

Opinion No. 67-37

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BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mrs. Katherine Ewing Finance Division Bureau of Revenue Santa Fe, New Mexico

QUESTION

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Has New Mexico's jurisdiction to escheat intangible personal property under Section 22-22-6, N.M.S.A., 1953 Compilation (1965-P.S.) been enlarged by the decision of the United States Supreme Court in **Texas v. New Jersey**, 379 U.S. 674, 85 Sup. Ct. 626, 13 L. Ed. 2d 596 (1964)?

CONCLUSION

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{*48} **ANALYSIS**

Section 22-22-6. N.M.S.A., 1953 Compilation (1965 P.S.) provides that:

Any stock or other certificate of ownership, or any dividend, profit, distribution, royalty, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bandholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within ten [10] years after the date prescribed for payment or delivery, is presumed abandoned if:

A. It is held or owing by a business association organized under the laws of or created in this state; or

B. It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

Where a business association is not domiciled in New Mexico and where the records of the business association indicate that the last known address of the creditor is within New Mexico, property subject to Section 22-22-6, supra, escheats to New Mexico only if the business association is engaged in business in New Mexico.

In **Texas v. New Jersey**, 379 U.S. 674, 85 Sup. Ct. 626, 13 L. Ed. 2d 596 (1964), the United States Supreme Court established the rule that jurisdiction to escheat abandoned intangible personal property lies in the state of the creditor's last known address, as shown by the debtor's books and records. If, however, there is no record of the creditor's last known address, jurisdiction to escheat the property is in the state of the debtor's domicile. This jurisdiction is subject, however, to later escheat if a state proves the creditor's last known address to be within its boundaries. The court also established the rule that where the creditor's last known address is in a state which does not provide for escheat of the property owed the creditor, jurisdiction to escheat of the property lies in the state of the debtor's domicile.

Thus, the application of the general rule established by the United States Supreme Court depends upon the nature of the escheat laws of the various states. Where a business association is not domiciled in New Mexico and is not engaged in business in New Mexico, the general rule does not apply to confer jurisdiction in New Mexico to escheat of the property because the property is not subject to escheat under Section 22-22-6, supra.

At first glance, it would appear that subsection A of Section 22-22-6, supra, confers a broader jurisdiction to escheat than is established in **Texas v. New Jersey**, supra, because it appears to establish jurisdiction to escheat of property when the business association is domiciled in New Mexico regardless of the fact that the creditor's last known address may be in another state. Section 22-22-11, N.M.S.A., 1953 Compilation (1965 P.S.), however, limits the application of Section 22-22-6A, N.M.S.A., 1953 Compilation (1965 P.S.) to bring it within the rules established in **Texas v. New Jersey**, supra. Section 22-22-11, supra, provides that:

If specific property which is subject to the provisions of sections {^{*49}} 3, 6, 7, 8, and 10 [22-22-3, 22-22-6, 22-22-7, 22-22-8, 22-22-10] of the Uniform Disposition of Unclaimed Property Act [22-22-1 to 22-22-29], is held for or owed or distributable to an owner whose last known address is in another state by a holder who is

subject to jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to the provisions of the Uniform Disposition of Unclaimed Property Act if:

A. It may be claimed as abandoned or escheated under the laws of such other state; and

B. The laws of the other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by the other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

Even though the business association is domiciled in New Mexico, New Mexico does not have jurisdiction to escheat of the property under Section 22-22-6A, supra, if the

creditor's last known address is in another state and the property is subject to escheat under the laws of the other state. If these conditions are met, the holder domiciled in New Mexico would be subject to the jurisdiction of the other state, **Texas v. New Jersey**, supra, as required by Section 22-22-11, supra. Thus, Section 22-22-6A, supra, would not apply to confer jurisdiction to escheat of the property in New Mexico. If the creditor's last known address is not known or if his last known address is in a state which does not provide for escheat of the property, Section 22-22-6A, supra, confers jurisdiction to escheat of the property in New Mexico. Thus, the operation of Section 22-22-6A, supra, is not contrary to the rules established in **Texas v. New Jersey**, supra.

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