

## UNCLAIMED PROPERTY LEGISLATION INTRODUCED

### WOULD REDUCE “LOOK-BACK” PERIOD AND REQUIRE REQUEST FOR PAYMENT WITHIN 3 YEARS

Legislation that would significantly reduce Delaware’s “look-back” period for enforcement of its unclaimed property laws and require the State Escheator to request payment for past due property within three years of the filing of a report was introduced last week in the Delaware General Assembly. The full text of the legislation is available [here](#).

Sponsored by Representative Melanie L. George and Senate Majority Leader Patricia M. Blevins (both chair the Judiciary Committees in their respective chambers), House Bill 229 would shorten the “look-back” period for unclaimed property examinations and demands for payment. The purpose of the change is to “enhance predictability in the administration of the State’s unclaimed property audit laws.”

Delaware currently “looks back” to calendar year 1981 during unclaimed property examinations and has the authority to demand past due property from 1981 to present. House Bill 229 would shorten this “look-back” period by fourteen years, to calendar year 1995, and limit the State’s authority to seek past due property from 1995 to present only.

For holders who have entered into a voluntary disclosure agreement with the State, the legislation would reduce the State’s “look-back” authority by ten years, changing the current “look-back” of calendar year 1991 to calendar year 2001.

The bill, if enacted, would likely reduce potential liability for holders under audit in the future, particularly where the State seeks to estimate liability for prior periods for which records are not available, by limiting the number of years included in any estimation calculation.

In addition, the legislation seeks to clarify the State’s current limitations periods by effectively requiring the State Escheator to initiate and complete examinations and request payment for past due property within three years of the filing of a report. The bill requires the State

Escheator to notify the holder in writing that the State is initiating an examination of the holder’s report “as soon as practicable” after receipt of the report. After completing the examination, the legislation makes clear that “[n]o Request for Payment ... shall be valid and enforceable and no proceeding to obtain payment of the liability identified ... may be commenced” unless the State Escheator mails the Statement of Findings and Request for Payment within three years of receipt of the report. These changes would apply retroactively to reports filed after July 22, 2002.

As such, the bill would eliminate the State’s current authority to notify a holder of a proposed deficiency in payment and commence an examination within three years of the filing a report, or within six years of the filing of a report, if the holder has underreported its liability by 25% or more.

Similar to Delaware’s current statute, the legislation would apply no limitation to the State’s authority to request payment for past due property where no report is filed, or where a holder “has filed a fraudulent report with the intent to evade the obligation to pay over abandoned property.”

Finally, the legislation would require the State to request payment within two years when the holder has filed an amended report.

House Bill 229 has been assigned to the House Judiciary Committee for review. The Delaware General Assembly has adjourned for the year and will return to session in January 2012 to resume consideration of this legislation at that time.

Please contact the Morris Nichols attorneys in the Unclaimed Property Counseling Group for more information about the proposed legislation. We will continue to provide updates as this legislation moves forward.

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