



Billing Code 4810-AS-P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315, 353, and 360

[Docket No.: FISCAL-2015-0002]

RIN: 1530-AA11 Regulations Governing United States Savings Bonds

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Department of the Treasury, Bureau of the Fiscal Service, is proposing regulations governing United States savings bonds to address certain state escheat claims.

DATES: Comment due date: [INSERT DATE 45 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The Bureau of the Fiscal Service invites comments on this proposed rule.

Comments may be submitted through one of the following methods:

*Electronic Submission of Comments:* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>.

Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> web site can be viewed by other commenters and interested

members of the public.

*Mail:* Send to Department of the Treasury, Bureau of the Fiscal Service, Attn: Theodore Simms, 401 14th Street, SW, Washington, DC 20227-0001. In general, Treasury will post all comments to <http://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying. You can make an appointment to inspect comments by telephoning (202) 504-3710. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

Theodore C. Simms II, Senior Attorney, 202-504-3710 or  
Theodore.Simms@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

#### I. BACKGROUND

The Department of the Treasury has issued savings bonds since 1935 to raise funds for the operation of the Federal government, and to encourage savings by small investors. From the beginning of the savings bond program, savings bonds have been registered securities. Treasury has authorized several forms of registration, including registration to individuals, co-owners, fiduciaries, institutions, and beneficiaries. See 31 CFR 315.7, 353.7, and 360.6. Savings bonds generally are not transferrable and are payable only to the registered owner, except as described in Treasury regulations. See 31

CFR 315.15, 353.15, and 360.15. Detailed regulations describe when payment will be made to a person or entity that is not the registered owner.

Ownership of a savings bond is determined by Treasury's savings bond regulations. Federal and state courts, including the United States Supreme Court, have upheld these ownership rights against challenges by parties asserting claims under state law. *See, e.g., Free v. Bland*, 369 U.S. 663 (1962). The rights of registered owners and others under Treasury regulations persist even for bonds that matured years ago, because Treasury does not require owners to redeem their paper savings bonds by a certain date.

In some cases, Treasury regulations determine who is entitled to payment based on state law. Treasury may look to state probate law, for example, to determine who is entitled to payment for savings bonds in a decedent's estate. *See* 31 CFR 315.71, 353.71, and 360.71. Treasury may also recognize certain state judicial proceedings that require payment to creditors, divorced spouses, and other claimants specifically listed in the regulations. *See* 31 CFR part 315, subpart E; Part 353, subpart E; part 360, subpart E. The touchstone for these claims, however, is Treasury's savings bond regulations.

Since at least 1952, Treasury has acknowledged circumstances when it will recognize a state's claim of title to savings bonds based on a judgment of escheat. "Escheat" describes a state's claim to property that has no owner. Many state probate laws allow a state to escheat the property of a person who dies without a will and without heirs. Treasury regulations do not specifically mention escheat, but they do provide that Treasury will pay a person entitled to the estate of a deceased savings bond owner in specified circumstances. When these circumstances are met, Treasury will pay a state that has title to savings bonds in the estate of a deceased owner. Like all claimants, the

state must present the bonds to Treasury or otherwise meet Treasury's requirements for payment.

In recent years, states have submitted escheat claims to Treasury for savings bonds based on state unclaimed property laws, when there is no evidence that the savings bond owner has died. The first claims came from states whose escheat laws purported to give them custody, but not title, to certain unredeemed savings bonds. In 2012, the United States Court of Appeals for the Third Circuit upheld Treasury's position that states are not entitled to payment for savings bonds held only in their custody, because such claims interfere with the rights of registered owners and others under Treasury regulations. *New Jersey v. U.S. Dept. of Treasury*, 684 F.3d 382 (3<sup>rd</sup> Cir. 2012).

