

MORRIS NICHOLS'
DELAWARE UNCLAIMED PROPERTY LAW COMPANION
2011 - 2012

Courtesy of the
Unclaimed Property Counseling Group
Morris, Nichols, Arsht & Tunnell LLP

Abandoned or Unclaimed Property Voluntary Disclosure
Agreement Program..... 63

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DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 12 Delaware Code, Section 1154 (12 Del. C. § 1154)

Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program

Policy:

The State of Delaware Division of Revenue is committed to promoting Holder compliance. In an effort to accomplish this objective, a **Voluntary Disclosure Agreement (VDA)** process is available to Holders who are not presently in compliance but want to comply with the Abandoned or Unclaimed Property Law. The VDA program allows Holders to come forward to report their abandoned property liability for a limited reporting period. The agreement releases the Holder from all claims, demands, interest, penalties, actions or causes of action related to all property reported properly under the term of the VDA.

In our commitment to fairness in the administration of Delaware's Abandoned or Unclaimed Property Law, the Division of Revenue will adhere to the following general guidelines:

- Any Holder who wishes to comply with the Delaware Abandoned or Unclaimed Property Law may file a VDA.
- Holders, which includes any subsidiary and all related entities, who have received an audit letter or are currently under audit by the State of Delaware may **not** file a VDA.
- The Holder shall complete a review of its books and records and file reports beginning with calendar year 1991, report year 1996, as well as for all subsequent report years, and pay over all abandoned property due the State of Delaware for those years.
- The State of Delaware reserves the right for three years to audit a VDA. Interest and penalty may be assessed pursuant to §1159 of the Abandoned or Unclaimed Property Law on all abandoned property due for all reporting years, if it is determined that the property reported on a VDA is materially under-reported. In such a case, the VDA shall be and of no force or effect. The State of Delaware reserves the right to fully audit the Holder in such a circumstance.

Process:

Initial Holder Contact

The Holder or the Holder's representative initiates the process by sending a completed Form AP DE-1, **Disclosure and Notice of Intent to Voluntarily Comply with Abandoned or Unclaimed Property Law**, to the following address:

Delaware Division of Revenue
Attn: Abandoned Property Audit Manager
820 North French Street
Wilmington, DE 19801
Fax: 302-577-8982

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The following information must be provided:

- Completed Form AP DE-1, signed by the Holder
- Holder's name and address
- List of all subsidiaries and all related entities participating in VDA
- Federal Employer Identification Number for each entity participating
- Holder representative's contact information, including an executed power of attorney signed by the Holder authorizing the representative to act on behalf of the Holder

Processing the VDA

- Upon acceptance of the Form AP DE-1 by the State of Delaware, the Holder shall complete a review of its books and records and file reports beginning with calendar year 1991, report year 1996, as well as for all subsequent report years and pay all abandoned property due the State for those years within six months from the date of the acceptance of Form AP DE-1. Acceptance shall be indicated by the State's signing and returning a copy of the Form to the Holder.
- After the review of its books and records, the Holder is required to file a Form AP DE-2, **Voluntary Self Disclosure Agreement**. The Form AP DE -2 must be signed and sent along with the audit report outlining the Holder's potential li-

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ability.

- The audit report shall identify in detail the work performed, the property types reviewed, any estimation techniques employed, and a calculations showing the potential amount of property due under the VDA.
- The State reserves the right to assess interest on any liability being reported under the VDA, if the VDA has not been received or an extension has not been granted within the six-month period.
- The State of Delaware will review the report submitted by the Holder and either accept it and request payment of their liability, or contact the Holder for additional information

General Information:

- The State of Delaware reserves the right to deny or void the VDA if a Holder does not adhere to the Program policies and procedures.
- The State of Delaware reserves the right to audit a VDA for three years from the date that a Holder has paid over property under a VDA.
- The VDA forms may **not** be altered without written consent of the State.

Abandoned or Unclaimed Property Audit Guidelines

Authority to Conduct Abandoned Property Audits:

Section 1155 of Title 12, Delaware Code provides the State Escheator with the authority to examine the records of any person or business association or organization to determine whether the person has complied with any provision of the Abandoned or Unclaimed Property Law of Delaware.

