



SC REVENUE RULING #92-6

SUBJECT: Safe-Deposit Boxes
(Abandoned Property)

TAX MANAGER: John P. McCormack

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 34-19-10 et. seq. (1976)
S.C. Code Ann. Section 27-18-10 et. seq. (1976)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Questions:

After a safe-deposit box has been opened by the lessor for reason of past due rent and the lessee notified, what procedures does the statute establish for the disposition of the contents?

Facts:

From time to time, a lessee of a safe-deposit box fails to pay the rental due. Questions have arisen concerning the procedures for the disposition of the property in the box.

Discussion:

The South Carolina legislature has enacted two different laws concerning safe-deposit boxes. Chapter 19 of Title 34, Safe-Deposit Boxes, addresses what constitutes a safe-deposit box, who is authorized to engage in the business of renting such boxes, access to safe deposit boxes, and procedures for the sale of the contents if the lessee fails to pay the rent. Chapter 18 of Title 27, the Uniform Unclaimed Property Act, addresses the disposition of abandoned property, including

the contents of a safe- deposit box when the lessee fails to pay the rent. Chapter 19 of Title 34 Safe Deposit Boxes Code Section 34-19-20 permits "any bank, building and loan association, savings and loan association, savings association, savings bank, or trust company [to] maintain and lease safe-deposit boxes and [to] accept property or documents for safekeeping."

A "safe-deposit box" is defined under Code Section 34-19-10 to mean "a safe-deposit box, vault, or other safe-deposit receptacle maintained by a lessor...."

With respect to the disposition of the contents of a safe-deposit box when the rental is in default, we must review Code Sections 34-19-70, 34-19-80, 34-19-90 and 34-19-100.

Code Section 34-19-70

If the rental due on a safe-deposit box has not been paid for one year, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within thirty days. If the rental is not paid within thirty days from the mailing of the notice, the box may be opened in the presence of an officer, manager or assistant manager of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box. [Emphasis added.]

Code Section 34-19-80

If the contents of the safe-deposit box have not been claimed within two years of the mailing of the certificate as required by §34-19-70, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within thirty days, the contents of the box will be sold at public auction at a specified time and place, or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once seven days prior to the sale in a newspaper of general circulation in the community. If the articles are not claimed, and the accrued rent and disbursements of lessor paid, they may then be sold in accordance with the notice. [Emphasis added.]

Code Section 34-19-90

The balance of the proceeds of a sale under §34-19-80, after deducting accumulated charges, including the expense of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him, or if none, shall be deemed a deposit account with the bank, cash depository, or trust company perating the safe-deposit facility, and shall be identified on the books of the bank as arising from the sale of contents of a safe-deposit box.

Code Section 34-19-100

Any documents or writings of a private nature and having little or no apparent value need not be offered for sale under §34-19-80, but shall be retained, unless claimed by the owner, for a period of two years, after which they may be destroyed.

In reviewing the above sections, we must look closely at what the lessor is required to do and what the lessor is permitted to do. Therefore, the distinction between the use of the word "shall" and the word "may" must be drawn. "The intention of the legislature as to the mandatory or directory nature of a particular statutory provision is determined primarily from the language thereof. Words or phrases which are generally regarded as making a provision mandatory include 'shall' and 'must'. On the other hand, a provision couched in permissive terms is generally regarded as directory or discretionary. This is true of the word 'may', ..." 73 Am. Jur., Statutes, 22.

Therefore, the above statute permits, but does not require, the lessor to open the safe-deposit box of a delinquent lessee; however, once the box is open, the lessor is required to follow certain procedures for securing the contents of the box, storing the contents, and notifying the lessee.

After the box is opened and the lessee properly notified, the lessor may sell the contents if they have not been claimed within two years of the mailing of the previous notification. The sale is not required; however, if it takes place, the lessor may deduct from the proceeds of the sale accumulated charges and the expenses of the sale. The balance must then be placed in an account maintained by the lessee with the lessor or, if no account exists, in a deposit account with the lessor. Chapter 18 of title 27 Uniform Unclaimed Property Act

With respect to safe deposit boxes, Code Section 27-18-170 of the Uniform Unclaimed Property Act states:

All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this State in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remain unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

Therefore, in addition to money, checks, drafts, stocks and other "intangible property" as defined in Code Section 27-18-20(10), tangible property such as jewelry is presumed abandoned and subject to the provisions of Chapter 18, Title 27 if unclaimed by the lessee of a safe-deposit box.

After the contents of a safe-deposit box are presumed abandoned, Code Section 27-18-180 requires the lessor to file a report with the Commission listing the unclaimed contents of the safe-deposit box. The report must also provide "a description of the property and the place where it is held and may be inspected by the [Commission] and any amounts owing to the [lessor]." At a later date, the unclaimed contents of a safe deposit box must be paid or delivered to the Commission in accordance with Code Section 27-18-200.

However, Code Section 27-18-210(G) states:

Property removed from a safe deposit box or other safe-keeping repository is received by the administrator subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse or pay the holder out of the proceeds remaining after deducting the administrator's selling cost.

