

EXHIBIT A

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Michigan Holder Transmittal for Annual Report of Unclaimed Property

Issued under the authority of P.A. 29 of 1995. Filing is mandatory. Failure to file is punishable by fine.

This transmittal must accompany your annual report whether you are filing on paper, diskette or CD Rom. If your report does not meet Treasury specifications it will be returned to you. Holders filing from multiple branches under one federal employer number must coordinate a branch identification number with the UPD.

Mail to:
Unclaimed Property Division
Michigan Department of Treasury
P.O. Box 30756
Lansing, MI 48909

Report Year 2009		
General Information		
Holder's Name First State Bank of East Detroit	Federal Employer ID Number [REDACTED]	UPD Branch ID No.
Address 24300 Little Mack	State of Incorporation Michigan	Date of Incorporation
City, State, ZIP Code St. Clair Shores, MI 48080	County Macomb	Report Number <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3
Did you exercise due diligence this report year? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Did you file a Report of Unclaimed Property last year? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, explain:	
Primary business activity Bank	Report Type <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Compliance <input type="checkbox"/> First <input type="checkbox"/> Audit <input type="checkbox"/> Other	What media type are you filing? <input type="checkbox"/> CD Rom <input checked="" type="checkbox"/> disk <input type="checkbox"/> paper (Form 1223) Do not mix media types for the same report. Is the company: a wholly-owned subsidiary? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No a division? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No publicly traded? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No private? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Annual Sales/Premiums		
Total Assets		
No. of Employees		

Reporting Requirements

You must report and submit all property (defined in General Instructions) in your custody that belongs to someone else and has gone unclaimed.

Total number of safety deposit boxes reported

Total number of shares of stock/mutual funds

Enter the total amount paid with this transmittal

\$ 15,415.93

Make checks payable to "State of Michigan".

Certification

I declare under penalties imposed by P.A. 29 of 1995, as amended, that I have examined this report and to the best of my knowledge it is true and complete.

Print Contact Name RENEE BERTOSSI	Telephone Number 586-775-5000
E-mail Address [REDACTED]	Fax Number 586-445-4793
Authorizing Signature Renee Bertossi	Title Associate Auditor
	Date 10/22/09

If you are a successor, attach a separate sheet listing the names and last known addresses of all previous holders of the property being reported. If you have changed your name during the reporting period, attach a separate sheet listing all prior names.

Treasury Use Only

Holder ID	Report	Stock ID	Import Batch
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October 2, 2009

State of Michigan
Department of Treasury
430 W. Allegan St.
Lansing, MI 48922

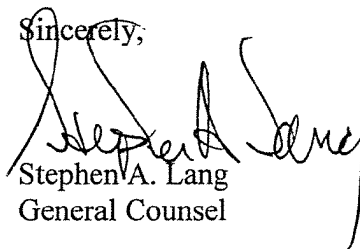
Re: Notice of unpaid cashier's checks

Dear Sir or Madam,

I am General Counsel with the First State Bank of East Detroit (the "Bank") and as such I have been asked to write to you concerning the referenced matter. Attached is a list of the remaining unpaid Cashier's Checks/Official Checks (the "Checks"), the amounts of which the Bank would normally be escheating to the State of Michigan. Unfortunately as the issuer of the Checks is refusing to return the amounts of the Checks which have not been negotiated to the Bank, I can do nothing more than we have in the past and put you on notice concerning the amounts outstanding.

The Checks although sold by the Bank to our customers were in fact issued by and in the name of MoneyGram Payment Systems, Inc. f/k/a Travelers Express Company, Inc ("MoneyGram"). Once the Checks were sold by the Bank, the amounts collected from the purchasers of the Checks were transferred to MoneyGram and it was and is MoneyGram's responsibility to pay the Checks upon negotiation. It had been previously the pattern of practice that once the Checks became stale (unpaid), MoneyGram would stop payment on the Checks and return the sums paid for the Checks to the Bank. The Bank in turn would escheat the sums to State of Michigan. MoneyGram is now however refusing to return the funds to be escheated and I (on behalf of the Bank) can do no more than again advise you of the situation.

