

PUBLICATION

Spotlight on Unclaimed Property: The Value of Voluntary Disclosure/Compliance Agreements

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On November 1, 2012, you may have filed state unclaimed property reports or are getting ready to do so for March 1, 2013 or May 1, 2013, depending on the state. On the other hand, you may not have filed, or plan to file, any such reports and that first sentence makes no sense to you. Alternatively, you have been concerned about unclaimed property liabilities in states where your company has no operations, or are concerned about those prior years that you didn't file in your home state, or you just realized that reports should have been filed, but were not, with other states. If your company is in full compliance with all of its state unclaimed property reporting obligations in all states, congratulations! If not, or if you are not sure, entering a voluntary disclosure agreement (VDA) may be an option to consider.

Unclaimed property compliance has become more daunting while audit risk has increased, especially as states increase appropriations for unclaimed property contingent fee auditors and their own employed audit staff, shorten dormancy periods for when property becomes unclaimed, add new types of property to their statutes and increase their scrutiny of "general ledger property" that is unique to your business or industry. If your company has never reported unclaimed property in a particular state or never reported a particular property type and is not currently under audit, a VDA may be an option available to mitigate compliance burdens, audit risks and exposure to penalties and interest on unclaimed property liabilities that should have been, but were not, reported.

VDA programs are offered by a number of state unclaimed property administrators and may be provided pursuant to formal guidelines (via statute or regulation) or informal administrative policy. The primary benefits of a state's VDA program are: (a) the holder of unclaimed property becomes compliant; (b) penalties (and for some states, interest) may be waived; (c) the "look-back period" may be limited (i.e., the statute of limitations to audit the holder does not begin to run if reports have not been filed); (d) the holder has more control and ability to manage timetables for compliance, information and records to be reviewed by the state; and (e) the holder generally avoids threats posed by "whistleblowers."

Participation varies depending on each state's guidelines and procedures, but the holder (or the holder's counsel in some situations) must make the initial contact and provide the state with relevant information to kick-off the voluntary disclosure process. For example, under Tennessee's Unclaimed Property Compliance Disclosure Agreement (CDA) program, the holder completes the CDA, which includes providing requested company and affiliated group identifying information, and signs the compliance agreement. Tennessee, and most other states with these programs, also require the holder to propose how its unclaimed property liability will be determined, including the type of estimation methodology that will be used by the holder if actual records are not available, and the scope of years to be included. Florida, Ohio, South Carolina, Texas and most other states, whether they have formal or informal VDA programs, require a similar procedure.

While VDAs are not the best choice for everyone, they do afford holders the ability to voluntarily become compliant, mitigate the amount of unclaimed property liability and penalties, and often avoid the long, arduous and time consuming unclaimed property audit examination. Despite the benefits, holders should always evaluate and review their unclaimed property reporting history, suspect property types and potential exposure, as well as personnel and budgets to devote to the VDA and self-audit.

If you would like to discuss the pros and cons of participating in or just want more information about state unclaimed property VDA programs, please contact one of the attorneys in the Firm's Tax Department.