

DEPARTMENT OF FINANCE
OFFICE OF UNCLAIMED PROPERTY, STATE ESCHEATOR
Statutory Authority: 12 Delaware Code, Section 1154 (12 **Del.C.** §1154)

PROPOSED

PUBLIC NOTICE

Voluntary Disclosure Agreement and Escheat Examination Manual

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 12 **Del.C.** §1154, the Delaware Department of Finance's Office of Unclaimed Property, State Escheator, proposes to revise and replace its regulations related to its Voluntary Disclosure Agreements and Escheat Examinations.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulations should direct them to the following address:

David Gregor
State Escheator
Department of Finance
820 N. French Street
Wilmington, DE 19801

Notice may also be directed via electronic mail to david.gregor@state.de.us. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Department of Finance no later than **4:30 p.m. EST, Friday, April 1, 2016**.

The action concerning determination of whether to adopt the proposed regulations will be based upon the results of Department analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that the Delaware Department of Finance's Office of Unclaimed Property, State Escheator, proposes to promulgate a manual to create a framework to ensure greater transparency and predictability in the process. The goal is for holders of unclaimed property to have a basic understanding of the processes available to them as well as the State's expectations. The standards contained in this "Voluntary Disclosure Agreement and Escheat Examination Manual" are to be implemented consistently, so as to ensure fair and uniform treatment of holders of unclaimed property.

Statutory Authority

Delaware Code, Title 12, §1154

Background

On January 29, 2015, the Governor of Delaware signed into law Senate Bill 11 of the 148th General Assembly, which directed the Delaware Secretary of Finance to complete the development of a detailed manual containing procedural guidelines for the conduct of Delaware unclaimed property examinations.

Voluntary Disclosure Agreement and Escheat Examination Manual

Introduction

On January 29, 2015, the Governor of Delaware signed into law Senate Bill 11 of the 148th General Assembly. Section 2 of the Bill states:

Section 2. The General Assembly hereby directs the Delaware Secretary of Finance (i) to complete the development of a detailed manual containing procedural guidelines for the conduct of Delaware unclaimed property examinations by December 31, 2015 and to update Delaware administrative regulations accordingly to ensure greater transparency and predictability as to what should be expected by holders during a Delaware unclaimed property examination; (ii) to develop such a manual utilizing a process that generates input from appropriate stakeholders and interested parties; and (iii) to take steps to ensure that Delaware's contract auditors comply with such manual.

Statutory Authority

12 Del.C. §1154, State Escheator to make regulations.

The State Escheator may make such rules and regulations as the Escheator may deem necessary to enforce this subchapter.

These Regulations replace the following existing provisions in the Delaware Administrative Code:

12 DE Admin. Code 102, Regulation on Practices and Procedures for Records Examinations by the State Escheator.

12 DE Admin. Code 103, Abandoned or Unclaimed Property Examination Guidelines.

These Regulations replace the following existing Regulations:

Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Program, 9 DE Reg. 771 (11/01/05).

Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program, 10 DE Reg. 699 (10/01/06) (Final).

Regulation on Practices and Procedures for Records Examinations by the State Escheator, 16 DE Reg. 530 (11/01/12) (Final).

Abandoned or Unclaimed Property Audit Examination Guidelines, 16 DE Reg. 630 (12/01/12) (Final).

Regulations

1.0 Delaware Department of Finance Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Guidelines

1.1 Policy

1.1.1 The State of Delaware Department of Finance is committed to promoting Holder compliance. In an effort to accomplish this objective, a Voluntary Disclosure Agreement (VDA) process is available to Holders who are not presently in compliance but want to comply with the Abandoned or Unclaimed Property Law. The VDA program allows Holders to come forward and report their abandoned property liability for a limited reporting period. The agreement releases the Holder from all claims, demands, interest, penalties, actions or causes of action related to all property reported properly under the term of the VDA.

1.1.2 In our commitment to fairness in the administration of Delaware's Abandoned or Unclaimed Property Law, the Office of Unclaimed Property will adhere to the following general guidelines:

- Any Holder who wishes to comply with the Delaware Abandoned or Unclaimed Property Law may file a VDA with the Department of Finance, Office of Unclaimed Property.
- The Department of Finance shall have no authority to enter into an unclaimed property Voluntary Disclosure Agreement with any Holder (including any subsidiary and all related entities) who has received a notice of examination from the Department of Finance or is currently under examination by the State of Delaware, unless the examination has been closed by the State.
- The Department of Finance shall have no authority to enter into an unclaimed property Voluntary Disclosure Agreement with any Holder (including any subsidiary and all related entities) who is currently enrolled in a Voluntary Disclosure Agreement program administered by the Secretary of State.
- The holder shall complete a review of its books and records and file reports beginning with calendar year 1996, report year 2002, and for all subsequent years. Beginning January 1, 2017, there is a rolling 19 report year look back period from the year of enrollment. Holders should pay over all abandoned property due to the State of Delaware for those years.
- The State of Delaware reserves the right for three years to audit a VDA from the date that a Holder has paid over property under a VDA. Interest and penalty may be assessed pursuant to §1159 of all the Escheats Law on all abandoned property due for all reporting years, if it is determined that the property reported on a VDA is materially under-reported. In such a case, the VDA shall not have any force or effect. The State of Delaware reserves the right to fully audit the Holder in such a circumstance.

