

PUBLICATION

Spotlight on Unclaimed Property: ACTION Required – Delaware Voluntary Disclosure Initiative Ends June 30

June 13, 2013

Delaware has earned the reputation as one of the most aggressive enforcers against businesses of unclaimed property/escheat obligations. For example, the Delaware Division of Revenue, or its proxies, routinely examine records for unreported unclaimed property (more accurately, estimate liabilities) back to 1981. As a preferred state of incorporation, many corporations are unaware that they may have a current and prior obligation to report to Delaware unclaimed property owed to their former customers, vendors, employees, beneficiaries, affiliates, or others whose last known addresses could be anywhere in the world.

In June 2012, and perhaps becoming aware that its unclaimed property enforcement was being viewed as anti-business, Delaware enacted legislation to create a voluntary disclosure program administered by the Department of State, which is independent of the Division of Revenue. Under the new program, holders of unclaimed property that have not received an audit notice, are not currently undergoing an unclaimed property audit, and, with certain exceptions, have not previously enrolled in prior voluntary disclosure programs administered by the Department of Finance (Division of Revenue), must act by June 30, 2013 to enroll in the program. In return, the "look-back period" applied to the participating holder extends to transaction year 1996, not 1981. For those holders that enroll between June 30, 2013 and June 30, 2014, the "look-back period" goes back to 1993. Further, the audit that will be conducted under the program must be administered by an independent entity compensated on an hourly basis, unlike the third-party contingent fee audits administered by the Division of Revenue.

Once the program is completed, the Division of Revenue cannot audit the holder for any of the prior transaction years subject to the voluntary disclosure agreement.

This is an opportunity for holders (principally Delaware incorporated or organized entities, but also those with a market in Delaware) to get into unclaimed property reporting compliance, not incur penalties or interest, close all prior years to audit and avoid the costly, time-consuming and intrusive Division of Revenue third-party contingent fee audits covering all years back to 1981.

If you would like to discuss the Delaware Voluntary Disclosure Program for unclaimed property currently underway, or unclaimed property issues in general, please contact one of the attorneys in the Firm's Tax Department.