



Douglas A. Ducey
Governor

David Briant
Director

PRIVATE HOLDER RULING LR16-006

May 23, 2016

Thank you for your letter requesting a private holder ruling on behalf of ***. Specifically, you requested a ruling regarding whether an electric cooperative may change its bylaws so that a member's failure to inform the cooperative of his or her mailing address or the assignment of the right to receive the redemption payments for certain capital credit allocations constitutes an irrevocable assignment of the redemption payments in question to an Arizona tax-exempt corporation to be formed by the cooperative. Pursuant to Arizona Revised Statutes (A.R.S.) § 44-336, the Department may issue private holder rulings to unclaimed property holders and potential unclaimed property holders on request.

ISSUE:

Whether an electric cooperative may change its bylaws so that a member's failure to inform the cooperative of his or her mailing address or the assignment of the right to receive redemption payments for certain capital credit allocations constitutes an irrevocable assignment of the redemption payments in question to an Arizona tax-exempt corporation to be formed by the cooperative?

RULING:

Based on the facts and documentation provided, the Department rules as follows:

An electric cooperative is subject to Arizona's unclaimed property laws and may not amend its bylaws to create a private right of escheat.

FACTS ASSERTED BY COMPANY:

The following are facts excerpted from your letter dated November 17, 2014.

*** is a non-profit company organized to provide electric service to primarily residential and commercial accounts in *** County, Arizona. The customers of the Cooperative are member/owners. Any revenues earned in excess of costs incurred are allocated to the members of the Cooperative as capital credits. The capital credits (or patronage capital, as it is sometimes called) are eventually paid back to the members. The pay back usually occurs 20 years or more after the year in which the profits were earned. All of this is anticipated by the enabling statutes that allow electric cooperatives to be set up. The cooperative is allowed to keep the profits for a number of years in order to supply the cooperative with capital to operate. Eventually, the capital is paid back.

PRIVATE HOLDER RULING LR16-006

May 23, 2016

Page 2

The Bylaws of the Cooperative, which were adopted and from time to time amended by the members, make it the responsibility of the members to keep the Cooperative informed of their current address. However, sometimes members move without giving *** a forwarding address or pass away without notifying *** of any devise or heir. This leads to the possibility that by the time *** is able to redeem the capital credits from certain years in the past, the Cooperative will not be able to locate and deliver the redemption monies to certain members.

This has not been a real problem for *** because *** has not been able to redeem capital credits for any years later than 1971. *** is nearing the time that it will begin to be able to redeem capital credits for years dating back to 1972. Certain members of the Cooperative have proposed that the members adopt a change to the Bylaws of the Cooperative making it the agreement of the members of the Cooperative that if a member fails to keep the Cooperative informed of his mailing address, or fails to inform the Cooperative of the assignment of the right to receive the redemption monies for certain capital credit allocations (either inter vivos transfers or testamentary transfers) and the Cooperative is unable to deliver the redemption payments as a result, that such failure constitutes an irrevocable assignment of the redemption payments in question to an Arizona charitable, tax-exempt corporation to be formed by the Cooperative to fund scholarships for students living in the Cooperative's service area and to fund educational trips to Washington, D.C. and elsewhere for students in the Cooperative's area who qualify for such educational trips. The charity would use the funds only for such educational purposes.

DISCUSSION & LEGAL ANALYSIS:

Effective January 1, 2001, the Arizona Legislature adopted the Uniform Unclaimed Property Act (the 1995 Act) and repealed the 1981 version. The Act can be found in Arizona Revised Statutes (A.R.S.) § 44-301 et seq. Unclaimed property is defined as tangible property pursuant to A.R.S. § 44-303 or a fixed and certain interest in intangible property that is held, issued or owed in the course of a holder's business or by a government, governmental subdivision, agency or instrumentality and all income or increments from that property. See A.R.S. § 44-301(15). A.R.S. § 44-301(8), in turn, defines a "holder" as "a person who is obligated to hold for the account of or deliver or pay to the owner property that is subject to this chapter." Finally, a person is defined as "an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity." A.R.S. § 44-301(14). Therefore, a cooperative corporation is a "business association" subject to Arizona's unclaimed property laws.¹

¹ Section 1(3) of the 1995 Uniform Act defines "business association" to include any "business entity consisting of one or more persons, whether or not for profit."

PRIVATE HOLDER RULING LR16-006

May 23, 2016

Page 3

A.R.S. § 44-321(A) states that the “expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the department as required by this chapter.” Thus, a person may not circumvent Arizona’s unclaimed property statutes by creating a private right of escheat.

A.R.S. § 10-2021 states that “[i]f, after ten years from the date of declaration of distribution of reserves, any reserves so distributable remain unclaimed, they may be used by the association in its research and educational work.” Therefore, A.R.S. § 10-2021 specifically excludes from unclaimed property distribution of reserves by cooperative marketing associations. No similar exemption applies to electric cooperative associations. Therefore, an electric cooperative is subject to Arizona’s unclaimed property laws and may not amend its bylaws to create a private right of escheat.

This response is a private holder ruling and the determinations herein are based solely on the facts provided in the Request. Therefore, the conclusions in this private holder ruling do not extend beyond the facts presented in your correspondence dated November 17, 2014. The determinations are subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department’s making of an accurate determination, this private holder ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.

The determinations in this private holder ruling are only applicable to the holder requesting the ruling and may not be relied upon, cited nor introduced into evidence in any proceeding by a holder other than the holder who has received the private holder ruling. In addition, this private holder ruling only applies to transactions that occur or unclaimed property liabilities that accrue from and after the date the holder receives the ruling.