1.2 Effective Date

The effective date of these Guidelines should be the date they are adopted, and the standards contained therein should apply to all VDAs commenced after that date. To the extent practical, the Guidelines should apply to any ongoing VDAs.

1.3 Initial Holder Contact

1.3.1 The Holder or the Holder's representative initiates the process by sending a completed Form AP DE-1, Disclosure and Notice of Intent to Voluntarily Comply with Abandoned or Unclaimed Property Law, to the following address:

Delaware Department of Finance
Attn.: Abandoned Property Audit Manager
820 North French Street
Wilmington, DE 19801
Fax: 302-577-1195

1.3.2 The following must be provided:

- Completed Form AP DE-1, signed by the Holder
- Holder's name and address
- List of all subsidiaries and all related entities participating in VDA
- Federal Employer Identification Number for each entity participating
- Holder representative's contact information, including an executed power of attorney signed by the Holder authorizing the representative to act on behalf of the Holder

1.4 **Processing the VDA**

1.4.1 Upon acceptance of the Form AP DE-1 by the State of Delaware, the Holder shall complete a review of its books and records and file reports beginning with calendar year 1996, report year 2002, as well as for all subsequent report years and pay all abandoned property due the State for those years within six months from the date of the acceptance Form AP DE-1. Acceptance shall be indicated by the State's signing and returning a copy of the Form to the Holder. For Holders entering the VDA program after January 1, 2017, there will be a rolling look-back date of 19 report years.

1.4.2 After the review of its books and records, the Holder is required to file a Form AP DE-2, Voluntary Self Disclosure Agreement. The Form AP DE-2 must be signed and sent along with the audit report outlining the Holder's potential liability. The audit report shall identify in detail the work performed, the property types reviewed, any estimation techniques employed, and calculations showing the potential amount of property due under the VDA. The audit report shall also address the States document request and supporting documentation.

1.4.3 The State reserves the right to assess interest on any liability being reported under the VDA, if the VDA has not been received or an extension has not been granted within the six month period.

1.4.4 The State of Delaware will review the report submitted by the Holder and either accept it and request payment of their liability, or contact the Holder for additional information.

1.4.5 A VDA is not considered completed until the report submitted by the Holder is formally accepted by the State of Delaware.

1.5 **General Information**

1.5.1 The State of Delaware reserves the right to deny or void the VDA if a Holder does not adhere to the Program policies and procedures.

1.5.2 The VDA Forms may **not** be altered without written consent of the State.

1.5.3 The forms necessary to enter and complete the VDA program (AP DE1, AP DE2) will be available online at the Delaware Department of Finance website and by the Audit Manager upon request.

2.0 **Delaware Department of Finance Abandoned or Unclaimed Property Examination Guidelines**

2.1 **Preface**

The Office of Unclaimed Property recognizes that each examination is unique. This manual is intended to create a framework so that a Holder undergoing an examination by the State of Delaware will have a basic understanding of the process and the State's expectations. The standards contained in this manual are to be implemented consistently, so as to ensure fair and uniform treatment of Holders. Absent permission from the State Escheator, the standards are not discretionary and third party audit firms may not develop or utilize their own distinct applications of these standards and instructions.

2.2 **Guiding Principles**

2.2.1 The goal of the examination should be to determine whether the Holder is in compliance with the Delaware unclaimed property laws. These examination guidelines will relate to all property that may be subject to escheat pursuant to the Delaware Escheats Law, Title 12, Chapter 11, of the Delaware Code. Abandoned and unclaimed property is reported to the State of Delaware pursuant the Escheats Law and the priority rules and other provisions set forth in the United States Supreme Court case Texas v. New Jersey, 379 U.S. 674 and 380 U.S.518 (1965) and reaffirmed by Delaware v. New York, 507 U.S.490 (1993).

2.2.2 Delaware has jurisdiction over the escheatment of property that has met one of three criteria:

2.2.2.1 The last known address of the owner is located in the State of Delaware;

2.2.2.2 The last known address of the owner is unknown, and the Holder is incorporated or formed under the laws of the State of Delaware; or

2.2.2.3 The last known address of the owner is not located in any state of the United States, or the District of Columbia, or any territory or possession of the United States, and the Holder is incorporated or formed under the laws of the State of Delaware.

2.2.3 The State Escheator shall not use collection goals or quotas during the conduct of an examination to assess a Holder's compliance.

2.2.4 The State Escheator shall make available, upon request, copies of all contracts between the State Escheator and any third-party auditor hired to conduct or assist with an examination.

2.2.5 The State's goal in every examination is to be fair and consistent.

2.3 Effective Date

The effective date of these Guidelines should be the date they are adopted, and the standards contained therein should apply to all examinations commenced after that date. To the extent practical, the Guidelines should apply to any ongoing examinations, though the failure of the State to have conformed to Guidelines not-yet-in-existence would not invalidate an examination.

2.4 Authority to Conduct Abandoned Property Examinations

2.4.1 Section 1155 of Title 12, Delaware Code provides the State Escheator with the authority 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.

