2) An annual statement of account which includes the amount of the deposit held or owing by the organization or association and the statement is not returned unclaimed or undelivered; and

(b) Files in the records of the organization or association an affidavit stating that the notice or statement was mailed pursuant to paragraph (a).

2. If such a notice of maturity or statement of account is returned unclaimed or undelivered, the banking or financial organization or business association shall, upon its return, exercise due diligence to locate the owner of the property. If the owner cannot be located, the property will then be presumed abandoned ~~5~~ 3 years after the date of maturity or date of renewal as stated in the returned notice or statement.

Chapter 120A.100 is hereby amended to read as follows:

NAC 120A.100 Inclusion of social security numbers in claims and reports. *(NRS 120A.140, ~~120A.250, 120A.380~~ 120A.560, 120A.640)*

1. A person filing a claim pursuant to ~~NRS 120A.380~~ *NRS 120A.640* must include *documented verification of* his social security number ~~on the form~~ *as* prescribed by the Administrator for each claim.

2. In addition to the information required by ~~NRS 120A.250~~ *NRS 120A.560*, a holder shall include in a report to the Administrator the social security number, if known, of each person appearing from the records of the holder to be the owner of the money or other property described in the report.

Chapter 120A.110 is hereby amended to read as follows:

NAC 120A.110 Payment or delivery of abandoned property to Administrator. *(NRS 120A.140, ~~120A.320~~, 120A.570, 353.1467)*

1. Unless specifically authorized by the Administrator, a holder shall pay or deliver abandoned property to the Administrator in a form other than cash.

2. *Electronic Funds Transfer (EFT) is required for all remittances of \$10,000 or more.* ~~In lieu of a check, the Administrator may require a holder to pay or deliver abandoned property with a value of \$10,000 or more to the Administrator electronically.]~~

3. *Securities must be transferred to the State of Nevada's securities custodian. The securities custodian means the designated security agent of the Office of the State Treasurer of Unclaimed Property.*