

The Delaware Supreme Court Signals Deference to the Department of Finance on Unclaimed Property Audit Subpoenas

Related People:
Matthew J. Rifino

Unclaimed Property Alert

06.04.2021

A recent decision of the Delaware Supreme Court, *State of Del., Dept. of Fin. v. AT&T, Inc.*, Case No. 303, 2020 (Del. June 1, 2021), Seitz, C.J., provides a framework for resolving disputes concerning administrative subpoenas that reflects great deference to administrative agencies such as the Delaware Department of Finance (DDF). In a case of first impression, the appellate court affirmed the trial court's quashing of a DDF administrative subpoena served in furtherance of an unclaimed property audit, but remanded the proceeding to the Court of Chancery to allow the DDF to issue a new subpoena consistent with its opinion and, if appropriate, file an amended complaint. In doing so, the Delaware Supreme Court provided the Court of Chancery with guidance for resolving administrative subpoena disputes should the DDF amend its complaint and issue a new subpoena by offering a standard favorable to administrative agencies.

Delaware's highly-lucrative unclaimed property program has been the subject of extensive litigation in recent years. Generally speaking, unclaimed property disputes arise out of the escheat of property to the State when the lawful owner of the property has not made use of or exercised control over the property within a specified period of time. The obligation of a holder of unclaimed property to maintain accurate records is onerous, and the sufficiency of the holder's recordkeeping is the principal area of dispute between DDF and the holder community. Delaware law authorizes DDF to serve an administrative subpoena in order to assess a holder's unclaimed property liability.

The standard offered in *AT&T* for determining enforceability of these administrative subpoenas is similar to the framework followed in the federal courts but requires that a recipient of an administrative subpoena raise its affirmative defenses in its initial pleading by affidavit. Consequently, a defendant must make a detailed showing of its opposition at the outset of the enforcement action and without the benefit of discovery. Although a recipient of an administrative subpoena retains its ability to contest an administrative subpoena, it faces an uphill battle to combat an administrative agency's demands for information. The deferential framework established by the Delaware Supreme Court could lead to an increased use of administrative subpoenas. Given the importance of unclaimed property to the State of Delaware, the *AT&T* decision may embolden the DDF to pursue an

administrative subpoena, as opposed to negotiating with holders of unclaimed property, which may, in turn, lead to an increase in litigation.