2.4.2 Section 130 of the Epilogue to the State's Budget for Fiscal Year 2016 (ending June 30, 2016) provides the Secretary of Finance or his or her designee with the authority to enter into agreements with organizations to identify abandoned property to be escheated to the State by means of audit or otherwise. Similar, if not identical, language has appeared in the State's budget for decades.

2.5 Examination of Holders

2.5.1 The State of Delaware will examine selected Holders' books and records for compliance with the Abandoned Property Law. The examination will be assigned to an auditor or to a third-party auditing firm that has been retained by the State 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 form approved by the State Escheator before any of the Holder's confidential records are produced. (See 2.8, Confidentiality and Non-Disclosure, for a form NDA approved by the State.)

2.5.2 The State's goal in every examination is to be fair and consistent while determining the Holder's historical compliance. The State expects the Holder's cooperation throughout the examination process.

2.6 Notice of Examination

2.6.1 All Delaware unclaimed property examinations begin with an official examination letter from the State's Abandoned Property Audit Manager. The letter will notify the Holder that its books and records (including those belonging to subsidiary and related entities) are subject to examination, identify the assigned auditor or third-party auditing firm, and include auditor contact information. The issuance of the official examination letter terminates the Holder's ability to enter into a VDA with the State of Delaware.

2.6.2 Third-party auditors are not authorized to engage in any examination or audit without prior consent from the State of Delaware, Department of Finance.

2.6.3 Effective July 1, 2015, the State Escheator shall not initiate any new examination of records or an investigation of any person or business association or organization pursuant to this section unless first the person or business association or organization has been notified in writing by the Secretary of State that the person, business association, or organization may enter into an unclaimed property voluntary disclosure agreement, or if the Holder fails to otherwise comply with a requirement imposed on such holder pursuant to §1177 of this title.

2.6.4 When identifying a Holder to be examined, the State may consider several factors. These include, but are not limited to:

- A review of past Holder reports for inconsistencies, omissions or a lack of detail;
- A comparison of a Holder's past reports to the reports of similar Holders within the same industry and of the same approximate size;
- Any information available from the state, such as Holder reporting and compliance history; and
- Available public data regarding the Holder, including annual company reports, press materials, and expert opinion.

2.6.5 At no time is the State required to justify its selection of a Holder for examination.

2.6.6 Example of Examination Contact Letter

Dear [Holder Representative]:

Pursuant to §1155 of Title 12 of the Delaware Code, you are hereby notified that the State of Delaware intends to examine the books and records of [Company Name], its Subsidiaries & Related Entities (hereinafter "[Company Name]"), to determine compliance with the Delaware Escheats Law. The examination will relate to all property that may be subject to escheat pursuant to Title 12, Chapter 11, of the Delaware Code ("the Statute"). Abandoned and unclaimed property is reported to the State of Delaware pursuant to the Statute, as well as the priority rules and other provisions set forth in the United States Supreme Court case *Texas v. New Jersey*, 379 U.S. 674 and 380 U.S.518 (1965) and reaffirmed by *Delaware v. New York*, 507 U.S.490 (1993).

The review will be conducted by Assigned Audit Firm ("Firm") on the behalf of the State of Delaware (the "State"). ("Firm") will contact you within the next three weeks to arrange a mutually agreed upon date to commence the examination. It is the State's expectation that an opening conference will be held within ninety days of this notice. In advance of the opening conference, ("Firm") will send you an initial document request seeking routine but necessary material which you are expected to produce at or before the opening conference. If [Company Name] desires ("Firm") to execute a confidentiality agreement, ("Firm") should be promptly notified. The execution of a standard confidentiality agreement is permitted by Delaware regulations, but not required, and it should not delay the opening conference. If [Company Name] believes that it cannot accommodate an opening conference within this timeframe, you should contact me immediately. The scope of the examination will be for the period [applicable year] through present.

The State is hereby requesting that you issue a litigation hold notice so that all records, including, but not limited to, bank statements, bank reconciliations, outstanding check lists, detail general ledgers, aged accounts receivable reports, and if applicable, information surrounding gift certificate issuances and redemptions. The State requests that all records will be retained, notwithstanding any [Company Name] record retention policies to the contrary, until the examination is completed. The State expects your cooperation in making necessary records available for both past and present years for the purposes of determining [Company Name] compliance with the Statute. In addition to specific document requests that will be forthcoming, please have available all of [Company Name] prior years' reports of unclaimed property and supporting documentation for all states, including Delaware. You will be advised throughout the course of the examination of what records will be required to complete the review.

If [Company Name] is presently working with or intends to retain a third-party consultant to assist [Company Name] in the conduct of this examination, please provide me with the name and contact information of the third-party consultant. As expressly stated in the Delaware regulations, the retention of a third party is no basis to delay the examination or the production of records.

In closing, you are specifically requested to have the appropriate individual in your organization contact ("Firm contact") of ("Firm") at (xxx) xxx-xxxx within 7 days of receipt of this notice in order to facilitate the exchange of prefatory information and to discuss scheduling of an opening conference.

If you have any questions about this notice, you may contact me at (302) 577-8776. Please be assured that, although ("Firm") is performing the examination as the State's agent, I am the final arbiter of any disputes that may arise during the course of the examination. I look forward to resolving this examination in an expeditious and cooperative manner.