Code Section 27-18-230 requires the Commission to sell abandoned property within three years after the Commission receives it, unless "in the judgement of the [Commission] the probable cost of sale exceeds the value of the property". Also, the Commission can refuse to accept property pursuant to Code Section 27-18-280, which reads, in part:

(A) The administrator may decline to receive any property reported under this chapter which he considers to have a value less than the expense of giving notice and of sale. If the administrator elects not to receive custody of the property, the holder must be notified within one hundred twenty days after filing the report required under Section 27-18-180.

Code Section 27-18-290 allows the Commission, after investigation, to destroy, or otherwise dispose of, any property delivered to it which the Commission determines has insubstantial commercial value.

Finally, Code Section 27-18-390 permits the Commission to "adopt necessary rules to carry out the provisions of [the Uniform Unclaimed Property Act]".

Therefore, the contents of a safe-deposit box are presumed abandoned if unclaimed by the lessee for more than five years after the lease period has expired. As such, the property must be reported to the Commission and paid or delivered to the Commission.

However, the Commission may refuse to accept certain property under the law if the Commission considers the property to have a value less than the expense of giving notice and selling the property. Also, the Commission may adopt rules to assist in the administration of the statute.

Reconciling the Two Statutes

In reviewing both the statute on Safe-Deposit Boxes and the Uniform Unclaimed Property Act, the following quote from 73 Am. Jur., Statutes, Section 254 provides guidance:

Where it is possible to do so, it is the duty of the courts, in the construction of statutes to harmonize and reconcile laws, and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions.

Conclusion:

After a safe-deposit box has been opened by the lessor for reason of past due rent, the contents sealed in a package and stored in the lessor's general vault, and the lessee notified, the following

procedures have been established by statute for the disposition of the contents of the safe-deposit box:

Lessor Sells The Contents:

1. If the contents remain unclaimed by the lessee for two years after the lessee was notified that the safe deposit box was opened, the lessor will send another notification to the lessee.

This notification will give the lessee 30 days to pay the accumulated charges. If these charges are not paid, the contents of the safe deposit box will be sold at a public auction by the lessor.

2. Once the contents are sold in accordance with Code Section 34-19-80, the lessor may deduct from the proceeds any accumulated charges and expenses of the notification and sale.
3. The balance of the proceeds must either be placed in another account maintained by the lessee with the lessor or, if no other account exists, the proceeds are deemed a deposit account with the lessor.
4. If the remaining sale proceeds are unclaimed by the lessee as of the fifth anniversary of the expiration of the safe-deposit rental period, these proceeds are presumed abandoned.
5. The proceeds must be reported and paid to the Commission in accordance with the Uniform Unclaimed Property Act. The lessor will not be reimbursed for the cost of opening the box and unpaid rent or storage cost since the lessor had previously deducted these cost after the sale.

Lessor Does Not Sell The Contents

1. If the safe-deposit contents are not sold in accordance Chapter 19 of Title 34, the contents will remain in the general vault of the lessor until presumed abandoned.
2. The contents will be presumed abandoned as of the fifth anniversary of the expiration of the safe-deposit rental period.
3. The contents must be reported, and at a later date, paid or delivered to the Commission in accordance with the Uniform Unclaimed Property Act. The approximate value of any tangible property must be stated on the report to the Commission. If a reasonable effort has been made to determine the approximate value of the property, and the lessor is unable to determine the approximate value, the lessor may state on the report that the value is unknown or cannot be determined.

In addition, the lessor must provide in the report a description of the property, the name and address of the place where it is held and may be inspected by the Commission, and a statement as to any amounts due the lessor by the lessee.

The Commission may refuse to accept any tangible property which it considers to have a value less than the cost of giving notice and selling the property. (The Commission must notify the lessor that it will not accept the property within 120 days of the lessor filing its report .)

4. If the contents, in the possession of the Commission, remain unclaimed, the Commission will sell the property in accordance with the Uniform Unclaimed Property Act. The Commission does not have to sell the property if, in its judgement, the probable cost of the sale exceeds the value of the property. Also, the Commission may refuse the highest bid at any sale if it determines it insufficient or destroy the property if it determines it has insubstantial commercial value. The lessor, after the Commission deducts its administrative selling costs, is entitled to be reimbursed from the remaining sale proceeds the costs of opening the box and unpaid rent and storage costs. The lessor therefore will only be reimbursed the lesser of (a) any sale proceeds that exceed the Commission's selling costs or (b) the lessor's costs of opening the box and any unpaid rent and storage costs.

It should be noted that, under the procedures established by law, the Commission must sell the property within three years after it is received. Therefore, the lessor may not be reimbursed its costs of opening the safe-deposit box, and unpaid rent and storage costs, until the property is sold by the Commission, which could be up to eight years after the lease on the box expired. Also, if the Commission decides not to sell the property or destroys the property under its authority, the lessor may never be reimbursed its costs.

NOTE: The procedures set forth in this document are to inform persons, who are leasing safe-deposit boxes, of the two options the law authorizes for the disposition of the contents of a safe-deposit box. They are not a detailed explanation of the statutory procedures, and all persons leasing safe deposit boxes to the public should review these statutes for more detailed instructions and information.

For additional information concerning Abandoned Property, call the Abandoned Property Section of the Commission at 737-4771.

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson Jr.
A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell
T. R. McConnell, Commissioner

s/James M. Waddell Jr.
James M. Waddell, Jr., Commissioner

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