Sincerely,



Stephen A. Lang
General Counsel

First State Bank of East Detroit

Cashier's Checks to be Escheated 2009

Prepared by: Internal Audit

<u>Check Number</u>	<u>Amount</u>	<u>Payee</u>	
4670429109	10.00	Unknown	Copy Unreadable
4670427992	14.00	Macomb County Register of Deeds	
5911130173	0.90	Unknown	Copy Unreadable
4670428796	2.47	Theresa McKoskey or Michael McKoskey	
4670431290	11.51	Unknown	Copy Unreadable
4670431309	42.00	St. Clair County Register of Deeds	
4670431324	14.53	Joseph Chambers or Yvonne Chambers	
4670431331	44.00	Macomb County Register of Deeds	
4670431333	372.50	Philip Greco Title Company	
4670429702	253.25	Henry Ford Hospital	
4670431346	138.00	Macomb County Register of Deeds	
4670429861	650.00	Unknown	Copy Unreadable
4670429445	1.18	Sharon M Winchester	
4670429237	30.97	Helen E Yahner	
4670431496	24.66	Janet Fopster	
4670431623	9.10	Unknown	Copy Unreadable
4670433087	10.00	Unknown	Copy Unreadable
4670431650	10.66	Charles Torr or Tong Torr	
4670433100	1.00	Unknown	Copy Unreadable
4670431693	11.95	Matthew Spezia or Sherry Spezia	
4670435006	200.00	Grego Title Company	
4670435007	44.00	Register of Deeds Oakland County	
4670432491	2,567.00	Comcast Construction	
4670435163	20.26	Debra Aker	
4670434554	3,971.52	Unknown	
4670433207	10.00	Richard A Speck	
4670432666	1,144.00	Social Security Administration	
4670432661	13.59	C.V.S.	
4670435555	80.20	Bon Secours Hospital	
4670436605	1.00	Mark Hanna	
4670433794	500.00	Unknown	Copy Unreadable
4679163316	6.44	Unknown	Copy Unreadable
4679164562	1,141.95	Washington Township Treasurer	
4679165295	750.00	Household Mortgage Services	
4679165803	14.00	Macomb County Register of Deeds	
4679163564	15.00	42-1 District Court	
4670436470	1.25	Jessica Bak	
4670436493	49.46	Worldwide Financial	
4679164838	50.00	American Heart Association	
4679164844	\$45,732.04	Macomb Community Bank	
4679167390	10.00	Phyllis Odonnell	
4679166596	2.14	Mayka Yang	
4679167411	10.00	Unknown	Copy Unreadable
4679166496	1.29	Charlotte Gawkoski Irrevocable Trust dtd 3/24/98	
4679169028	12.08	Christopher Level or Carrie Level	
4679171507	10.00	Keven D Corbeil	
4679171523	10.00	Rakesh K Khullar	
4679170411	797.50	Philip Greco Title Company	
4679170063	15.00	State of Michigan	
4679171751	250.00	Dimitrios Bastoumis or Ourania Bastoumis	
4679170522	1,268.31	Option One Payment Processing	
4679170484	500.00	Sarah E Sutherland	
4679172531	3,400.00	Public Schools of the city of Ann Arbor	
4679171598	1.00	Joyce W Tarby	
4679171860	28.29	Michael F Poppe or Nancy L Poppe	
4679171970	18.80	James Davis	