Sincerely yours,

Assistant Director and Audit Manager

2.7 Third-Party Advocates

2.7.1 Holders may retain third party advocates (the "Advocate") to assist them in the examination process. The retention of an Advocate is no basis to delay the commencement of the State's examination and the State

will not delay the examination so that the Advocate may conduct a review or its own audit of the Holder's books and records in advance of the State's examination. The State will cooperate with the Holder and its Advocate and keep both of them apprised of records requests, interviews and the progress of the audit in general. All records will be requested directly from the Holder.

2.7.2 The State's examination shall not be limited to a review of work papers, compilations or record summaries prepared by the Holder or the Advocate, but shall include access to such of the Holder's original books and records deemed by the State to be necessary to ascertain the Holder's compliance with the law. The State shall provide all requests and communications directly to the Holder and, if requested by the Holder, will also direct copies to the Advocate.

2.7.3 The practice of continually informing the Holder employees most likely to have first-hand knowledge of the Holder's day-to-day operations minimizes the potential for delays caused by miscommunications, ensures the Holder understands its obligations, and aids in furthering future compliance.

2.8 Confidentiality and Non-Disclosure Agreement ("NDA")

2.8.1 Holders are given the opportunity to enter into a NDA with the assigned auditor. The State has approved the proposed NDAs of the auditing firms with which it contracts and will not require the firm to edit language for purposes of the examination. If the Holder opts not to use the NDA approved by the State and the Holder and auditor cannot reach an agreement on the terms, the parties will rely on the confidentiality provisions of 12 Del.C. §1141(b).

2.8.2 The State and its agents are prohibited from disclosing the amount of abandoned or unclaimed property that has been reported to and received by the State by any Holder and disclosing the terms of or supporting documentation related to any annual filing, unclaimed property voluntary self-disclosure agreement, or settlement agreement resulting from the reporting of any unclaimed property.

2.8.3 Approved Non-Disclosure Agreement

The following is an example of a Non-Disclosure Agreement approved by the Department of Finance:

CONFIDENTIALITY & NONDISCLOSURE AGREEMENT

This Confidentiality & Nondisclosure Agreement (the "Agreement") is made and entered this ____ day of _____, 2015 by and between [auditing firm name], a [insert appropriate state's name] [insert appropriate business entity: corporation, limited liability company, etc.] ("[auditing firm name]") and _____, a _____, and its subsidiaries and related entities (collectively, the "Holder") (at times "[auditing firm name]" or the "Holder" may be referred to as a "Party" and collectively as the "Parties").

1. Introduction. [auditing firm name] is a contract auditor that has been authorized to conduct an unclaimed property examination (the "Examination") of the Holder by the state(s) identified on Exhibit A (hereinafter a "Participating State" or collectively, the "Participating States", and shall include any additional state or jurisdiction that may, during the course of the Examination, authorize [auditing firm name] to act as its agent and to perform an unclaimed property examination of the Holder) to determine the Holder's compliance with the Participating State(s)' unclaimed property laws, rules, and regulations. Upon receipt of any subsequent authorization, [auditing firm name] shall promptly provide the Holder with an updated Exhibit A.

2. Confidential Information, defined. During the course of the Examination, [auditing firm name] may have access to, or receive, confidential and/or proprietary information concerning the Holder including, but not limited to, materials relating to the administration of the Holder's business, operations, unclaimed property procedures and practices; financial information and/or accounting records; information regarding the Holder's current and former shareholders, members or partners, principals, directors, officers, employees, retirees, beneficiaries, customers, consumers, vendors, contractors, agents and other such representatives; and/or any other materials or information disclosed by the Holder or its principals, partners, directors, officers, employees, agents, consultants, advisors, legal counsel, accountants, and other such representatives (collectively "Representatives") to [auditing firm name] and its Representatives in connection with the Examination. All such information, including any materials derived therefrom, whether disclosed orally or in written (including electronic) form or otherwise, shall be considered by the Parties to be proprietary and confidential ("Confidential Information"). Confidential Information shall also include any report filing, voluntary self-disclosure agreement, or settlement agreement resulting from the Holder's reporting of any unclaimed property as well as any settlement, payment(s), or other interim or final resolution of the Examination. Confidential Information shall not include information or materials that are: (i) in the public domain not as a result of the violation of the undertakings herein; (ii) available to [auditing firm name] on a non-confidential basis prior to the Holder's disclosure of it to [auditing firm name], or (iii) hereafter made available to [auditing firm

name] on a non-confidential basis from a source other than the Holder, provided that such source in so acting is not violating any duty or agreement of confidentiality.

3. Non-Disclosure. [auditing firm name], in receiving Confidential Information from the Holder or its Representatives, will preserve the confidentiality of such Confidential Information and shall:

- a. restrict disclosure of such Confidential Information to [auditing firm name]'s Representatives having a "need to know" in connection with the Examination, and where such Representative is a third-party agent or contractor of [auditing firm name], ensure that said Representative is either: (a) a party to a non-disclosure agreement sufficient to protect the Holder's legal and equitable right in the Confidential Information; or (b) under a duty of confidentiality with respect to the Confidential Information as a result of a legally binding, regulatory, or statutory prohibition;
- b. advise its Representatives of the obligations of confidentiality hereunder with respect to the Confidential Information and ensure that its Representatives comply therewith;
- c. restrict disclosure of such Confidential Information to Representatives of a Participating State(s) having a "need to know" in connection with the Examination;
- d. use such Confidential Information solely for the purpose conducting the Examination, and not otherwise appropriate such Confidential Information for [auditing firm name]'s or its Representatives' own use or the use of any other person or entity; and
- e. use commercially reasonable efforts to maintain the confidentiality of the Confidential Information, but in no event less than those efforts [auditing firm name] uses to maintain the confidentiality of its own Confidential Information of a similar nature and/or those efforts required under applicable federal, state and/or local law.

