



Discovering the Hidden Pool

Identifying abandoned or unclaimed property involves lots of complexities, but the monetary rewards can be well worth the effort and expense.

By NOEL E. HALL

THERE ARE REGULATORY BODIES all over the U.S. that are holding billions of dollars for companies and individuals who may be completely unaware that the money exists. The federal government, quasi-governmental agencies, states, counties, cities, local agencies and municipalities are all vestibules for abandoned or unclaimed property (AUP).

One large, well-known entertainment corporation had no clue that it was due more than \$1 million in unclaimed property until approached by a consultant. The company successfully recovered the money on its first attempt, and it now implements an ongoing process to aggressively pursue recovery of such funds.

As is true with companies in other industries, media businesses are more focused on abandoned or unclaimed property than in the past for very compelling reasons. Their managers are constantly asked to perform more with less, so they are exploring creative ways to convert traditional cost centers into profit centers while defraying the expense of required compliance functions under their purview.

What's more, media and entertainment are among the industries that yield some of the best recovery results. That's because they tend to deal more with commercial accounts and vendors, as opposed to the general public and private accounts.

Yet there are many complexities involved in extracting such hidden pools of gold. And for some, there's a side to the AUP equation that can have negative consequences. For example, some financial managers at large and medium-sized companies are unaware

of their AUP reporting requirements. Those who do often consider the regulations a thorn in their sides from a compliance perspective. And then there is the cash outlay to consider.

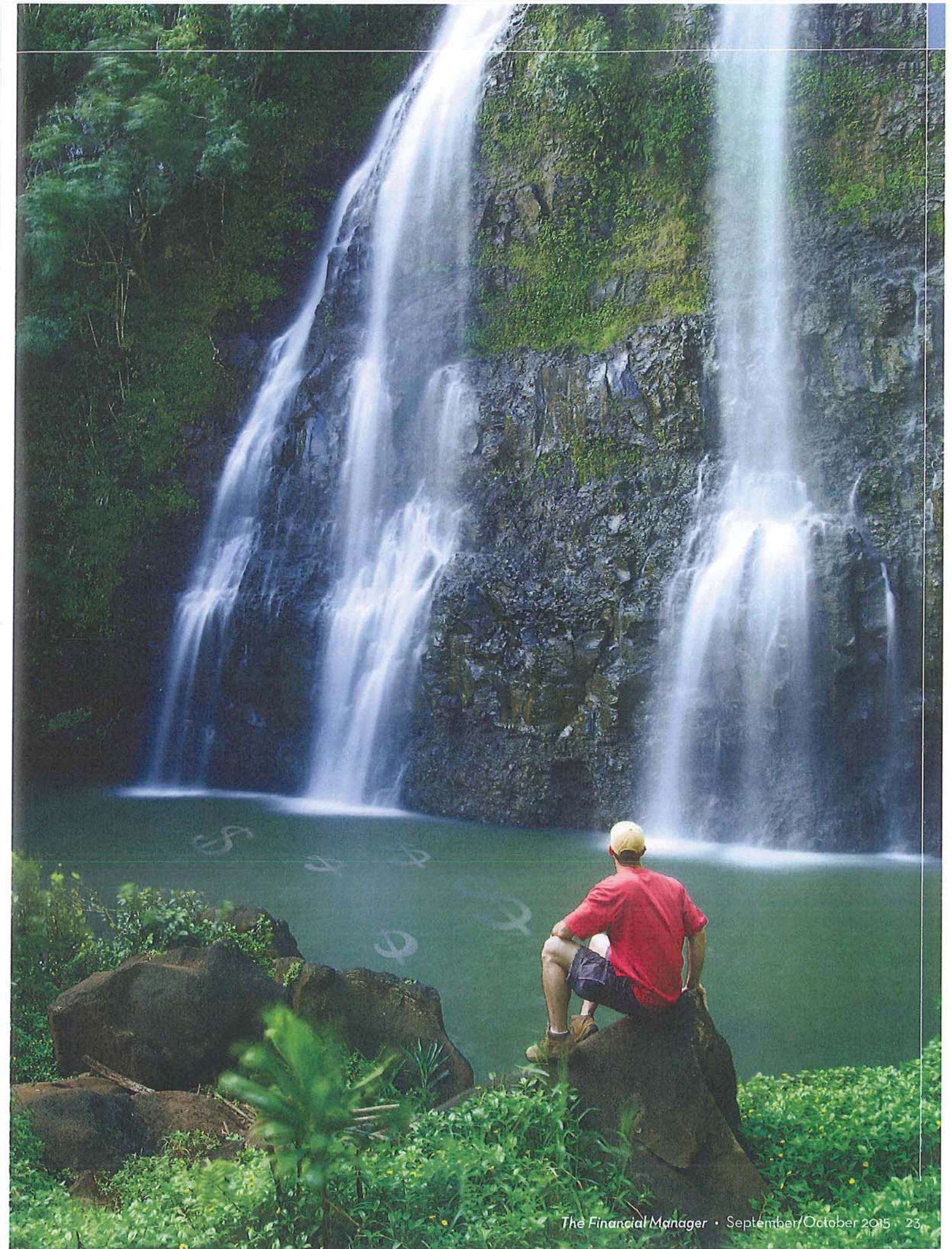
WHAT IS AUP, REALLY?

