

*Lynden Lyman on***Operation Rightful Owner: The Federal and State Governments Consider Teaming Together to Address the Problem of Unclaimed U.S. Savings Bonds**

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Last month's *Expert Commentary* considered the treatment of unclaimed property within the federal government, and how this area has gone largely unaddressed. One particularly significant unclaimed property problem crying out for a solution is that of matured U.S. savings bonds that have never been redeemed by the bondholder. This month's *Expert Commentary* will discuss the bold and unprecedented plan proposed by the states to work with the federal government to reunite lost bondholders with the money that is rightfully theirs.

Description of the Problem. The federal government established the savings bond program in 1935. During the depths of the Great Depression, it was probably inconceivable that anyone would ever forget to claim their bond proceeds upon maturity (even if the event was 40 years down the line). Series E bonds first became available just six months prior to the attack on Pearl Harbor. With the urgency of World War II, bond sales mushroomed and events seemingly overtook concerns about the possibility that, decades later, there would be an operational challenge to paying holders of matured bonds. Given the state of the world at the time, such a question might have appeared unpatriotic or at least unimportant.

VJ Day was followed by decades of incredible growth and prosperity. In the 1950s and 1960s, savings bond sales grew as they became not only a popular form of investment for the general public, but also an accepted and welcome gift for new arrivals, the achievement of religious milestones, and school graduations. As the savings bond program continued to expand, no one ever stopped to go back and fix what has now proved to be a design flaw: how would volumes of manual records be maintained so as to readily identify the owners of matured, unredeemed bonds?

It was not until the mid 1980s that the federal government began to address the problem. The U.S. Treasury created an automated file that could identify the names and addresses of bond owners— but only those issued since 1974. With respect to older bonds, the Treasury's "automated" system can track the serial number, date of issue, and current status (matured or unmatured, unredeemed or retired). But the Treasury cannot readily determine the name and address of the owner.

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This is not to say that the name and address information for these older bonds does not exist, but rather that the information is not readily accessible. The detail is contained within roughly 5.4 billion images— each representing an individual bond— contained on approximately 600,000 roles of microfilm. This microfilm would need to be imaged, indexed, and cross-referenced against the Treasury’s serial-number driven, automated system of current bond status. A massive reconciliation process (for errors and defective images) would then follow. The Bureau of Public Debt has estimated that it would cost more than \$23 million to undertake this task; this expense calculation was made in 1989, when there were only 5 million matured, unredeemed bonds with an aggregate value of \$1.3 billion. The numbers have since mushroomed, with more than 30 million matured, unredeemed bonds, currently representing more than \$16 billion in value.

Even if the construction of a comprehensive matured, unredeemed savings bond database could magically be completed overnight (and magic would be needed, since there is no budget or program directive to build one), there is the additional challenge of bondholder outreach and claims processing. As noted last month, there is no federal unclaimed property “program”; no phone bank of customer service operators or staff to field the anticipated millions of inquiries.

Looking for Solutions. As discussed in recent *Expert Commentaries* on unclaimed property, locating owners and processing their unclaimed property claims has become a state expertise. The states have the capacity to handle large volumes of public inquiries, and they additionally know a considerable amount about auditing old records of unclaimed liabilities. Because the federal government does not have these capabilities and is unlikely to establish them, unclaimed savings bonds would be a tremendous opportunity for the federal government and the states to team together, where the general public would be enriched.

The idea of federal and state governments working together to reunite missing owners of matured, unredeemed savings bonds with money that is rightfully theirs has become widely embraced by the states, and both Congress and the Treasury Department are studying the idea. In 2004, the states, through the National Association of State Treasurers, or NAST, launched “Operation Rightful Owner,” and spent several years defining how a joint approach to identifying and returning unclaimed bonds might work. In 2006, the states made a major plan redesign when their leadership concluded that Congress would never agree to simply turn over all of the unclaimed bond proceeds. As an alternative, the states opted for a “performance based” approach, where the federal government would, in essence, subcontract the job of identification and location of bond-

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holders to the states, with the states largely compensated on the basis of their success in finding owners.

In late July 2006, the states' savings bond concept, reshaped to some degree after negotiations with Republican House leaders, was embodied in H.R. 5984 ("The Unredeemed U.S. Savings Bond Return Act of 2006"). Unfortunately, before the legislation could gain much traction, the Democrats gained control of the Congress and the session expired. The states then started educating a different group of legislators. At present, there has been a meeting of the minds on the key tenants of the state concept, namely that:

- Concepts of tax equity promote the collection of unpaid taxes on matured, but unredeemed bonds;
- The federal government does not have the existing means to conduct outreach of lost bondholders, and it should instead utilize the competency of existing state unclaimed property programs to carry out this objective; and
- Payments made to the states for identification and location of missing bondholders should be structured in a way that rewards the states for successfully reuniting owners with their property.

Current Status. The Congress seems reluctant to move forward with the legislation until the question of budgetary impact can be resolved. Significantly, the vast bulk of the \$16 billion in matured, unredeemed bond funds represents interest, not principal; this interest was taxed at maturity, but the taxes never were collected (by way of example, a \$25 series E bond could have been originally purchased at a discount of \$18; that bond, if it had a 40-year maturity, would now be worth about \$100, which is virtually all interest and taxable as ordinary income). The additional tax revenue that the federal government would realize from applying the existing tax code to the bond funds would, based on the states' modeling, pay for the unification program. The federal government's accountants and analysts are not yet convinced, and with so much money involved, it is preferable to Congress to be certain of this detail.

It is reasonable to be certain that the financing is properly in place to facilitate the return of matured, unredeemed savings bonds to millions of Americans. On the other hand, even if it were not possible to come up with a "budget positive" or even a "budget neutral" approach, returning the money to the rightful owners would be the responsible

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course of action. In time, the federal government and the states will hopefully figure out a workable solution.

About the Author. Lynden Lyman is the managing director of the ACS Unclaimed Property Clearinghouse in Boston, serving as chief executive of the Clearinghouse since 1999. Lynden is a licensed attorney with 20 years experience in unclaimed property law, administration and auditing. Formerly, as an assistant attorney general with the state of Iowa, Lynden participated in state initiated audits of banks, insurance companies, utilities, and publicly traded companies. From 1986 to 1993, he was associate special counsel/consultant for the Clearinghouse. In this capacity, he coordinated and participated in the examination of records, preparation of reports, and the reporting and collection of property from more than 12,000 different companies. Additionally, Lynden worked with more than 30 states in the drafting and adoption of unclaimed property statutes and regulations. From 1993 to 1998, during which time the Clearinghouse operated as a unit of State Street Bank, Lynden held various management positions, culminating in senior vice president and division executive. As contributing editor of the five-volume legal treatise *Unclaimed Property Law and Reporting Forms* (published by Lexis/ Matthew Bender) over the last 16 years, Lynden has reviewed and annotated every state unclaimed property law.

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