4. Records Retention. [auditing firm name] shall retain the audit work papers (which may include the Confidential Information) in a secure environment for no longer than the period of time specified under the laws, rules or regulations of the Participating State(s) or [auditing firm name]'s contract with the Participating State(s), whichever is longer, at which time the records (inclusive of any Confidential Information) shall be destroyed; and [auditing firm name] shall certify in writing as to such destruction to the Holder using the following contact information: Contact Name & Title, Company, Street Address, City, State, Zip; Telephone Number; Email Address:

5. Application of Agreement. This Agreement shall apply solely to the Examination and shall not be construed to permit the disclosure of any Confidential Information to any other state or jurisdiction not listed on Exhibit A, absent the express written consent of the Holder. This Agreement may not be canceled or modified, nor any of its provisions be waived, except in writing signed by the Parties hereto or, in the case of a waiver, on behalf of the Party making the waiver. This Agreement constitutes the entire agreement and understanding of the Parties hereto and supersedes any and all prior agreements and understandings relating to the subject matter hereof. If it is found in a final judgment by a court of competent jurisdiction that any term or provision hereof is invalid or unenforceable: (i) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect; (ii) the invalid or unenforceable provision or term shall be stricken from this Agreement and the validity, binding effect and enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any manner.

IN WITNESS WHEREOF, the Parties have caused this Confidentiality & Non-Disclosure Agreement to be executed and delivered the day and year first above written.

HOLDER NAME

[auditing firm name]

Its subsidiaries and related entities

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

2.9 Opening Conference

- 2.9.1 Once an examination is assigned, an opening conference will be scheduled with the auditor and representatives of the Holder. Prior to the opening conference, the auditor will provide the Holder a list of documents which the Holder must produce in advance of or at the opening conference. These documents may include but are not limited to the following: tax returns (including consolidated and affiliation schedules), organization charts, charts of accounts, unclaimed property filing history (all states), prior completed and accepted voluntary disclosure agreements (VDAs) and examinations, and policies and procedures related to record retention, accounting, unclaimed property, or any other practices the State deems relevant to the examination. During the opening conference, by way of example and not limitation, the auditor will:

- Advise the Holder of the reporting requirements of the Delaware Abandoned or Unclaimed Property Law;
- Provide an overview of the examination process to include State approved methodologies, record availability, sampling and the potential for projection and estimation (if applicable);
- Identify the maximum time period to be covered by the examination and discuss potential scoping issues;
- Schedule a time period for field work to commence; and
- Request additional records and materials necessary to proceed with the examination.

2.9.2 The State shall have access to the Holder's original books and records and will not limit its examination to a review of work papers, compilations or record summaries created by the Holder. The State expects the Holder's full cooperation and anticipates that, with the Holder's cooperation, the time to complete a typical examination should not exceed twenty four (24) months. If an examination lasts longer than 24 months, the Abandoned Property Audit Manager will meet with the Holder to facilitate completion of the examination. Interest and penalty may be assessed pursuant to §1159 of the Escheats Law on all abandoned property due for all reporting years under examination. Interest and penalties may be abated at the discretion of the State Escheator.

2.10 Scope of Examination

2.10.1 The scope of the examination may be dependent upon many factors, including but not limited to the following:

- When an entity was incorporated, formed/created;
- When an entity began to engage in a particular line of business that may result in potential unclaimed property;
- Activity/materiality;
- Whether an entity was subject to a prior examination; and
- Whether an entity completed, and the State accepted, a VDA.

2.11 Examination

2.11.1 Depending on the facts and circumstances of the examination and in cooperation with the Holder, the auditor may conduct the examination on-site and/or remotely if records are available electronically or can be shipped. When available in electronic format, records should be produced electronically to maintain efficiency. 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. Furthermore, during the examination, the auditor may make subsequent requests to the Holder for additional books and records as required to complete the examination.

2.11.2 The auditor will retain copies of records deemed necessary or desirable in order to create a suitable record for the appeals procedure described in 12 Del.C. §1156.

2.11.3 Record requests have a deadline in order to move the examination forward and avoid unnecessary delays. The auditor should submit record requests to the Holder in writing, or if the request is made verbally, should follow up with written documentation of the request. The auditor should provide a reasonable timeframe for the Holder to respond to the request based on the type and extent of the information requested.

2.11.4 Holders will be given the opportunity to review, reconcile, remediate and, where applicable under Delaware law, perform due diligence on any items that have been identified as potential unclaimed property. The auditor will verify that the Holder has mailed due diligence letters to the owner's last known address. The auditor will conduct meetings with the Holder in order to provide guidance regarding the due diligence process and to ensure the Holder is performing the outreach within the timelines established by the State. The form of the due diligence letter must be approved by the State, and all due diligence letters should be submitted to the auditors for review and approval prior to sending out.