Although it was once common practice to routinely reverse uncashed checks and accounts receivable credits to "other income," companies generally haven't considered AUP as a potential source of revenue or, at a minimum, a defrayal of the cost associated with compliance.

For media and entertainment companies, AUP generally consists of uncashed disbursements, such as payments to/for employees, vendors, royalties, residual and participation, bond interest or dividends. Additionally, any unapplied cash – such as unused credits on account – that reach the statutory dormancy period (generally three to five years depending on the state statute) would also fall under the definition of AUP and be subject to reporting.

The cost of compliance can be substantial given the possibility that there may be no return on such a process. For companies operating within the borders of the U.S. and the U.S. Possessions, there are 54 reporting jurisdictions (the 50 states, District of Columbia, Puerto Rico, U.S. Virgin Islands and Guam). The jurisdictions have inconsistent laws, and there are at least 10 different filing dates for the 54 reporting jurisdictions.

Many companies tend to only report to their home state (defined as state where the corporate headquarters is located), which is a mistake from a compliance perspective. It just so happens that the



second smallest state in the country, Delaware, takes in more than \$600 million of AUP each year – a much larger amount than more populous and commercially diverse states. (See sidebar below.)

GOLD IN THEM THAR HILLS

The exercise of recovering property is commonly termed “asset recovery” and in essence is the reverse of what was just described. The secret is knowing how to claim this money back.

Often when companies are introduced to the concept of asset recovery they tend to be somewhat skeptical as it “sounds too good to be true” – as was the case with the entertainment giant mentioned in the opening paragraph of this article.

Although a relatively simple concept to comprehend, successful results revolve around the mechanics and execution of the process. Before you dash off and file claims for AUP, with plans to note them in your next quarterly meeting, consider this: the enforcement arm of AUP compliance and the claims processing arm are often administered by the same department within a given jurisdiction.

Given that, it would not be wise to pursue recovery of your company’s AUP without considering whether it has been in substantial compliance with reporting requirements through the years.

Attempting to recover monies on behalf of your company could expose the organization

to an unwanted examination for non-compliance. Carefully weigh the benefits of pursuing claims by first understanding the company’s potential exposure or risk, if the company was selected for an audit.

However, if your company is already under examination, it makes sense to pur-

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sue AUP. There is no downside risk, as your company has already been identified. Both the examination and the claims processing can proceed simultaneously with little, if any, adverse impact.

SEPARATE ACTIONS

The two different categories of AUP assets – abandoned property and unclaimed property – need to be treated differently. Abandoned property generally consists of typical general ledger transactions such as uncashed payroll, vendor and refund checks as well as unused accounts receivable credits, customer credits and unapplied cash.

At some point, if the property types

noted in the preceding paragraph remain uncashed, the money in question will inevitably reach the statutory dormancy period and be considered AUP and subject to reporting by the holder of such property on behalf of the owner.

The second AUP category of assets, unclaimed property, generally has no reporting requirements. It often consists of payments made by states, cities, agencies, counties and property held by the bankruptcy courts in trust for claimants.

Here’s a hypothetical example of what can happen: A company successfully wins an appeal for a property tax refund in the county of Los Angeles, CA that requires the county to issue a check to the taxpayer. The company either does not receive the refund check or fails to negotiate the instrument, and the county is under no obligation to relinquish custody of those funds to the state or any other jurisdiction.