More recently, the State of Kansas submitted an escheat claim based upon a state court judgment that purported to convey title over certain unredeemed savings bonds. Kansas sought to redeem savings bonds in its possession, which had been turned over to the state as unclaimed property, and to redeem a much larger class of savings bonds that it did not possess. In this class are matured, unredeemed savings bonds that were registered to an owner with an address in Kansas, generally more than thirty years ago. Kansas cannot identify who owns these bonds, where the owners currently reside, or whether the owners intend to redeem their bonds in the future. The physical bonds themselves may be in their owners' possession. Kansas asserted that Treasury was bound to accept its claim because the state court judgment was a valid judicial proceeding, citing 31 CFR 315.20.

The savings bond regulations do not require Treasury to recognize the Kansas escheat judgment. However, Treasury does acknowledge that a savings bond can be

abandoned, with no one entitled to payment under Treasury regulations. Treasury agreed to redeem the savings bonds that Kansas possessed using Treasury's waiver authority under 31 CFR 315.90, after reviewing evidence showing that the bonds had been abandoned, and determining that redemption would not impair any existing rights or subject the United States to any substantial expense or liability. In addition to other facts presented by the state, Kansas's possession of the bonds was evidence of abandonment, as well as a guarantee that no one else could submit the bonds for payment.

Treasury did not redeem the broad class of savings bonds that Kansas did not possess. Because Treasury regulations do not require a savings bond owner to redeem bonds by a certain date, a bond is not abandoned merely because it has not been redeemed. Treasury's standard procedures for redeeming savings bonds allow the registered owner to present a matured bond for payment at any time, irrespective of state law. Recognizing Kansas's escheat claim to bonds that it does not possess, and cannot establish are abandoned, would impair the rights of registered owners and others under Treasury regulations, and expose Treasury to claims for double payment.

Kansas sued Treasury in the United States Court of Federal Claims, seeking payment for all matured, unredeemed savings bonds with registration addresses in Kansas that were issued between 1935 and 1974, as well as other relief. At issue in the ongoing litigation is whether Treasury's savings bond regulations at 31 CFR 315.20 require Treasury to recognize the Kansas escheat judgment. Although the regulations do not require Treasury to recognize a state escheat judgment for unclaimed property, especially a judgment that interferes with existing rights, Treasury is proposing to amend 31 CFR 315.20 and other sections to address issues that arise from state escheat claims.

## II. THIS PROPOSED RULE

Treasury proposes to amend its savings bond regulations to explicitly address state escheat claims to unclaimed savings bonds. The amendments would be published at part 315, subparts E and O; part 353, subparts E and O; and part 360, subparts E and M.

One group of amendments further defines the scope of the judicial proceedings covered by subpart E in parts 315, 353, and 360. The proposed amendments explicitly provide that escheat proceedings will not be recognized under subpart E.

A second group of amendments establishes a new procedure for states to submit escheat claims under their unclaimed property statutes for Treasury's consideration. The proposed regulations provide Treasury with discretion to recognize an escheat judgment that purports to vest a state with title to a definitive savings bond that has reached the final extended maturity date and is in the state's possession, when the state presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. Escheat judgments that purport to vest a state with title to bonds that the state does not possess will not be recognized.

The proposed regulations would require a state to demonstrate, at a minimum, that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond. The state must also demonstrate that those persons had an opportunity to be heard before the escheat judgment was entered. The steps normally required in a state escheat proceeding may be adequate to establish abandonment, but

Treasury is not bound by these proceedings. Because state escheat rules may vary and state escheat proceedings are often uncontested, Treasury reserves the right to require additional evidence of abandonment. Under the proposed regulations, if a state seeks to redeem bonds in its possession to which it has obtained title via escheat, the proceeding must have provided notice and an opportunity to be heard to those who the state claims have abandoned their right to payment. Treasury may also require a bond of indemnity, with or without surety, in any case for the protection of the United States' interests. See 31 CFR 315.91, 353.91, and 360.91.

The proposed regulations make explicit that Treasury will not recognize escheat judgments that convey custody, but not title, to a state. This principle is well established in Federal case law and has been incorporated into the proposed regulation.