2.11.5 The examination may be divided into multiple parts by property types and report years for the convenience of both the State and the Holder. Thus, portions of examinations may be concluded while other portions remain ongoing. At all times, the State, through its auditors, will keep the Holder informed of any such division of the examination.

2.11.6 The Holder will be kept informed of the progress of the examination and may contact the State directly to address issues or concerns. The Holder has the right to contact the State directly to address issues arising from or related to the examination, including the right to report alleged misconduct, unethical behavior, or lack of professionalism on the part of the auditor.

2.11.7 At the end of any defined portion of the examination, the auditor will present the preliminary findings to the Holder. These findings are not final. The preliminary findings, at that point, identify in detail the work performed, property types reviewed, the time period reviewed, any estimation techniques employed, and a calculation showing the potential amount of unclaimed property due and owing. The auditor will allow the Holder reasonable time to complete required research and gather more records to address matters raised in the preliminary findings.

2.12 **Reportable Property Types**

2.12.1 Commonly reported types of Unclaimed Property along with the National Association of Unclaimed Property Administrators ("NAUPA") Property Type Codes with Applicable Dormancy Periods are as follows:

<u>NAUPA Code</u>	<u>Property Type</u>	<u>Dormancy Period (Years)</u>
<u>ACCOUNT BALANCES</u>		
<u>AC01</u>	<u>Checking Accounts</u>	<u>5</u>
<u>AC02</u>	<u>Savings Accounts</u>	<u>5</u>
<u>AC03</u>	<u>Mature CD or Save Cert</u>	<u>5</u>
<u>AC04</u>	<u>Christmas Club</u>	<u>5</u>
<u>AC05</u>	<u>Money on deposit to secure fund</u>	<u>5</u>
<u>AC06</u>	<u>Security Deposit</u>	<u>5</u>
<u>AC07</u>	<u>Unidentified Deposit</u>	<u>5</u>
<u>AC08</u>	<u>Suspense Accounts</u>	<u>5</u>
<u>UNCASHED CHECKS</u>		
<u>CK01</u>	<u>Cashier's Checks</u>	<u>5</u>
<u>CK02</u>	<u>Certified Checks</u>	<u>5</u>
<u>CK03</u>	<u>Registered Checks</u>	<u>5</u>
<u>CK04</u>	<u>Treasurer's Checks</u>	<u>5</u>
<u>CK05</u>	<u>Drafts</u>	<u>5</u>
<u>CK06</u>	<u>Warrants</u>	<u>5</u>
<u>CK07</u>	<u>Money Orders</u>	<u>5</u>
<u>CK08</u>	<u>Traveler's Checks</u>	<u>15</u>
<u>CK09</u>	<u>Foreign Exchange Checks</u>	<u>5</u>
<u>CK10</u>	<u>Expense Checks</u>	<u>5</u>
<u>CK11</u>	<u>Pension Checks</u>	<u>5</u>
<u>CK12</u>	<u>Credit Checks or Memos</u>	<u>5</u>
<u>CK13</u>	<u>Vender Checks</u>	<u>5</u>
<u>CK14</u>	<u>Checks Written Off To Income</u>	<u>5</u>
<u>CK15</u>	<u>Other Outstanding Official Checks</u>	<u>5</u>
<u>CK16</u>	<u>CD Interest Checks</u>	<u>5</u>
<u>EDUCATIONAL SAVINGS ACCOUNTS (ESEA)</u>		
<u>CS01</u>	<u>ESA - Cash</u>	<u>5</u>
<u>CS02</u>	<u>ESA - Mutual Funds</u>	<u>5</u>
<u>CS03</u>	<u>ESA - Securities</u>	<u>5</u>
<u>COURT DEPOSITS</u>		
<u>CT01</u>	<u>Escrow Funds</u>	<u>5</u>
<u>CT02</u>	<u>Condemnation Awards</u>	<u>5</u>
<u>CT03</u>	<u>Missing Heir's Funds</u>	<u>5</u>
<u>CT04</u>	<u>Suspense Accounts</u>	<u>5</u>
<u>HEALTH SAVINGS ACCOUNT (HSA)</u>		
<u>HS01</u>	<u>Health Savings Account</u>	<u>5</u>

HS02	Health Savings Account Investment	5
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INSURANCE

IN01	Individual Policy Benefits or Claim Payments	5
IN02	Group Policy Benefits or Claim Payments	5
IN03	Proceeds Due Beneficiaries	5
IN04	Proceeds from Matured Policies, Endowments or Annuities	5
IN05	Premium Refunds	5
IN06	Unidentified Remittances	5
IN07	Other Amounts Due Under Policy Terms	5
IN08	Agent Credit Balances	5

MINERAL PROCEEDS

MI01	Net Revenue Interest	5
MI02	Royalties	5
MI03	Overriding Royalties	5
MI04	Production Payments	5
MI05	Working Interest	5
MI06	Bonuses	5
MI07	Delay Rentals	5
MI08	Shut-in Royalties	5
MI09	Minimum Royalties	5

