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General Government Division

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March 27, 1995

The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

The Honorable Edward J. Markey
Ranking Minority Member
Subcommittee on Telecommunications
and Finance
Committee on Commerce
House of Representatives

The Honorable John Joseph Moakley
Ranking Minority Member
Committee on Rules
House of Representatives

This letter responds to your requests of July 28 and August 9, 1994 in which you asked the U.S. General Accounting Office (GAO) to assist you in evaluating certain issues associated with H.R. 2443, the proposed Equitable Escheatment Act of 1993. This bill sought to reverse a Supreme Court decision, Delaware v. New York[1] concerning the escheat of unclaimed securities distributions[2] whose owners cannot be identified. If the bill had been enacted, it would have reallocated the unclaimed securities distributions at issue in the Delaware v. New York case and divided past and future owner unknown securities distributions subject to escheat among all 50 states and the District of Columbia. Since the introduction of the bill and your requests, however, the states of New York, Massachusetts, and Delaware, as principal recipients of these funds, and the other 47 states and the District of Columbia, as intervening parties to the case, have

[1]See Delaware v. New York, 113 S.Ct. 1550 (1993).

[2]Escheat herein refers to the process whereby any unclaimed or abandoned property passes to the custody of the state. Distributions refer to dividends, interests, stock distributions or other transfers of value paid by an issuer of a security to the record owners of the security.

negotiated a settlement agreement. This agreement, according to lead counsel for the settlement, was executed and went into effect in January 1995. It includes provisions for payments by New York, Massachusetts, and Delaware to the other 47 states and the District of Columbia; in exchange the intervening states and the District of Columbia agree to refrain from seeking or supporting legislation to change the rules of escheat set forth by the Supreme Court in Delaware v. New York.

As you know, in 1988 Delaware asked the Supreme Court to resolve its dispute with New York over unclaimed securities distributions for which financial intermediaries such as banks, thrifts, or brokerage firms holding the property had neither an identity nor last known address of the actual owner. Under the secondary rule adopted by the Supreme Court in Texas v. New Jersey[3], such funds escheat to the state in which the intermediary is incorporated. New York escheated such funds from financial intermediaries doing business in New York. Delaware claimed that some of these funds were wrongfully escheated and that it, not New York, was entitled to some of those payments because the financial intermediary firms were incorporated in Delaware. Later, Massachusetts joined the suit claiming funds for those financial intermediaries incorporated in its state. Subsequently, between 1989-1991, the remaining 47 states and the District of Columbia were granted permission to intervene and argue their positions concerning the escheat of unclaimed securities distributions.

The Supreme Court appointed a Special Master to hear the case and report his recommendations to the Court. In his January 28, 1992 report, the Special Master recommended that unclaimed securities distributions should escheat to the state in which the issuer of the security is located rather than the one in which the financial intermediary is incorporated. Further, he recommended that the location of the issuer is the state in which the issuer maintains its principal domestic executive office.

However, in its March 30, 1993 decision, the Supreme Court rejected the Special Master's recommendation and held that "the State in which the intermediary is incorporated has the right to escheat funds belonging to beneficial owners who cannot be identified or located." The Court also suggested that states could ask Congress to override its decision. As a result, H.R. 2443, the Equitable Escheatment Act of 1993, was introduced to reverse the Supreme Court decision and to enact the Special Master's recommendations. Similar legislation was introduced in

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[3]See Texas v. New Jersey, 379 U.S. 674, 85 S.Ct. 626, 630-631, 13 L.Ed.2d 596 (1965).

the Senate (S. 1715). Neither bill was enacted by the 103rd Congress.

During 1994, counsel representing all 50 states and the District of Columbia negotiated a settlement agreement which went into effect on January 6, 1995. The agreement calls for a total of $182,000,000 in ten annual payments to be paid by New York, Massachusetts, and Delaware to the 47 intervening states and the District of Columbia beginning on January 31, 1995. In exchange, the intervenors agree not to seek or support the enactment by Congress of any legislation which would change the rules on escheat as set forth in the March 30, 1993 Supreme Court decision. According to the lead counsel arranging the settlement agreement, the states' pledge not to seek or support federal legislation extends beyond the 10 year payment period; that is, it is perpetual. We were also told by all counsel and state officials who discussed the agreement with us that the agreement resolves the disagreement among the states over the rules of escheatment which were the subject of H.R. 2443 and S. 1715.

When we discussed this assignment with your staffs on October 31, 1994, it was known that the states were negotiating a settlement. Since then we have confirmed that a settlement has been reached by interviewing state officials and counsel representing New York, Delaware, and Massachusetts, the principal recipients of the escheatable unclaimed securities distributions. We also interviewed the counsel representing the other 47 states and the District of Columbia. According to these officials, legislation will not be sought by the states and the District of Columbia; therefore we believe your concerns have been addressed. We did our work between December 1994 and February 1995 in accordance with generally accepted government auditing standards. If however, you have any questions or need further assistance, please do not hesitate to contact me at (202) 512-8678.

James L. Bothwell
Director, Financial Institutions
and Markets Issues

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