Treasury proposes to recognize escheat judgments regarding bonds in a state's possession as a discretionary matter, because the breadth of state escheat laws is not within Treasury's control. In exercising discretion, Treasury will consider whether a state's escheat claim impairs any existing rights under Treasury regulations and will assess the risk to Treasury of duplicative payment claims. Requiring states to possess the bonds that they seek to redeem protects these interests, and enables Treasury to locate records of the bonds for which the state seeks payment.

The proposed regulations on escheat claims to unclaimed property do not apply when a state claims title to a definitive savings bond as the heir to a deceased owner. Treasury has long recognized circumstances in which a state may obtain title to a savings bond by escheat when the bond owner has died. These escheat claims will be considered under existing savings bond regulations that pertain to the estates of deceased owners, co-

owners, and beneficiaries. See 31 CFR part 315, subpart L; part 353, subpart L; and part 360, subpart L.

### III. PROCEDURAL REQUIREMENTS

#### A. Administrative Procedure Act (APA).

Because this proposed rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rulemaking falls within the contract exception to the APA at 5 U.S.C. 553(a)(2). Treasury, however, is voluntarily seeking public comment to assist the agency in giving full consideration to the matters discussed in the proposed rule.

#### B. Congressional Review Act (CRA).

This proposed rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.* It is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This proposed rule may take immediate effect after we submit a copy of it to Congress and the Comptroller General.

#### C. Paperwork Reduction Act (PRA).

There is no new collection of information contained in this proposed rule that would be subject to the PRA, 44 U.S.C. 3501 *et seq.* Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

#### D. Regulatory Flexibility Act.

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply to this rulemaking because, pursuant to 5 U.S.C. 553(a)(2), issuance does not require notice and opportunity for public comment. Nonetheless, this proposed rule will not have a

significant economic impact on a substantial number of small entities. This rulemaking primarily affects states and is not expected to have a direct impact on any small entities. The proposed rule formally states Treasury's existing interpretation of the savings bond regulations as they apply to escheat claims, and proposes a new procedure through which states can submit claims to Treasury. Treasury is voluntarily seeking public comment in order to give thorough consideration to a range of views on state escheat claims before issuing the final rule.

E. Executive Order 12866.

This rule is not a significant regulatory action pursuant to Executive Order 12866.

List of Subjects in 31 CFR Part 315

Government securities, Savings bonds.

List of Subjects in 31 CFR Part 353

Government securities, Savings bonds.

List of Subjects in 31 CFR Part 360

Government securities, Savings bonds.

Accordingly, for the reasons set out in the preamble, the Department of the Treasury proposes to amend 31 CFR part 315 subparts E and O; part 353 subparts E and O; and part 360 subparts E and M to read as follows:

**Part 315 -- REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES**

1. The authority citation for part 315 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. Amend § 315.20 by revising paragraph (b) to read as follows:

**§ 315.20 General**

\* \* \* \* \*

(b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings specifically listed in this subpart. Escheat proceedings will not be recognized under this subpart. Section 315.23 specifies the evidence required to establish the validity of the judicial proceedings.

\* \* \* \* \*

3. Redesignate subpart O as subpart P and add a new subpart O to read as follows:

**Subpart O – Escheat and Unclaimed Property Claims by States**

Sec.

315.88 Payment to a State claiming title to abandoned bonds.

**§ 315.88 Payment to a State claiming title to abandoned bonds.**

(a) *General.* The Department of the Treasury may, in its discretion, recognize an escheat judgment that purports to vest a State with title to a definitive savings bond that has reached the final extended maturity date and is in the State’s possession, when the State presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. A State claiming title to a definitive savings bond as the heir to a deceased owner must comply with the requirements of subpart L, and not this section. Treasury will not recognize an escheat judgment that purports to vest a State with title to a bond that has not reached its final extended maturity date. Treasury also will not recognize an escheat judgment that

purports to vest a State with title to a bond that the State does not possess, or a judgment that purports to grant the State custody of a bond, but not title.