MISCELLANEOUS INTANGIBLE PROPERTY

MS01	Wages, Payroll, Salary (payroll cards)	5
MS02	Commissions	5
MS03	Workers Compensation Benefits	5
MS04	Payments For Goods & Services	5
MS05	Customer Overpayments	5
MS06	Unidentified Remittances	5
MS07	Unrefunded Overcharges	5
MS08	Accounts Payable	5
MS09	Credit Balance - Accounts Receivable	5
MS10	Discounts Due	5
MS11	Refunds Due	5
MS12	Unredeemed Gift Certificates	5
MS13	Unclaimed Loan Collateral	5
MS14	Pension & Profit Sharing	5
MS15	Dissolution or Liquidation	5
MS16	Miscellaneous Outstanding Checks	5
MS17	Miscellaneous Intangible Property	5
MS18	Suspense Liabilities	5

SECURITIES

SC01	Dividends	3
SC02	Interest (Bond Coupons)	3
SC03	Principal Payments	3
SC04	Equity Payments	3
SC05	Profits	3
SC06	Funds Paid to Purchase Shares	3
SC07	Funds for Stocks & Bonds	3

<u>SC08</u>	<u>Shares of Stock (Returned by Post Office)</u>	<u>3</u>
<u>SC09</u>	<u>Cash for Fraction Shares</u>	<u>3</u>
<u>SC10</u>	<u>Unexchanged Stock of Successor Corp</u>	<u>3</u>
<u>SC11</u>	<u>Other Certificates of Ownership</u>	<u>3</u>
<u>SC12</u>	<u>Underlying Shares or other Outstanding Certificates</u>	<u>3</u>
<u>SC13</u>	<u>Funds for Liquidation / Redemption of Unsurrendered Stock or</u> <u>Bonds</u>	<u>3</u>
<u>SC14</u>	<u>Debentures</u>	<u>3</u>
<u>SC15</u>	<u>U S Govt Securities</u>	<u>3</u>
<u>SC16</u>	<u>Mutual Fund Shares</u>	<u>3</u>
<u>SC17</u>	<u>Warrant (Rights)</u>	<u>3</u>
<u>SC18</u>	<u>Mature Bond Principal</u>	<u>3</u>
<u>SC19</u>	<u>Dividend Reinvestment Plans</u>	<u>3</u>
<u>SC20</u>	<u>Credit Balances</u>	<u>3</u>

TANGIBLE PROPERTY

<u>SD01</u>	<u>SD Box Contents</u>	<u>5</u>
<u>SD02</u>	<u>Other Safekeeping</u>	<u>5</u>
<u>SD03</u>	<u>Other Tangible Property</u>	<u>5</u>

FIDUCIARIES

<u>TR01</u>	<u>Paying Agent Account</u>	<u>3</u>
<u>TR02</u>	<u>Undelivered or Uncashed Dividends</u>	<u>3</u>
<u>TR03</u>	<u>Funds held in Fiduciary Capacity</u>	<u>3</u>
<u>TR04</u>	<u>Escrow Accounts</u>	<u>3</u>
<u>TR05</u>	<u>Trust Vouchers</u>	<u>3</u>
<u>IR01</u>	<u>Traditional IRA - Cash</u>	<u>3</u>
<u>IR02</u>	<u>Traditional IRA - Mutual Funds</u>	<u>3</u>
<u>IR03</u>	<u>Traditional IRA - Securities</u>	<u>3</u>
<u>IR05</u>	<u>Roth IRA - Cash</u>	<u>3</u>
<u>IR06</u>	<u>Roth IRA - Mutual Funds</u>	<u>3</u>
<u>IR07</u>	<u>Roth IRA - Securities</u>	<u>3</u>

UTILITIES

<u>UT01</u>	<u>Utility Deposits</u>	<u>5</u>
<u>UT02</u>	<u>Membership Fees</u>	<u>5</u>
<u>UT03</u>	<u>Refunds or Rebates</u>	<u>5</u>
<u>UT04</u>	<u>Capital Credit Distributions</u>	<u>5</u>

2.13 Projection and Estimation

- 2.13.1 If for certain periods the amount of reportable property cannot be ascertained from the books and records of the holder, projection and estimation techniques may be used to determine the reportable amounts for such periods. Such determination shall be made by first examining records during periods in which records exist to establish a "base period" of data from which statistical inferences can be made for periods in which records are incomplete or do not exist. Names and addresses identified in the base period shall not be used to determine which state has the priority claim to the abandoned property estimated to be due over periods where records of owners' addresses do not exist.
- 2.13.2 All sampling, projection and estimation techniques used by the auditor to determine unclaimed property due to Delaware shall be a method approved by Delaware prior to use. The auditor may suggest or the State may request, guidance necessary for the State to make an informed decision as to which estimation technique would be most appropriate for the facts and circumstances at hand. The State will permit the Holder to comment on or suggest an alternative technique. The State's decision to employ a particular technique is final. The Holder may challenge this decision at the close of the examination.

