AMERICAN
PAYROLL
ASSOCIATION

November 12, 2018

Submitted by Electronic Mail

Sara Meek
Deputy Director of Legislative Affairs
Illinois State Treasurer
219 State House
Springfield, IL 62706

Re: Presumptive Abandonment Period of Funds Held in Payroll Card Accounts
Notice of Proposed Rules – Revised Uniform Unclaimed Property Act

Dear Ms. Meek:

The American Payroll Association (APA) appreciates the opportunity to comment on the Notice of Proposed Rules regarding Illinois's Revised Uniform Unclaimed Property Act ("Proposed Rules").[1] We are writing to express our concern about how the Proposed Rules implement the statute with regard to payroll cards. Many of our members use payroll cards to make secure, timely, and inexpensive wage payments to their employees. We are concerned that the Proposed Rules will make it difficult to determine when and what amounts to escheat from payroll card accounts. We are also concerned that the Proposed Rules place unreasonable and unnecessary burdens on employees being paid by payroll card.

The American Payroll Association

The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Relations Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

The APA's Government Relations Task Force Payroll Card Subcommittee monitors the development and use of payroll cards within the employer community and helps educate policymakers and regulators about the benefits and uses of the cards. Since 2004, the committee has supported numerous legislative and regulatory initiatives that provide employers with clear guidance on their responsibilities under the law, ensure that employees have full and free access

[1] Illinois Register, Volume 42, Issue 39, Pages 17145 – 17232 (Sept. 28, 2018).

to their wages on payday, and require that employees be provided with information on how to use a payroll card to their advantage.

The Benefits of Payroll Cards

Payroll cards allow employees without bank accounts and those with limited access to traditional financial services to enjoy the convenience and security that their coworkers experience with direct deposit. Without payroll cards, these workers often rely on expensive check cashing services to access their wages, and then incur additional expense when purchasing money orders to pay their bills. Payroll cards provide unbanked and under-banked workers with a safe place to store their wages and offer them a convenient means of making purchases and paying their bills. Additionally, many payroll card programs provide program features that consumers have come to expect from mainstream financial service providers—including online bill pay, savings functions, and mobile check cashing.

The ability to pay employees electronically benefits employers as well. Payroll cards allow employers to deliver wages in a timely manner to all employees including those who do not participate in direct deposit. This is true even when employees are away from the workplace and during periods of severe weather and natural disasters when mail delivery can be impeded. Payroll cards also allow employers to enjoy administrative efficiencies and, in many instances, cost savings.

The Proposed Rules Create Administrative Problems for Holders

The Act establishes a one-year presumptive abandonment period for employment-related compensation on payroll cards. "[W]ages, commissions, bonuses, or reimbursements to which an employee is entitled, or other compensation for personal services, including amounts held on a payroll card, one year after the amount becomes payable."[2] In addition to receiving wages deposited by employers, many payroll cards are capable of receiving loads from other sources (e.g., tax refunds or cardholder cash loads). While application of the one-year period specified in the Act is limited to wages, the Proposed Rule impermissibly subjects all funds deposited on a payroll card to the same one-year period. Because the Act specifically excludes payroll cards from the definition of "stored-value card,"[3] any funds not originating from employment-related compensation should be treated the same as funds held in a demand deposit account and presumed abandoned three years after the last indication of interest by the apparent owner.[4] Federal banking law has long supported the treatment of funds held in prepaid accounts as demand deposit accounts.

Because the Proposed Rules distinguish between wages and other funds, they suggest that Holders should apply different presumptive abandonment periods to commingled funds based on their source. If an Owner has a payroll card with a $2,000 balance, $1,000 of which is from

[2] 765 ILCS 1026/15-201(13).
[3] 765 ILCS 1026/15-102(30).
[4] 765 ILCS 1026/15-201(6).

his tax refund and the other $1,000 is from wages, the Holder may be required to escheat half of the balance after a year and escheat the remaining half two years later. Given that money is inherently fungible, tracking which dollar is being spent in any particular transaction simply isn't possible. The APA is not aware of any escheatment law in any other state that requires a Holder to distinguish funds in a single account based on the source of the funds.

The Proposed Rules Will Harm Employees

Under the Proposed Rules, employees with payroll cards would have funds escheated from their cards merely because the money hasn't been spent in a year—even if the employee is actively using his or her card. The Act states that employment-related compensation is presumed abandoned a year after the amount *becomes payable*.[5] In other words, the Act mandates that Holders presume funds originating from wages are abandoned a year after the wages are placed on the payroll card, regardless of whether the Owner has displayed interest in those funds by spending a portion, checking the balance, or transferring them to a savings feature.

The "becomes payable" provision makes sense when applied to a check cut by the employer but never cashed by the employee. In that situation, the consumer has failed to act to claim his or her wages, and escheatment after one year is reasonable. However, when the employee is receiving ongoing loads to, and actively using, his or her payroll card, requiring the Holder to escheat funds that haven't been spent in a year is an unexpected and unjust outcome. Employees should not be required to spend their hard earned money before an unexpected deadline in order to avoid having it escheated to the state.

The Proposed Rules also run counter to public and private goals of encouraging workers to save for their futures. Many payroll cards have savings features that allow employees to put away money towards a specific goal such as education, a vacation, or down payment on a house. Payroll card issuers and employers frequently sponsor financial literacy programs that promote financial independence by encouraging responsible spending and savings. The Treasurer's office has also championed financial literacy, with Treasurer Frerichs announcing his own initiative in April of last year. Under that program, Illinois students are taught a framework that "promotes critical thinking as it applies to decisions about spending, saving, budgeting, and investing."[6] Given the State's policy of teaching financial literacy and encouraging citizens to set appropriate savings goals, it is hard to understand why the Treasurer would implement Proposed Rules that make it difficult if not impossible for workers to save money on their payroll cards.

---

[5] The Act does not define "payable," but a natural reading of the Act suggests that wages become payable on the established payday in accordance with 820 ILCS 115/3. Accordingly, the presumptive abandonment period for wages on a payroll card begin to tick immediately upon payment to a payroll card.

[6] *Illinois Treasurer Frerichs Announces Financial Literacy Partnership with Econ Illinois*, Office of Illinois State Treasurer (2017), https://illinoistreasurer.gov/TWOCMS/media/doc/April2017_EconIllinoisPartnership.pdf.

APA Requests Clarification in Proposed Rules

The APA requests that the Treasurer modify the Proposed Rules to eliminate the confusion regarding the treatment of funds on payroll cards. We suggest that the one-year presumptive abandonment period should only apply to unclaimed employment-related compensation. The determination of whether funds in a payroll card account are unclaimed should hinge on whether the payroll card has ever been activated. If the payroll card has been activated, then the funds have been claimed and should be subject to the presumptive abandonment rules applied to bank accounts. If the payroll card has never been activated, then the funds should be treated as unclaimed and subject to the one-year presumptive abandonment period. The situation in which an employee does not receive or activate her payroll card is analogous to the case where an employee does not cash a payroll check; it is reasonable in both cases to presume the wages are abandoned after one year.

The suggested modification would eliminate administrative problems for Holders described above since it is unlikely that an unactivated card would have commingled funds on it. This interpretation would also mitigate unintended consumer harm by not requiring Holders to escheat funds that the employee has shown distinct interest in through spending or saving.

Thank you for the opportunity to comment on this important issue. We would welcome the opportunity to discuss the above issues with you further. In this regard, please feel free to contact me by email at bdunn@americanpayroll.org or by phone at 202-232-6889.

Sincerely,

William Dunn
Director of Government Relations