If a certain time lapse occurs (usually three to five years), the taxpayer will forever lose its rights to reclaim that property.

PREPARING FOR ACTION

As you contemplate the recovery process, several factors should be considered. The biggest hurdle involves figuring out whether the organization has the requisite level of qualified resources to devote to such an undertaking.

There are in excess of 1,000 potential repositories throughout the 54 jurisdictions, counties, cities, governmental agencies and bankruptcy courts that maintain property. To amass a database that warehouses this information and keeps it current is a herculean undertaking.

Little wonder that the market has been inundated with service providers salivating to offer their assistance to companies trying to claim these funds.

There are numerous cases where organizations have literally retained dozens of service providers to identify and recover property on their behalf. One of the challenges with this approach is managing so many contracts and relationships. Unless they are closely managed, the service providers may work at cross purposes.

The service providers are usually far more conversant in the various rules and mechanics of filing claims than the internal staff of a company seeking AUP. But the providers are often small operations with limited

SMALL STATE, BIG IMPACT

THERE ARE TWO major reasons why Delaware takes in more than \$600 million in abandoned and unclaimed property each year.

First, it is the state of incorporation or formation to a vast majority of U.S. corporations. Secondly three U.S. Supreme Court cases provided two bright-line tests that govern where AUP must be reported.

One Supreme Court ruling stated that property or transactions must be reported to the state or jurisdiction of the owner’s last known address as shown on the books and records of the holder (the company holding the transaction).

Another stated that if the owner of the property is unknown, or if the holder does not possess any owner information, the property must be remitted to the holder’s state of legal domicile.

The impact of the second ruling is quite significant and is often considered catastrophic for all companies incorporated or formed under the laws of Delaware – especially when the company has been targeted for an AUP examination by the state of Delaware and whose annual reporting history is sketchy or non-existent.

That’s because when the state examines a company for AUP violations, it uses a look-back period of Jan. 1, 1981. The consequences of analyzing more than 30 years is staggering to some companies. It often results in wildly inflated assessments by Delaware and its team of third-party audit firms using various extrapolation methods to calculate audit exposure.

PAYING THE PROVIDERS

THERE IS BURGEONING industry of sole proprietors, associations and companies that attempt to make a living assisting companies in the recovery of their property for a contingency fee.

For assets that must be reported (abandoned property), the jurisdictions impose limitations on what a service provider can charge for the recovery of property. The limits range from as low as 5% to as much as 35%, with an average of about 15%.

For the most part, jurisdictions don't impose a cap on what a service provider can charge for the recovery of assets that don't need to be reported (unclaimed property).

resources, so they effectively operate within a small geographic range (for example, one of two states).

Most states maintain online databases that allow companies to search for their property. However, many state databases do

not provide much detail about the property being held. As an example, some states only indicate the number of records and amounts over \$50 or under \$50, and that's all.

Not until the time that an actual claim form is filed will the owner know the true amount of the claim. This practice in and of itself is enough to discourage a company from pursuing the property.

It gets more challenging than that: states do not necessarily make it easy for organizations to claim back money held by the jurisdiction. The level of documentation required to support a claim can often leave a company's staff exhausted or worse: they concede the claim due to what appears to be an uncompromising level of documentation required.

Even if a company has the professional level of resources, they need to know how to prepare well-documented claim packages that will be approved by the jurisdiction.

It has been my experience that most companies will not make the investment by allocating internal resources. Instead, they either concede the non-state property held by counties, cities and federal agencies – or they retain outside assistance to identify this property.

Despite the difficulties, asset recovery is an area of opportunity that some companies are exploring aggressively. Every dollar reclaimed from the various sources directly impacts an organization's financial performance. Whether the process is undertaken internally or outsourced, the cost can be greatly outweighed by the benefits derived from the investment.

Consider where and how you are deriving your revenue and whether the payer has an AUP reporting obligation. The larger and more geographically diverse your company is, the greater the opportunity. What's more, mergers and acquisitions can increase amounts recovered on behalf of companies.

As the number of companies undergoing AUP examinations steadily increases, a greater quantity of property will inevitably be turned over to the states and other jurisdictions. In time and given the proper level of dedicated resources, it could find its way to your bottom line.

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