Section 123 of House Bill 400 from the 140th General Assembly of the State of Delaware originally granted the Director of Revenue the authority, approved annually, to enter into an agreement with organizations to identify abandoned property to be escheated to the State by means of audit or otherwise.

Auditing of Holders:

As allowed by law, the State of Delaware will examine selected Holders' books and records for compliance with the Abandoned Property Law. The audit will be assigned to an auditor in the Division of Revenue or to a third-party auditing firm that the State has retained for such purposes. At the request of a Holder the State's third party auditor will enter into a confidentiality agreement with the Holder in a form approved by the State Escheator before any of the Holder's confidential records are produced.

Notification of Audit:

An official letter from the Abandoned Property Audit Manager will be issued to Holders selected for audit. The letter will outline the State's intention to examine the books and records of the Holder (including subsidiary and related entities) and identify the assigned auditor or third-party auditing firm. Third-party auditors are not authorized to engage in any examination or audit without prior written consent from the State of Delaware Division of Revenue. The issuance of an intent to audit letter terminates the Holder's ability to enter into a Voluntary Disclosure Agreement (VDA).

Opening Conference:

Once an audit is assigned, an opening conference will be scheduled with the auditor and representatives of the Holder. During the opening conference, the auditor will:

- Advise the Holder of the reporting requirements of the Delaware Abandoned or Unclaimed Property Law,
- Identify the time period to be covered by the examination,
- Schedule a time period for field work to be commenced, and
- Request records and materials necessary to initiate the audit.

The State expects the Holder's cooperation and anticipates that with the Holder's cooperation the time to complete a typical audit should not exceed twelve (12) months. If an audit lasts longer than 12-months, the Abandoned Property Audit Manager will meet with

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the Holder to facilitate completion of the audit. Interest and penalty may be assessed pursuant to §1159 of the Abandoned or Unclaimed Property Law on all abandoned property due for all reporting years under audit.

Examination:

The auditor may conduct the examination on-site or remotely with the consent of the Holder if records are available electronically or can be shipped. Onsite work may last a few days to several weeks depending on the size and complexity of the Holder the availability of records, and the availability of holder personnel necessary to explain and discuss the records. During the examination, the auditor will review all necessary books and records, interview key personnel and review relevant policies and procedures related to abandoned property. During the examination, the auditor may make subsequent requests to the Holder for additional books and records as required to complete the audit.

The Holder will be kept informed of the progress of the audit and may contact the State directly to address issues or related to the audit. At the end of the examination, the auditor will present the preliminary findings to the Holder at an exit conference. These findings are not final. The auditor will allow the Holder reasonable time to complete required research and gather more records to address matters raised in the preliminary findings.

Third-Party Advocates:

Holders may retain third party advocates (Advocate) to assist them in the audit process. The retention of an Advocate is no basis to delay the commencement of the State's audit and the State will not delay the audit so that the Advocate may conduct a review or it's own audit of the Holder's books and records in advance of the State's audit. The State will cooperate with the Holder and its Advocate and keep both of them apprised of the records requests, interviews and the progress of the audit in general. It is understood that the State will not audit or be limited to a review of work papers, compilations or record summaries prepared by the Holder or the Advocate but shall have access to such of the Holder's original books and records that are necessary to ascertain the Holder's compliance with the law. The State shall direct all requests and communications directly to the Holder and, if requested by the Holder, will also direct copies to the Advocate.

Final Report:

At the close of the audit, the Holder will receive a statement of findings letter from the Delaware's Abandoned Property Audit Manager. This letter will outline the findings of the audit and make a formal demand for the property under question (if applicable). The Holder has thirty (30) days to directly remit to the State of Delaware any abandoned property identified during the examination as owed to the State of Delaware.

General Information:

For more information on abandoned property Voluntary Disclosure Agreements and/or audits, please contact Mark Udinski, Audit Manager at 302-577-8260 or mark.udinski@state.de.us or write to:

Delaware Division of Revenue
Attn: Mark Udinski, Abandoned Property
Audit Manager
820 North French Street
Wilmington, DE 19801
Fax: 302-577-8982

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