

Client Alert

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Initial Window for Delaware Unclaimed Property VDA Opportunity Closes June 30, 2013

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Delaware is offering a voluntary disclosure program, touted by its secretary of state as a “good deal,” to businesses that may not be in compliance with all of Delaware’s unclaimed property reporting requirements. To obtain advantage of the most generous option under the program, which requires holders of unclaimed property to *only* report property going back until 1996 – rather than 1981 – holders must file a request to participate by June 30, 2013. Businesses are ineligible if they are already under audit, have received an audit letter or have already entered into a voluntary disclosure agreement (VDA). Businesses entering into the program after June 30, 2013, but prior to June 30, 2014, will be subject to a report look-back period going back to 1993. Participants in the program must complete the process by June 30, 2015.

Unlike Delaware’s prior VDA programs, which were administered by the state escheater and often resulted in post-VDA audits by contract auditors and the issuance of large assessments, this program is administered by the secretary of state (with third-party legal and accounting assistance), and promises compliant participants an agreement containing a waiver of the state’s right to audit for the look-back period and all proceeding years.

Although the secretary of state has sent correspondence to many businesses “strongly urging” them to consider participating in the program, many businesses may be reluctant to participate given the state escheater’s prior practice of using a VDA as an invitation to use the amounts remitted by businesses as mere starting points for greater impositions, often based on aggressive and questionable estimation techniques. However, Delaware has taken pains to address many of the potential participants’ concerns. For example, guidance has been provided regarding estimation methodologies (although final decisions regarding the particular estimation methodology to be employed will be made by the secretary of state in consultation with the program administrators).

Businesses that may be holding unclaimed property – for example, uncashed payroll checks, unused gift card balances, unclaimed customer deposits, or unclaimed rebates – should at least consider whether Delaware’s voluntary disclosure program provides an opportunity to reduce their escheatment exposure. This could be particularly significant for businesses that are incorporated in Delaware, since the U.S. Supreme Court has held that where the address of the owner of property is unknown, the property is to be reported to the business’s state of incorporation.

Only time will tell whether this is truly a “good deal,” but businesses that do not take advantage of the program may find themselves in the unenviable position of proving unclaimed property reporting compliance to Delaware back to 1981. Please contact any of us if you need additional details regarding the program.

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