"MONEY FOR NOTHING, BUT THE CHECKS FOR FREE" – FREE MONEY FOR FIDUCIARIES

September 18, 2016

By: Brian G. Rich and Ashley Dillman Bruce

Often, when businesses fail, they end up either in bankruptcy court as a chapter 7 debtor or in a state court liquidation proceeding such as an assignment for the benefit of creditors. In these instances, a fiduciary is appointed to wind-down the affairs of the business, liquidate assets, and pay allowed claims. In many situations the fiduciary is left with records which are either incomplete or in disarray and little money to pay the costs of administration. One often overlooked asset for easy recovery can be unclaimed funds. Unclaimed funds are deposits, insurance refunds, or other funds that have been remitted but which were never cashed or claimed. These funds are deposited with the State of Florida and wait until someone comes forward with a claim.

Chapter 717, Florida Statutes, titled The Florida Disposition of Unclaimed Property Act, and rules and regulations promulgated pursuant to the Act, require financial institutions and other entities to report intangible personal property they are holding that is considered unclaimed or abandoned. "Intangible property" is defined in Chapter 717 to include, moneys, checks, drafts, deposits, interest, dividends, and income; credit balances, customer overpayments, security deposits, and other instruments as defined by the Uniform Commercial Code provisions dealing with secured transactions; refunds, unpaid wages, unused airline tickets, and unidentified remittances; stocks and other intangible ownership interests in business associations; moneys deposited to redeem stocks, bonds, bearer bonds, original issue discount bonds, coupons, and other securities or to make distributions; amounts due and payable under the terms of insurance policies; amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefit. The property must have been inactive for a set period of time, usually between one and five years. Because there is no statute of limitations, property can be claimed at any time.

A small industry of "finders" exists who contact fiduciaries with the great news that they have located unclaimed funds, and for a fee which is usually 33%, they will assist in the recovery. For a fiduciary, this may seem like a great deal because they do not have to incur any time or expense and they get these unclaimed funds, less the fee or commission. But while many of these services may be worthwhile, a little diligence and a simple online application can be made by the fiduciary to claim these funds without the need to give away the fee. In other words, fiduciaries do not need to use these companies if they know how to access the unclaimed funds.

The process is simple. The fiduciary needs to have the name of the company and the tax identification number. The fiduciary must then visit the Division of Unclaimed Property's webpage, https://www.fltreasurehunt.org, and click on the "Search Unclaimed Property" link. Within a few extra steps, a claim form is sent to the fiduciary with easy instructions. After the state receives the complete claim package, it is allowed up to 90-days to review the finalized claim.

In cases which may have minimal assets, this quick and easy search should be one of the first steps that the fiduciary takes to see if there are any unclaimed funds that can be obtained. Berger Singerman, LLP recently

represented a bankruptcy trustee and recovered over $23,000 for the trustee through this process. This simple practice can often result in free money for fiduciaries.

If you have questions about this topic, please contact the authors, Brian Rich on the firm's Business Reorganization Team, or Ashley Dillman Bruce, on the firm's Dispute Resolution and Business Reorganization Team.

Related Practices

Bankruptcy Litigation

Bankruptcy/Restructuring

Related Practice Teams

Business Reorganization

Dispute Resolution

Related Team Member(s)

Brian G. Rich

Ashley Dillman Bruce