

Delaware Unclaimed Property Audit Notices to Be Issued Within Days: Privately Held Companies a Focus

Client Alert

11.11.2020

The Delaware Secretary of State announced in late August 2020 that his office was mailing nearly 200 letters to businesses identified as “holders” of unclaimed property. These Delaware-formed companies were deemed likely to be out of compliance in reporting dormant, abandoned or unclaimed property under Delaware law.

The 200 holders –many of which are privately held companies– were afforded 60 days to enter into Delaware’s voluntary disclosure agreement or VDA program. Approximately 75 of these companies have not yet entered the VDA program and will shortly be placed under audit by Delaware.

Delaware has indicated it intends to mail new audit notices on or by Friday, November 13, 2020. Once an audit notice is sent, a holder can no longer enter into the less onerous VDA program.

IMPLICATIONS OF FORGOING ENROLLMENT IN THE DELAWARE VDA PROGRAM

In a Delaware VDA, a holder conducts a self-review and determines its own liability. Delaware, in exchange, waives interest and penalties on the late-filed unclaimed property.

Holders that do not enroll in the VDA program in a timely manner will be referred to the Delaware State Escheator for an audit to be conducted by a third-party auditor.

A few important third-party audit considerations:

- **Interest Fees:** Interest will accrue and be assessed in an audit, often increasing liability by hundreds of thousands of dollars.
- **Multi-State Risk:** Since third-party auditors often contract with multiple states, a Delaware audit could potentially lead to a multistate audit of holders’ unclaimed property.

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- **Duration:** It's also significant to note that audits routinely last five to seven years, while VDAs usually close in one to two years.

HOW MORRIS NICHOLS CAN ASSIST

Morris Nichols has almost 30 years of experience representing dozens of Fortune 1000 companies and large privately held businesses in unclaimed property matters. We have built a national reputation for leadership in this area of the law.

If your company was "invited" into the VDA program this summer and has already entered it, Morris Nichols can assist you in navigating that process and negotiating with the Delaware State Escheator's office.

If your company has not yet entered the program, we can help you do so. We can also be of assistance in defending your company, limiting the scope of review, and advocating vigorously on its behalf if audited.

If you have any questions regarding this Alert or Delaware's unclaimed property program in general, please contact one of the members of Morris Nichols' Unclaimed Property Counseling Group.

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PRACTICE AREAS

Unclaimed Property