First State Bank of East Detroit

Cashier's Checks to be Escheated 2009

Prepared by: Internal Audit

<u>Check Number</u>	<u>Amount</u>	<u>Payee</u>
4679172051	10.15	Scott Springer
4679171350	100.00	Unknown
4670439177	47.32	Elias Gutierrez
4670440090	2.00	Lighthouse Title Co.
4670440270	55.00	First State Bank Mortgage Company
4670440551	24.82	Marion Clark
4670440787	4.28	Washington Mutual Bank
4670441096	375.00	Home Protection One
4670440896	38.37	Thomas R Taylor
4670441243	78.00	Metropolitan Title Co.
4670441575	17.00	Leelanau County Register of Deeds
4670441969	14.83	Village of Empire
4679153552	31.04	Darryl E Thomas
4679153725	101.82	Vincenzo Mortillaro
4679154122	875.79	Michael Kenneson or Dena Kenneson
4679154067	59.36	Melinda A Harden
4679157988	2,850.00	Unknown
4679154077	467.97	James Ciarmitaro or Sheila Ciarmitaro
4679155018	14.00	Roscommon County Register of Deeds
4679155344	55.00	First State Bank Mortgage Company
4679155662	190.00	Gaetano Consiglio or Graziella Consiglio
4679155621	15.92	Thomas Elizabeth Lozon
	69,726.47	

Copy Unreadable



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

NICK A. KHOURI
STATE TREASURER

March 15, 2011

MONEYGRAM PAYMENT SYSTEMS INC
ATTN: KATE PETRICK
1550 UTICA AVE SOUTH
MINNEAPOLIS, MN 55416-

Reportable Property Missing

Dear Ms. Petrick,

Under Michigan's Uniform Unclaimed Property Act, holders of unclaimed property are required to report, and remit to the State Treasurer, property belonging to owners who cannot be located or for whom there is no known address. **The purpose of this letter is to request a response from your office regarding information supplied to the Michigan Unclaimed Property Division by First State Bank of East Detroit.**

This office has been made aware of cashier's checks and official checks, sold by First State Bank of East Detroit, that have not been presented for payment. According to the General Counsel with First State Bank, the escheatment period for these uncashed checks is over and they are due to be reported to the State of Michigan. It was further explained that First State Bank requested MoneyGram return the value of the outstanding checks in order for First State to file their annual unclaimed property report. MoneyGram has, allegedly, refused First State Bank's request. A copy of the letter received by Michigan's Unclaimed Property Division has been attached for your review.

Upon reviewing all past reports submitted to the State of Michigan by MoneyGram Payment Systems, it was discovered that none of the checks listed as escheatable by First State Bank of East Detroit have been turned over to the Unclaimed Property Division. We are thereby requesting a response regarding the status of the outstanding cashier's checks and official checks purchased by customers of First State Bank of East Detroit.

Respond Within 90 Days to Avoid Penalty

Review your records to determine if you are holding this unclaimed property. If you file a past-due report and remit unclaimed property within **90 days** of the date on this Notice, we will waive penalty on the unclaimed property reported and remitted, although the property may still have interest assessed for late filing. If you are not in possession of the property in question, a letter of explanation will suffice.

The mailing address to direct your report and/or correspondence is:

Unclaimed Property Division

PO Box 30756

Lansing, MI 48909

When responding, please be sure to enclose a copy of this letter. It facilitates the documentation of the company's compliance with the Unclaimed Property Act.

If you have any questions, please contact **Laura Herrin** in the Unclaimed Property Division at **517-636-5314**.

Sincerely,

Gonzalo Llano, Administrator

Unclaimed Property Division



Clinton R. Rockwell
Partner

BuckleySandler LLP
100 Wilshire Boulevard, Suite 1000
Santa Monica, CA 90401
crockwell@buckleysandler.com
Ph: 424-203-1002
Fax: 424-744-4151

April 5, 2012

Mr. David Field
Auditor, Division of Audits
State of California
600 Corporate Pointe, Suite 1000
Culver City, CA, 90230

Re: Luther Burbank Savings Escheated Funds Inquiry

Dear Mr. Field:

This letter is submitted on behalf of our client Luther Burbank Savings ("LBS") in response to a verbal inquiry from the State of California, Division of Audits (the "Division") regarding escheatment practices relating to teller's checks written by LBS. Specifically, the Division is inquiring as to: (i) why more funds from these teller's checks are not escheated to the State of California; (ii) whether LBS's third party vendor, MoneyGram Payment Systems Inc. ("MPSI"), escheated those funds to another state; and (iii) whether MPSI has documentation of such remittance.

