

State of Delaware Provides Additional 30 Days - Until July 18, 2020 - for Companies to Enter Its Voluntary Disclosure Program: Audit Notices Will Be Sent to Those Who Do Not Enter the Program

Client Alert

06.22.2020

Virtually all companies generate unclaimed property. This type of property includes unclaimed payroll or accounts payable checks, unapplied customer credits, and unclaimed dividends or shares. Under laws that exist in every state, property that is unclaimed by the owner after a defined period of time must be paid to the state of the last known address of the owner or, if that address is unknown, to the state of incorporation or formation of the company which issued and now holds the unclaimed payment, also known as the "Holder". States collect hundreds of millions of dollars each year in unclaimed property. As the state of formation for thousands of companies, the State of Delaware collects over \$500 million a year in unclaimed property, making it the third largest revenue source for the State.

On June 18, 2020, the administrators of Delaware's unclaimed property program sent letters to companies who failed to respond to a February 2020 invitation to enroll in the Delaware Secretary of State's voluntary disclosure agreement ("VDA") program establishing **July 18, 2020** as the final date to enter the voluntary program prior to being placed under audit by the Department of Finance. A copy of the Delaware Department of Finance June 18, 2020 posting is reproduced below:

Delaware Department of Finance
Office of Unclaimed Property
PO Box 8931
Wilmington, DE 19899-8931

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HOLDERS: For any holder who received a February 2020 invitation from the Delaware Secretary of State to join the Voluntary Disclosure Agreement Program ("SOS VDA Program"), due to the current state of emergency declared by Governor John Carney, as well as many other declarations made across the country and the world, the Office of Unclaimed Property, Department of Finance, and the State Escheator recognize that many holders have not had full access to their mail or the proper time to route the invitation to the appropriate individual(s). As a result, holders who received an invitation to join the SOS VDA Program during February 2020 will be able to join the SOS VDA Program through **July 18, 2020**.

The Office of Unclaimed Property ("OUP") has sent letters, dated June 18, 2020, advising any holder who received the February 2020 invitation but has not yet enrolled in the SOS VDA Program, that the OUP will not send Notices of Examination for another 30 days.

Holders who intend to enroll in the SOS VDA Program should do so by sending in a completed VDA-1 as soon as possible and during this additional 30-day period. Please contact the SOS VDA Program by email (sos.vda@delaware.gov) to enroll or with any questions.

After July 18, 2020, the State Escheator will send a Notice of Examination to any holder, who received a February 2020 SOS VDA Program invitation, who has not enrolled in the SOS VDA Program. Per 12 Del. C. § 1173(e)(3), holders may not enter the SOS VDA Program after a Notice of Examination has been mailed by the State Escheator.

There are numerous benefits to participating in the Delaware Secretary of State's VDA program, including self- review and managed presentation of liability by the company; use of company friendly presumptions in the State's assessment of the Holder's review; processing and completion of the review in two years or less; and, no assessment of interest or penalties by the State.

By contrast, Delaware unclaimed property audits are conducted by contract auditors, often include many other states; last four to five years or longer; do not employ Holder friendly presumptions; and, include the mandatory assessment of interest and potential imposition of penalties.

If your company received a February 2020 "invitation" to enter the Delaware VDA program, and has not yet enrolled, it has until **July 18, 2020** to do so, or risk being the subject of a costly, time-consuming, and less forgiving Delaware unclaimed property audit.

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

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PRACTICE AREAS

Unclaimed Property