2.13.3 Delaware's approved sampling process for estimating a property holder's unclaimed property liability includes the following steps:

2.13.3.1 Define the population:

2.13.3.1.1Base period – Period of time where complete records are available

2.13.3.1.2Sampling unit – Examples include aged checks or customer net credit balances

2.13.3.1.3Remove potential anomalies – Outliers, duplicate records, errors

2.13.3.2 Determine appropriate stratification (if necessary)

2.13.3.2.1Number of strata

2.13.3.2.2Stratum boundaries

2.13.3.3 Calculate Sample size

2.13.3.3.1Desired confidence

2.13.3.3.2Desired precision

2.13.3.4 Perform random computerized sample selection

2.13.3.5 Verified achieved precision goals

2.13.3.6 Evaluate results

2.13.3.6.1Appropriateness of projecting deviations

2.13.3.6.2Application of ratio estimator

2.13.4 Holders will be given the opportunity to review, reconcile, remediate and perform remediation outreach on any items that have been identified as potential unclaimed property. The form of the outreach letter must be approved by the State, and all letters should be submitted to the auditors for review and approval prior to sending out. The Holder must provide confirmation of the date of the outreach mailing to the auditor.

2.13.5 The sole purpose of determining an estimated liability in a time period where records exist is for calculating an unclaimed property liability in years where records do not exist. The use of statistical sampling for estimation shall be used, therefore, where (a) prior approval is received by the State; and (b) records are not available and the names and address of rightful owners cannot be identified.

2.13.6 **Approved Remediation Outreach letter**

The following is an example of a "remediation outreach" letter approved by the Department of Finance:

<Holder Letterhead>

<Date>

<Owner Name/Address>

Dear <Owner>.

Our records indicate that the check detailed below, issued to <Owner>, has not cleared the bank. In order for us to determine whether this obligation is still due and owing or whether the obligation may have been satisfied, we are requesting that you please review your records and respond back to us as to your findings. After reviewing your records, complete the form below and return it to us within 10 days. If your address has changed, please provide the new address as well as a telephone number.

If a response is not received, the States' unclaimed property laws may require us to remit the funds to the State of your last known address (i.e. the State listed on the address block of this letter). The State will hold the funds in perpetuity or until you claim the funds from the State.

<u>Check Number</u>	<u>Date Issued</u>	<u>Invoice</u>	<u>Invoice Date</u>	<u>Amount</u>
☐ 123456	04/04/2001	Inv 9999	03/15/2001	\$250.00

☐ Check the appropriate box below and return this confirmation to us:

☐ I have reviewed my records and have determined that the check listed above is owed to my Company. Please issue a replacement check.

☐ I have reviewed my records and was unable to determine whether the check listed above is owed to my Company.

☐ I have reviewed my records and have determined that the check listed above is not owed to my Company as it was settled **more than two years prior to** the date of this letter.

I have reviewed my records and have determined that the check listed above is not owed to my Company. Payment was settled **within two years** of the date of this letter by:

receiving a subsequent payment on _____, or
through a settlement agreement on _____, or
through some other method on _____.
If other method, please explain and include all applicable dates: _____

Please sign here: _____

Print name and title here: _____

Business telephone number: _____

Address (if other than above): _____

Sincerely,

<Signature>

<Printed name of holder contact person><Holder Phone Number>

<Holder Name>

<Holder Address>

2.14 Entity Sampling

In some circumstances where the Holder has not maintained records for the entire examination period, the State may elect to sample a number of entities of a Holder during an examination in lieu of testing all Delaware entities. The auditors will identify an appropriate sampling of entities based upon factors such as, but not limited to, the following: revenue, line of business, commercial activity, and property types being held. The results of the detailed testing of these entities will be extrapolated, if applicable, to the other appropriate Delaware entities that have not been selected for detailed review to determine the liability due to the State. The Holder will be given the option to use this sampling methodology or to test all entities that fall within the scope of the examination.

2.15 Bankruptcy

If at any time before or during the course of an examination the Holder files for bankruptcy, the Holder shall give notice of the filing to the auditor. The auditor will, within seven (7) calendar days of the holder's notice or the discovery of the event, notify the State of the bankruptcy filing. The auditor will assist the Escheator to ensure that a proper proof of claim is filed timely in the bankruptcy action.

2.16 Statement of Findings and Request for Payment

2.16.1 If the Audit Manager determines at the conclusion of the examination that the Holder has not reported or underreported the amount of unclaimed property due to the State, the State will issue a statement of findings and request for payment to the Holder. This letter will outline the findings of the examination and make a formal demand for the property under question. The Holder has sixty (60) days to directly remit to the State of Delaware any abandoned property identified during the examination as owed to the State of Delaware. The Holder's appeal rights to contest all or part of the findings as outlined in 12 Del.C. §1156 are triggered by the statement of findings and request for payment.

2.16.2 The State may bifurcate or divide the examination by property type and year and issue a statement of findings and request for payment for a portion or portions the examination while other portions of the examination remain ongoing. An examination is deemed to be complete for any category of property as of the date on which the Audit Manager mails the statement of findings and request for payment as described in 12 Del.C. §1156(a) for that category of property and time period.

2.17 General Information

The Holder is encouraged to take advantage of the voluntary disclosure agreement process for educational purposes to assist in revising and establishing its own abandoned property policies and procedures.

For more information on abandoned property Voluntary Disclosure Agreements and/or examinations, please contact the Audit Manager at the following address:

Delaware Department of Finance

Office of Unclaimed Property

Abandoned Property Audit Manager
820 North French Street
Wilmington, DE 19801

Please visit the State's unclaimed property website, http://finance.delaware.gov/unprop/unprop_holders.shtml, for current contact information.

19 DE Reg. 723 (02/01/16) (Prop.)