

INITIAL STATEMENT OF REASONS

The State Controller's Office proposes amendments to 2 CCR §§ 1155.250, 1155.350, and the repeal of § 1175.

2 CCR § 1155.250

Code of Civil Procedure section 1532 sets forth requirements for remitting unclaimed property to the State Controller's Office. California Code of Regulations, title 2, section 1155.250 was initially adopted to set forth specific procedures for remitting funds by electronic funds transfer. The proposed amendments to section 1155.250 will update incorporated Forms SCO EFT-1 and SCO EFT-3, and remove language requiring prior approval to remit funds by Fedwire. The proposed changes are necessary to accommodate changes in vendor contracts, technology, and statutory authority.

To begin, Section 1155.250 will be amended to incorporate the 01/11 revision of Form SCO EFT-1 rather than the 03/98 version of the same form. The 01/11 revision will make a few non-substantive changes, but it also contains three material changes. First, the 01/11 revision will grant holders the option to provide the "Bank Transit Routing Number and Bank Account Number" on company letterhead instead of submitting a voided check. This change is necessary because a voided check is no longer required for processing electronic funds transfers due to a change in the third party vendor contract and updates in technology. Second, the 01/11 revision will provide two fewer options for the method of communication for ACH Debit than the 03/98 version. This change is also needed to reflect a change in the vendor contract and updates in technology. Third, the 01/11 revision will add the following language under the "ACH CREDIT" section: *"I have verified our company's Financial Institution can originate an ACH Credit transaction in the required record field."* This change is also necessary to reflect a change in the vendor contract. It should also be noted that the provisions for "International Funds Transfer," which were contained on the 1998 Form SCO EFT-3 have been relocated to Section IV on 01/11 revision of Form SCO EFT-1. This is merely a format change as no additional information is required for International Funds Transfer.

Next, Section 1155.250 will be amended to incorporate the 01/11 revision of Form SCO EFT-3 instead of the 01/98 version of Form SCO EFT-3. The 01/11 revision of Form SCO EFT-3 will remove the reference to "International Funds Transfer." This change is necessary because the "International Funds Transfer" provision will be relocated to Section IV of Form SCO EFT-1(01/11). This change will also be reflected in the title of the form. The form name will be changed from "Authorization To Remit by Fedwire Or International Funds Transfer And Registration Form" to "Authorization for Remittance by Fedwire." This title change has no regulatory effect; it simply reflects a change in the fields included within the form. The 01/11 revision of Form SCO EFT-3 also deletes the "Reason" field from Section II. This change is needed to reflect the statutory change. The authority to require holders to provide a reason to remit by Fedwire was removed from Code of Civil Procedure section 1532 by Stats. 2003, c. 228 (A.B. 1756). Therefore, the "Reason" field should no longer be included on the form. Other changes made by the 01/11 revision are non-substantive.

Lastly, the proposed amendment to Section 1155.250 will delete the language of Section 1155.250 requiring prior approval to remit funds by Fedwire. This change is necessary to accommodate the repeal of statutory authority. Prior to 2003, Code of Civil Procedure section 1532, subdivision (g)(5) stated:

Electronic funds transfer may be made by Fedwire only if prior approval is obtained from the Controller and the holder is unable, for reasonable cause, to make payment pursuant to paragraph (2) or (3).

The above language was deleted from Code of Civil Procedure section 1532 by Stats. 2003, c. 228 (A.B. 1756). With the statutory authority repealed, the State Controller's Office may not require holders to seek approval or explain the need to remit by Fedwire. Consequently, the regulatory language requiring prior approval must be deleted.

2 CCR § 1155.350

California Code of Regulations, title 2, section 1155.350 was initially adopted to set forth procedures for remitting funds by ACH Debit as required by Code of Civil Procedure section 1532. The proposed amendments will update Form UFS-1 and delete the reference to Form UP-27. These changes are necessary to ensure the continued efficient operation of unclaimed property reporting pursuant to Code of Civil Procedure sections 1530 and 1532, as set forth in more detail below.

The proposed amendments to Section 1155.350 will update Form UFS-1 from the 02/98 revision to the 04/09 revision. The 04/09 revision makes a few non-substantive changes, and four material changes from the 02/98 version. The first change to Form UFS-1 is a clarification regarding due dates. The 02/98 version provided a blank space to fill in the due date of the report while the 04/09 revision provides a choice of four due dates which may be selected by checking the appropriate box. This revision is necessary to clarify changes in statutory reporting deadlines and reporting requirements. A dual reporting requirement ("notice report" and "remit report") was added by Stats. 2007, c. 179 (S.B. 86). Under the dual reporting requirement, four possible due dates exist: two for the "notice report" and two for the "remit report." The 04/09 revision requires the holder to indicate the report type and the due date by selecting the appropriate box. This change will enable State Controller's Office staff to quickly determine whether the proper report has been submitted as required.

