

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
BUREAU OF TAXATION  
AUGUSTA, MAINE 04330J

April 28, 1975

Maurice F. Stickney  
Department of the Treasury  
State Office Building  
Augusta, Maine 04333

Dear Mr. Stickney:

You have inquired whether shareholdings of Maine residents in a New Hampshire corporation, which is not doing business in Maine and is not incorporated in Maine, escheat to the State of Maine "after the appropriate time lapses in attempting to locate these stockholders." I have concluded that these shares properly escheat to the State of Maine.

I have assumed that the records of the corporation show the last known addresses of these shareholders to be Maine addresses. I have also assumed that in determining "the appropriate time lapses" the corporation has looked to the statutes of the state of incorporation, New Hampshire.

The rule on escheat of debts where several states have asserted competing interests was established in Texas v. New Jersey, 379 U.S. 674 (1965) to be:

The state of the creditor's last known address is entitled to escheat the property owed him, but if his address does not appear on the debtor's books or is in a state that does not provide for escheat of intangibles, then the state of the debtor's incorporation may take custody of the funds until another state comes forward with proof that it has a superior right to escheat the property.

This rule was strictly followed in Pennsylvania v. New York, 407 U.S. 206 (1972), and the rule has evidently been designed to ". . . govern all types of intangible obligations . . ." Texas v. New Jersey, 379 U.S. at 678, and see Pennsylvania v. New York, 407 U.S. at 221 (dissent).

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Since the ownership of corporate stock is ownership of intangible personal property, the above rule appears to apply to stock ownership as well. Under the first part of the rule, then, Maine would be entitled to escheat the stock holdings of those stockholders for whom the corporate records showed a last known address in Maine. The second part of the rule which applies to your questions concerns whether Maine provides for escheat of intangibles.

It is not clear whether the state must have in its statutes provisions for escheat of property in these lost-creditor or lost-shareholder situations, whether the escheat statutes dealing with the intangible property of deceased persons satisfy the Supreme Court rule simply as an expression of state policy, and/or whether the common law of the State of Maine may be looked to on escheats. Since this issue has not been resolved, however, I think the analysis should assume that lost-creditor or lost-shareholder statutes need not be the sole basis of the escheat. Moreover, an escheat has been declared in Maine in absence of a statute dictating the escheat. Titcomb v. Kennebec Mutual Fire Insurance Company, 79 Me. 315 (1887).

Maine statutes on the escheat of intangible personal property following death without kin are 18 M.R.S.A. §§ 851 and 1001. Since these statutes express the state policy on escheat of intangibles, I think the Maine Supreme Judicial Court would declare an escheat of the shares of stock in a New Hampshire corporation held by Maine residents who can no longer be located, as though these lost residents were deceased. The Titcomb decision cited above, the statute on distribution by domestic corporations in 13-A M.R.S.A. § 525, and the legal principle of mobilia sequuntur personam, that intangible personal property may be found to follow the domicile of its owner, support this conclusion. In the present situation, with respect to mobilia sequuntur personam, there would seem to be a presumption that the Maine resident shareholder had his or her domicile in Maine, and that although the resident has disappeared Maine remains the domiciliary state.

I conclude that the second part of the Supreme Court's rule is sufficiently satisfied to justify the escheat of this property to the State of Maine. I would go on to advise strongly, however, that a statute on the escheat of intangibles broad enough to cover the lost-creditor or lost-shareholder situations involving both foreign and domestic corporations be submitted to the next Legislature to make certain what is now based on judgment with which another state may well disagree. The clearer the Maine law of escheat is, the easier it will be for the State of Maine to claim

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these lost-shareholder stock holdings and lost-creditor moneys against the claims asserted by other states.

Sincerely yours,

Donald J. Gasink  
Assistant Attorney General

DJG:gr