

DEPARTMENT OF FINANCE
DIVISION OF UNCLAIMED PROPERTY
Escheator of the State of Delaware
Statutory Authority, 12 Delaware Code, Section 1155 (12 Del.C. §1155)

FINAL

ORDER

Abandoned or Unclaimed Property Examination Guidelines

NATURE OF PROCEEDINGS

Delaware Department of Finance (“Department”), Division of Unclaimed Property, Escheator of the State of Delaware (the “State Escheator”), initiated proceedings to informally adopt a regulation amending certain abandoned or unclaimed property examination guidelines as described in 12 Del.C. §1155 and previously published in 10 DE Reg. 699 (10/01/06). The Department’s proceedings to adopt its regulations were initiated pursuant to 29 Delaware Code, Section 10113, with authority prescribed by 12 Del.C. §1154 and §1208.

SUMMARY OF PROPOSAL

The regulation amends an existing regulation on abandoned or unclaimed property examinations by the State Escheator as described in 12 Del.C. §1155. The regulation sets forth the rules governing the historical periods for which the State Escheator will examine historical records to determine whether the person whose records are being examined has complied with any provision of 12 Del.C. Ch. 11.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

12 Del.C. §1154, State Escheator to make regulations.
12 Del.C. §1155, Examination of records.
12 Del.C. §1208, Rules and regulations.

OTHER REGULATIONS AFFECTED

10 DE Reg. 699 (10/01/06), Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Programs.

FINDINGS OF FACT:

The Department, acting through the State Escheator, finds that the following amendments: (a) are rules of practice and procedure used by the State Escheator; (b) reflect nonsubstantive changes to an existing regulation to alter its form and to correct technical errors; and (c) make the existing regulation consistent with the plain language of 12 Del.C. §1155. The Department, acting through the State Escheator, therefore finds that the following amendments should be adopted.

THEREFORE IT IS ORDERED, that the following Amended Regulation on Abandoned or Unclaimed Property Examination Guidelines is adopted and shall be final effective December 10, 2012 and shall apply to all examinations not complete as of that date.

Mark Udinski, State Escheator
Department of Finance

Abandoned or Unclaimed Property ~~Audit~~ Examination Guidelines

1.0 Authority To Conduct Abandoned Property Audits: Records Examinations

~~Section 1155 of Title 12, Delaware Code provides the~~ The State Escheator with the authority is authorized under 12 Del.C. §1155 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 12 Del.C. Ch. 11 (the “Delaware Unclaimed Property Law”).

2.0 Auditing Examination Of Holders: Holders’ Records

2.1 As allowed by law, the State of Delaware will examine selected Holders' books and records for compliance with the Abandoned Property Law. The ~~audit State Escheator~~ will be assigned to ~~assisted~~ in the examination by an auditor ~~in~~ employed by the Division of ~~Revenue~~ Unclaimed Property 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 ~~from~~ form approved by the State Escheator before any of the Holder's confidential records are produced.

~~Notification of Audit:~~

2.2 An official letter from the Abandoned Property Audit Manager (the "Audit Manager") will be issued to Holders selected for audit examination. The letter will outline the State's intention to examine the books and records of the Holder (including ~~subsidiary~~ subsidiaries 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~~ Escheator. The issuance of ~~an intent to audit~~ the letter terminates the Holder's ability to enter into a Voluntary Self Disclosure Agreement (VDA) ("VDA").

~~Opening Conference:~~

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

2.3.1 Advise the Holder of the reporting requirements of the Delaware ~~Abandoned or~~ Unclaimed Property Law;

2.3.2 Identify the time period to be covered by the examination;

2.3.3 Schedule a time period for field work to be commenced; and

2.3.4 Request records and materials necessary to initiate the audit examination.

2.4 The State expects the Holder's cooperation and anticipates that with the Holder's cooperation the time to complete a typical audit examination should not exceed twelve (12) months. If an audit examination lasts longer than 12-months, the ~~Abandoned Property~~ Audit Manager will meet with the Holder to facilitate completion of the audit examination. Interest and penalty may be assessed pursuant to § Section 1159 of the ~~Abandoned or Delaware~~ Unclaimed Property Law on all abandoned property due for all reporting years under audit examination.

~~Examination:~~

2.5 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. ~~On-site 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 examination. The auditor will make copies of records deemed necessary or desirable in order to create a suitable record for the Internal Review Procedure described in 12 Del.C. §1156.

2.6 The Holder will be kept informed of the progress of the audit examination and may contact the State Escheator directly to address issues arising from or related to the audit examination. 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.

3.0 Third-party Advocates

Holders may retain third-party advocates (~~Advocate~~) ("Advocates") to assist them in the audit examination process. The retention of an Advocate is no basis to delay the commencement of the State's audit examination, and the State will not delay the audit examination so that the Advocate may conduct a review or ~~its own~~ audit examination of the Holder's books and records in advance of the State's audit examination. 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 examination in general. ~~It is understood that the~~ The State will not ~~audit~~ examine or ~~otherwise~~ 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~~ Delaware Unclaimed Property Law. The State shall direct ~~all its~~ requests and communications ~~directly~~ to the Holder and, if requested by the Holder, will also direct copies to the Advocate.

4.0 ~~Final Report:~~ Statement of Findings and Request for Payment

At the close of the audit examination, the Holder will receive a statement of findings ~~letter~~ and request for payment from the ~~Delaware's Abandoned Property~~ Audit Manager if the Audit Manager determines that the holder has underreported abandoned or unclaimed property under the Delaware Unclaimed Property Act. This letter will outline the findings of the audit examination and make a formal demand for the underreported 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 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 19804~~

~~Fax: 302-577-8982~~

16 DE Reg. 630 (12/01/12) (Final)