Background

MPSI and LBS entered into a written Agreement ("Agreement") for MPSI to provide Official Check services to LBS. Banks routinely outsource official check services to third party vendors like MPSI to service customers in need of a check drawn on a bank or to pay the bank's own obligations, with the additional benefit of enhanced fraud control and decreased back office expenses. Part of the official check service involves the use of a teller's check, which is defined as "a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank." Cal. Com. Code § 3104(h).

In this case, MPSI provides blank teller's checks to LBS, consistent with its practice with many other bank clients. These checks indicate on their face that they are issued by MPSI, the Drawee is Preferred Bank ("Preferred"), and the Drawer is LBS. In the regular course of LBS's business, the checks are issued to various payees, and printed and sent by LBS. Per the Agreement, LBS sends the funds for the teller's checks to MPSI on the next business day to cover the amounts of the checks written. MPSI receives information concerning the check number and the amount of the check; it does not receive the payee's name or address. MPSI pays these teller's checks through Preferred and submits a monthly report to LBS of any outstanding checks that have not

been paid. Should the teller's checks remain uncashed for five years, MPSI escheats such funds to its home state of Delaware.

Because the teller's checks are issued by LBS, a California corporation, and the funds for such checks are provided to MPSI, a Delaware corporation, the laws discussed herein are limited to those of California and Delaware.

MPSI is the Holder of the Funds, Not LBS

Both California and Delaware law require a "holder" to escheat any sums outstanding on a teller's check after the prescribed dormancy period to the State. Cal. Code Civ. Proc. §§ 1501; Del. Code Ann., tit. 12, §§ 1170, 1198.

California defines "holder" as, "any person **in possession** of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation," and further requires sums **held or owing** by a business association payable on teller checks to be escheated three years from the date payable. Cal. Code Civ. Proc. §§ 1501, 1513 (emphasis added).

Delaware defines "holder" as, "any person **having possession, custody or control** of the property of another person and includes a post office, a depository, a bailee, a trustee, a receiver or other liquidating officer, a fiduciary, a governmental department, institution or agency, a municipal corporation and the fiscal officers thereof, a public utility, service corporation and every other legal entity incorporated or created under the laws of this State or doing business in this State." Del. Code Ann., tit. 12, § 1198 (emphasis added).

As previously noted, the funds for the teller's checks are remitted from LBS to MPSI on the following day the teller's checks are issued. MPSI, therefore, has possession of the funds at the time of escheatment and is the legal "holder" of the funds under California and Delaware law.

In addition, the Agreement specifically indicates that, "MPSI is responsible for unclaimed property related..." to the teller checks issued by MPSI. Therefore, LBS is contractually not responsible to escheat any unclaimed funds associated with the teller checks.

Even a claim under Cal. Code Civ. Proc. § 1518 that the funds are held in a fiduciary capacity for a business association, leads to the conclusion that MPSI is the holder of the funds. MPSI only acts in a fiduciary capacity until the funds are remitted by LBS. Once those funds are remitted by LBS, which occurs the very next business day after the checks are written by LBS, MPSI, as the issuer of the checks, also becomes the holder of the funds. Pursuant to the Agreement, LBS must, "remit the face amount of Checks issued...so that MPSI has collected funds by 11 AM PST on the next Business Day such face amounts are deemed **held in trust until remitted.**" (Emphasis added). Thus, once the funds are remitted, MPSI is contractually no longer a fiduciary, and under California law, becomes the holder.

Furthermore, Delaware's unclaimed property law, as indicated above, adopted an expansive definition of "holder" to include, "any person having possession, custody or control of the property of another person and includes ... a **fiduciary**..." Del. Code Ann., tit. 12, § 1198 (emphasis added). Under any circumstances, fiduciary or otherwise, MPSI is the holder of the

Mr. David Field
April 5, 2012
Page 3

unclaimed funds as a legal entity incorporated under Delaware law having possession of the unclaimed funds. Therefore, under Delaware law as well, MPSI is the holder of the funds.

Based on the foregoing, the holder of eligible funds is MPSI, not Preferred or LBS.