(b) *Due Process.* At a minimum, a State requesting payment under this section must demonstrate to Treasury's satisfaction that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond, and that those persons had an opportunity to be heard before the escheat judgment was entered.

(c) *Fulfillment of Obligation.* Payment to a State claiming title under this section fulfills the United States' obligations to the same extent as if payment had been made to the registered owner.

## **PART 353 – REGULATIONS GOVERNING DEFINITIVE UNITED STATES**

### **SAVINGS BONDS, SERIES EE AND HH**

1. The authority for this part continues to read:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

2. Amend § 353.20 by revising paragraph (b) to read as follows:

#### **§ 353.20 General.**

\* \* \* \* \*

(b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings specifically listed in this subpart. Escheat proceedings will not be recognized under this subpart. Section 353.23 specifies the evidence required to establish the validity of the judicial proceedings.

\* \* \* \* \*

3. Redesignate subpart O as subpart P and add a new subpart O to read as follows:

**Subpart O – Escheat and Unclaimed Property Claims by States**

Sec.

353.88 Payment to a State claiming title to abandoned bonds.

**§ 353.88 Payment to a State claiming title to abandoned bonds.**

(a) *General.* The Department of the Treasury may, in its discretion, recognize an escheat judgment that purports to vest a State with title to a definitive savings bond that has reached final maturity and is in the State’s possession, when the State presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. A State claiming title to a definitive savings bond as the heir to a deceased owner must comply with the requirements of subpart L, and not this section. Treasury will not recognize an escheat judgment that purports to vest a State with title to a bond that has not reached its final maturity. Treasury also will not recognize escheat judgments that purport to vest a State with title to a bond that the State does not possess, or judgments that purport to grant the State custody of a bond, but not title.

(b) *Due Process.* At a minimum, a State requesting payment under this section must demonstrate to Treasury’s satisfaction that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond, and that those persons had an opportunity to be heard before the escheat judgment was entered.

(c) *Fulfillment of Obligation.* Payment to a State claiming title under this section fulfills the United States' obligations to the same extent as if payment had been made to the registered owner.

**PART 360 – REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I**

1. The authority for this part continues to read:

Authority: 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

2. Amend § 360.20 by revising paragraph (b) to read as follows:

**§ 360.20 General**

\* \* \* \* \*

(b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings specifically listed in this subpart. Escheat proceedings will not be recognized under this subpart. Section 360.23 specifies the evidence required to establish the validity of the judicial proceedings.

\* \* \* \* \*

3. Redesignate subpart M as subpart N and add a new subpart M to read as follows:

**Subpart M – Escheat and Unclaimed Property Claims by States**

Sec.

360.77 Payment to a State claiming title to abandoned bonds.

**§ 360.77 Payment to a State claiming title to abandoned bonds.**

(a) *General.* The Department of the Treasury may, in its discretion, recognize an escheat judgment that purports to vest a State with title to a definitive savings bond that has stopped earning interest and is in the State's possession, when the State presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. A State claiming title to a definitive savings bond as the heir to a deceased owner must comply with the requirements of subpart L of this part, and not this section. Treasury will not recognize an escheat judgment that purports to vest a State with title to a bond that is still earning interest. Treasury also will not recognize escheat judgments that purport to vest a State with title to a bond that the State does not possess, or judgments that purport to grant the State custody of a bond, but not title.

(b) *Due Process.* At a minimum, a State requesting payment under this section must demonstrate to Treasury's satisfaction that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond, and that those persons had an opportunity to be heard before the escheat judgment was entered.

(c) *Fulfillment of Obligation.* Payment to a State claiming title under this section fulfills the United States' obligations to the same extent as if payment had been made to the registered owner.

Dated: June 26, 2015.

David A. Lebryk,

Fiscal Assistant Secretary.

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