The second change to Form UFS-1 is the addition of "Holder Agent Contact" information. Holders of unclaimed property often contract an agent to handle the reporting of unclaimed property reporting. In many instances, Controller's Office staff must contact these agents to facilitate the completion of the unclaimed property reports. Accordingly, the addition of "Holder Agent Contact" information is necessary to aid in the timely completion of unclaimed property reports as required by Code of Civil Procedure sections 1530 and 1532.

The third change to Form UFS-1 is a change in how the unclaimed property totals are reported. The 02/98 version required the holder to report the total for properties \$50 and over, the total for

properties \$50 and over without names, the total for properties \$49.99 and under, and the total number of shares. The 04/09 revision requires only the total dollars reported/remitted and the total shares reported/remitted. The revised form has removed the distinction between properties valued \$50 and over, and properties valued \$49.99 and under because the Controller's Office no longer provides separate treatment for such properties. Because all properties are treated the same, the more detailed reporting requirements are no longer necessary. In addition to these changes, the 04/09 revision requires the holder to indicate whether the report includes safe deposit boxes by selecting the appropriate check box. This change is necessary for internal processing of the report. Specifically, the change enables Controller's Office staff to know whether the report information should be forwarded to the Safe Deposit Unit of the Unclaimed Property Division.

The fourth change to Form UFS-1 is the addition of "Demutualization Proceeds" under Section H on the 01/11 revision. The section requires the holder to indicate whether the property on the report includes proceeds from a demutualization. If the answer is yes, the holder must provide the date of the demutualization, and check the box that describes the reported proceeds. This change is necessary to accommodate a statutory addition of Code of Civil Procedure section 1515.5 (added by Stats. 2003, c. 304 (A.B. 378), § 2). Section 1515.5 sets forth three escheatment periods which are applicable solely to demutualization proceeds. Demutualization proceeds escheat immediately if the address of the owner is known to be incorrect pursuant to Section 1515.5, subdivision (a); demutualization proceeds escheat two years from the date of demutualization if the distribution is mailed to the owner, but returned by the post office as undeliverable pursuant to Section 1515.5, subdivision (b); and demutualization proceeds escheat three years from the date of demutualization if the distribution is mailed to the owner, and not returned by the post office as undeliverable pursuant to Section 1515.5, subdivision (c). Because of these specialized escheat schedules for demutualization proceeds, the addition of "Section H-Demutualization Proceeds" is necessary to enable Controller's Office staff to determine whether the unclaimed property report has been timely submitted. Section H serves this need by requiring the holder to check the box that appropriately describes the reported proceeds.

The proposed amendment to 2 CCR § 1155.350 will also delete the reference to Form UP 27(02/98). The reference to Form UP 27 should be removed because the State Controller's Office no longer uses the form. The State Controller's Office has determined that Form UP 27 is no longer necessary because it does not include any additional information beyond that listed on Form UFS-1.

2 CCR § 1175

This regulatory action proposes to repeal California Code of Regulations, title 2 section, 1175. Section 1175 requires holders to maintain records for seven years after the property is reported or should have been reported. The State Controller's Office believes this regulation is contrary to statutory authority. To begin, the Unclaimed Property Law (CCP 1500 et seq.) does not provide any records retention period or place any limitation on record keeping requirements. Moreover, the Court of Appeal indicated that there is no limitation on the time in which the Controller may bring an action to enforce the Unclaimed Property Law in *Bank of America v. Cory*, (1985) 164 Cal.App.3d 66, 74-77. The insertion of the records retention period by regulation may limit the

Controller in his duty to enforce the Unclaimed Property Law. Therefore, the State Controller's Office believes this regulation should be repealed.

Technical, Theoretical, and/or Empirical Studies, Reports or Documents in Proposing the Adoption of These Amendments.

The State Controller did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of these amendments.

Reasonable Alternatives to the Regulation and the Agency's Reasons for Rejecting Those Alternatives.

No other alternatives were presented to, or considered by, the State Controller.

Reasonable Alternatives to the Proposed Regulatory Action that Would Lessen Any Adverse Impact on Small Business.

The State Controller has not identified any adverse impacts on small businesses.

Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directing Affecting Business.

The State Controller has determined that any adverse economic impact to businesses would be negligible because these amendments do not impose additional requirements on businesses. As currently enacted, 2 CCR §§ 1155.250 and 1155.350 require businesses to provide specific information when submitting an unclaimed property report. The amendments to 2 CCR §§ 1155.250 and 1155.350 set forth some variations in required information on Form UFS-1, EFT-1, and EFT-3, but do not impose more burdensome requirements. The repeal of 2 CCR § 1175 removes an affirmative recordkeeping requirement. As such, its repeal does not impose any new or additional requirements on businesses.