MPSI is Obligated to Escheat the Funds to Delaware

Having established that MPSI is statutorily and contractually the appropriate holder of the funds, the next question is to which state such funds should be escheated. With respect to the obligation to escheat the uncashed teller's checks, the U.S. Supreme Court requires unclaimed property to be reported to the state of the lost owner's last known address, as shown in the records of the holder. *Texas v. New Jersey*, 379 U.S. 674 (1965); *Delaware v. New York*, 507 U.S. 490 (1993); Cal. Code Civ. Proc. § 1513; State of Delaware; Department of Finance; Division of Revenue; Bureau of Unclaimed Property Escheat Handbook, pg. 6. And if the owner's address is unknown to the holder, the unclaimed property is reported to the state of incorporation of the holder of the unclaimed property. *Id.*

As indicated above, MPSI receives the funds for the teller's checks and a report containing only the check numbers and amounts of the checks. MPSI is therefore, unaware of the name or location of the owner of the teller's checks funds, and takes the position that it is obligated to escheat the unclaimed funds to MPSI's state of incorporation (Delaware).

In light of the foregoing:

- The funds from the teller's checks are not escheated by LBS because LBS is neither statutorily nor contractually the "holder" of the funds at the time such funds are required to be escheated, nor is MPSI merely a fiduciary for LBS;
- MPSI escheated the unclaimed funds in connection with the teller's checks to Delaware, its state of incorporation, because MPSI is contractually and statutorily required to do so; and
- If the Division seeks proof of the proper escheatment of the unclaimed teller's check funds, the Division should reach out to the "holder" and reporter, MPSI, for such documentation.

Thank you in advance for your time and attention to this matter. Should the Division wish to further discuss the foregoing, please do not hesitate to contact me or my colleague Howard Eisenhardt (202-349-2945, heisenhardt@buckleysandler.com).

Sincerely yours,



Clinton R. Rockwell



JOHN CHIANG
California State Controller

May 28, 2013

Daniel B. Burbott
Moore Brewer Wolfe Jones Tyler & North
4180 La Jolla Village Dr. Ste. 540
La Jolla, California 92037

Re: *Disputed Unclaimed Property Law Audit Issues-Redwood Credit Union*

Dear Mr. Burbott:

This letter serves as the State Controller's reply to your request for a written response to the memorandum you provided on behalf of Redwood Credit Union (RCU) entitled, "Disputed Unclaimed Property Law Audit Issues." Your memorandum set forth RCU's positions regarding the escheat of automatic renewing share certificate accounts, teller's checks, and Uniform Transfers to Minors Act (UTMA) accounts. The State Controller's position regarding escheat of these types of properties is explained in more detail below.

Share Certificate Accounts with Automatic Renewal

According to your memorandum, RCU provides its members a share certificate account that features an automatic rollover upon maturity to another share certificate. As I understand it, RCU takes the position that such accounts do not escheat as long as they are subject to automatic renewal. Your position relies on the conclusion that such accounts do not mature, though by your own admission, automatic rollover only occurs "upon maturity." We disagree with your application of the Unclaimed Property Law in this instance.

It is our long-standing position that automatic renewal provisions do not prevent the running of the three-year escheat period provided for in Code of Civil Procedure section 1513.

In relevant part, Code of Civil Procedure section 1513 provides:

300 Capitol Mall, Suite 1850, Sacramento, CA 95814 ♦ P.O. Box 942850, Sacramento, CA 94250
Phone: (916) 445-2636 ♦ Fax: (916) 322-1220

- (a) Subject to Sections 1510 and 1511, the following property held or owing by a business association escheats to this state:

* * *

(2) (A) Except as provided in paragraph (6), any demand, savings, or matured time deposit . . . or other interest in a financial organization or any deposit made therewith . . . when the owner, for more than three years, has not done any of the following:

- (i) Increased or decreased the amount of the funds or deposit, cashed an interest check, or presented an appropriate record for the crediting of interest or dividends.
- (ii) Corresponded electronically or in writing with the financial organization concerning the funds or deposit.
- (iii) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization.

Thus, when a deposit is made for a specified term, the deposit would escheat three years from the expiration of the term even if the deposit was subject to an automatic renewal provision. The deposit would be “matured” within the meaning of Section 1513, upon expiration of the original term, and would escheat three years following maturity if none of the required contacts occurred within that period.

You incorrectly conclude that, because automatic renewal provides for the funds to rollover to another share certificate at maturity, the dormancy period will never expire unless the accountholder stops further renewals. If this interpretation were correct, such automatic rollover provisions would be tantamount to the establishment of an impermissible private escheat law. The Unclaimed Property Law, “as a law established for a public reason, cannot be contravened by a private agreement”¹ Any such private escheat provision would frustrate the operation of the Unclaimed Property Law, and therefore, cannot prevail over public law.²

Furthermore, one of the purposes of the Unclaimed Property Law is to give California, rather than the holders, the beneficial use of unclaimed property.³ If the automatic rollover provision could be used to avoid escheat, California would lose the beneficial use of the property. Consequently, under your interpretation, automatic rollover provisions would be unlawful under California Civil Code section 1667 as “contrary to

¹ *Screen Actors Guild, Inc. v. Cory*, (1979) 91 Cal.App.3d 111, 115.

² *Id.*

³ *Douglas Aircraft Co. v. Cranston*, (1962) 58 Cal.2d 462, 463.

the policy of expressed law, though not expressly prohibited” as it applies to the Unclaimed Property Law. As a result, an automatic renewal or rollover provision cannot be used to prevent escheat.

Teller’s Checks

According to your memorandum, RCU takes the position that MoneyGram Payment Systems, Inc. (MoneyGram) is the holder of unclaimed teller’s checks purchased from RCU. Based on our understanding of the facts, we concur with this conclusion.

It is our understanding that RCU entered into an agreement with MoneyGram for the purpose of issuing teller’s checks. Pursuant to the agreement, teller’s checks are drawn by RCU and MoneyGram on MoneyGram’s bank, the Bank of New York Mellon. RCU is listed as the drawer, MoneyGram is listed as the issuer, and Bank of New York Mellon is listed as the drawee on the face of the teller’s checks. When a teller’s check is purchased, issued, or used at RCU, RCU transfers the face amount of the check to MoneyGram the next business day. RCU does not transmit, nor does MoneyGram request, any information regarding the payees’ names or addresses. As a result of this practice, MoneyGram’s records do not contain any information regarding the payees of outstanding checks. Consequently, unclaimed checks that may otherwise escheat to the State of California have been remitted to the State of Delaware.

Based on this factual situation, the State Controller’s Office believes that MoneyGram is the holder of funds related to outstanding teller’s checks, and as such, MoneyGram is responsible for reporting the unclaimed funds to the appropriate states.

Although MoneyGram is responsible for reporting escheated teller’s checks, RCU should have provided MoneyGram with the names and addresses of the payees where available in order to fully comply with California Unclaimed Property Law.

Pursuant to Code of Civil Procedure section 1530(b)(1), a holder is required to report “the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of at least fifty dollars (\$50) escheated under [the Unclaimed Property Law].” Thus, a holder is required to report the owner’s name and last known address if the holder has such information. The necessary implication of this reporting requirement is that the holder must collect and retain the owner’s name and address where possible.⁴ While the statute leaves room for the possibility that a holder may not always have such information, the statute does not

⁴ *Rushing v. Powell*, (1976) 61 Cal. App.3d 597, 604; see also *State v. Chubb Corp.*, (1989) 239 N.J. Super. 257, 259.

allow for a holder to remain willfully blind of such information. In the instant case, RCU does not provide, and MoneyGram does not collect, the names and addresses of the payees even though many of the names and addresses of the payees are apparently found in the records of the RCU. This practice does not appear to comply with the requirements of Section 1530.

That RCU and MoneyGram are required to exchange payee information is evidenced by their contractual agreement. The parties to a contract are presumed to know all applicable laws in existence when the agreement is made, and such laws are made a part of the contract as if they were expressly referred to and incorporated.⁵ In this case, the contract between RCU and MoneyGram requires MoneyGram to be responsible for unclaimed property related to the teller's checks. Therefore, both parties to the contract are presumed to know the unclaimed property reporting requirements, and both parties are obligated to ensure that MoneyGram has the information necessary to meet its unclaimed property reporting requirements. Accordingly, MoneyGram should have requested the names and addresses of the payees, and RCU should have furnished such information.

Uniform Transfers to Minors Act Accounts

Your memorandum set forth RCU's position that Uniform Transfers to Minors Act (UTMA) accounts deposited with RCU escheat pursuant to Code of Civil Procedure section 1518. The State Controller's Office disagrees with this RCU's interpretation because, as explained below, UTMA accounts deposited with RCU escheat pursuant to Code of Civil Procedure section 1513.

The Uniform Transfers to Minors Act (Probate Code section 3900 et seq.) establishes procedures for transferring property to a custodian for the benefit of a minor. Pursuant to Probate Code section 3909(a)(2), an UTMA account is established when a transferor transfers funds to a financial institution to the credit of an account in the name of the transferor, an adult other than the transferor, or a trust company followed by the words: "as custodian for (name of minor) under the California Uniform Transfers to Minors Act." Once the transfer is made, the custodian named on the account holds the funds, and is obligated to manage the funds for the benefit of the minor pursuant to Probate Code section 3912. In other words, the custodian named on the account holds the funds in a fiduciary capacity for the benefit of the minor.

Whether property escheats pursuant to Code of Civil Procedure section 1513 or section 1518 is determined by the relationship between the holder and the owner. Property will

⁵ *Torrance v. Workers' Comp. Appeals Bd.*, (1982) 32 Cal.3d 371, 378.

escheat pursuant to Section 1513 if the holder is a financial organization holding a deposit account belonging to the owner. The relevant portion of Section 1513(a)(2) is set forth above. Property will escheat pursuant to Section 1518 when the holder is holding property in a fiduciary capacity for the benefit of the owner. In relevant part, Section 1518 states:

[A]ll intangible personal property, including intangible personal property maintained in a deposit or account, and the income or increment on such tangible or intangible property, held in a fiduciary capacity for the benefit of another person escheats to this state if for more than three years after it becomes payable or distributable, the owner has not done any of the following:

- (A) Increased or decreased the principal.
- (B) Accepted payment of principal or income.
- (C) Corresponded in writing concerning the property.
- (D) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file with the fiduciary.

Your memorandum asserts that UTMA accounts deposited with RCU escheat pursuant to Section 1518 because you believe that RCU holds the funds in a fiduciary capacity. This position is incorrect because the credit union is not holding UTMA account funds in a fiduciary capacity for the benefit of the minor. The fiduciary duty imposed by Probate Code section 3912 applies only to the custodian of the funds, and not to the financial institution in which the funds are deposited. In fact, the provisions of UTMA allow the custodian to withdraw UTMA account funds from the credit union, and reinvest those funds elsewhere at any time.⁶ Thus, the credit union has no greater control, and owes no greater duty, for UTMA accounts than on regular savings accounts on deposit. Therefore, UTMA account funds on deposit with RCU must be treated like any other dormant account held by a financial organization. Consequently, UTMA accounts escheat pursuant to Section 1513.

To be clear, a financial organization may escheat funds pursuant to Section 1518, but only if the financial organization is holding funds in a fiduciary capacity for the benefit of the owner. This situation would occur for UTMA accounts if the financial organization itself was named as the custodian. For example, an account established in the name of "Redwood Credit Union as custodian for (name of minor)" would likely escheat pursuant to Section 1518. When the custodian is any person other than the financial organization, the funds on deposit with the financial organization will escheat pursuant to Section

⁶ A custodian shall hold, manage, invest and reinvest custodial property pursuant to Probate Code § 3912(a)(3).

Daniel B. Burbott
Moore Brewer Wolfe Jones Tyler & North
5/28/2013
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1513. As I understand it, RCU is not the custodian of the UTMA accounts on deposit. Therefore, the UTMA accounts held by RCU do not escheat under Section 1518.

Very truly yours,

DAVID I BROWNFIELD
Staff Counsel

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