
Delaware Unclaimed Property Compliance

November 14, 2019

Brenda Mayrack, State Escheator and Director, Office of Unclaimed Property
Delaware Department of Finance

Sonia Walwyn, Director, Unclaimed Property and Tax Risk Advisory, Duff & Phelps

Scott Regan, Director, Unclaimed Property and Tax Risk Advisory, Duff & Phelps

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Agenda

Section 1: Introduction to Unclaimed Property

Section 2: Overview of Delaware's Unclaimed Property Program

Section 3: Comparison of Delaware's Voluntary Compliance v. Audit Programs

Section 4: What's on Your Mind, Questions?

Learning Objectives

- Receive information on of all aspects Delaware's Unclaimed Property Statute, rewritten and reenacted in 2017, and how it could impact your business.
- Learn about Delaware's Voluntary Disclosure and Audit Programs and best practices for complying with either program.
- Gain overview of the ins and outs out Delaware unclaimed property filing requirements.
- Understand Delaware's annual compliance review process and what to expect if your company is selected for review.
- Discuss Delaware's owner reunification efforts and how your company can help owners receive their funds.

Section 1

Introduction

Introduction

- Roots of modern unclaimed property law is based on English common law
- All fifty states, Washington D.C., the five U.S. territories and three Canadian Provinces have laws which are custodial in nature.
- States stand in the shoes of the rightful owner – but use collected property for the benefit all citizens in the state.
- Purpose of the laws is safekeeping and to reunite owners
- It is an important source of temporary funding for many states

Introduction

- Property that has not been claimed by an “Owner” for a specified period of time (dormancy period) is considered abandoned or unclaimed.
- After the statutorily defined holding periods, the “Holder” has an obligation to file annual reports and remit the property to the appropriate states.
- Must be a fixed and certain obligation of the Holder to the Owner.
- Rules of jurisdiction established in 1965 in U.S. Supreme Court case *Texas v. New Jersey* 379 U.S. 674.

Which State Rules?

Company's
State of
Incorporation

Last Known
Address of
Owner



Introduction

Numerous Property Types

Trade payable	Commissions and bonuses
Vendor checks	Expense checks
Payroll	Mineral proceeds and royalties
Refunds	Stocks and bonds
Money	Retirement assets
Unapplied cash	Demand deposit accounts and CD's
Deposits	Unexchanged shares
Dividends	Safe deposit boxes
Credit memos	Rebates
Workers compensation checks	Gift instruments
Un-cashed flexible spending checks	Accounts receivable credits

Introduction

- The Uniform Law Commission (“ULC”) first established a uniform state unclaimed property act in 1954, with revisions in 1981 and 1995
- In July 2016, during its annual meeting, the ULC approved its “[Revised Uniform Unclaimed Property Act](#)” or “RUUPA”
- States are beginning to enact legislation inspired on RUUPA
- Delaware was early adopter of a RUUPA inspired unclaimed property act with the enactment of Senate Bill 13 in February 2017
- Moving toward uniformity but nuances remain based on needs of each jurisdiction:
 - Dormancy periods by property type
 - Due diligence requirements
 - Filing deadlines
 - Reporting and remitting protocols

Section 2

Overview of Delaware's Unclaimed Property Program by Brenda Mayrack



OFFICE OF UNCLAIMED
PROPERTY

**Unclaimed Property Compliance
Duff & Phelps**

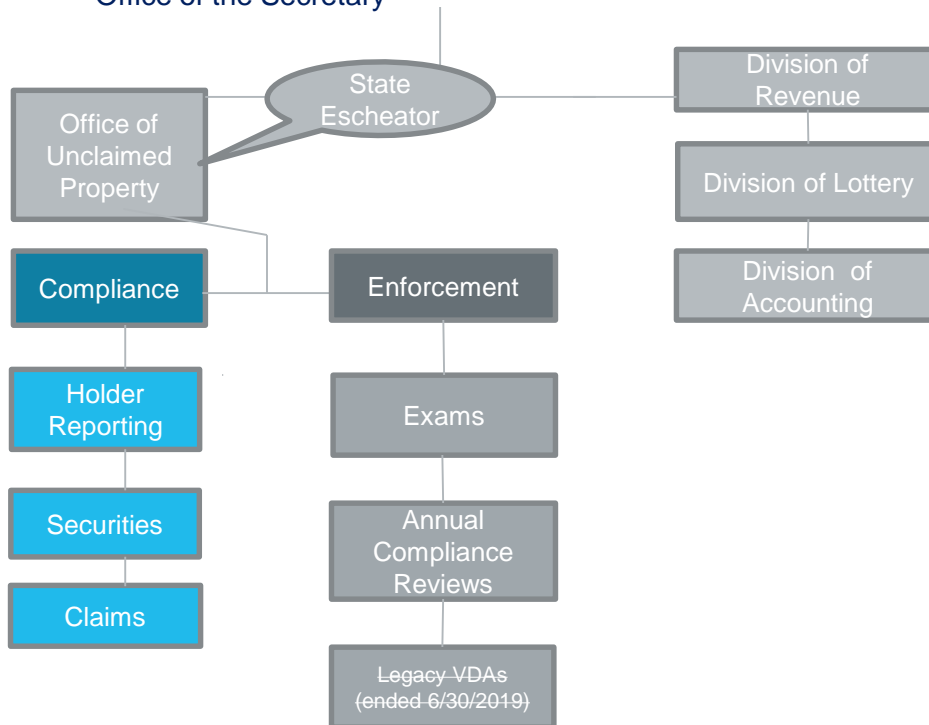
Brenda Mayrack, Delaware State Escheator

November 14, 2019

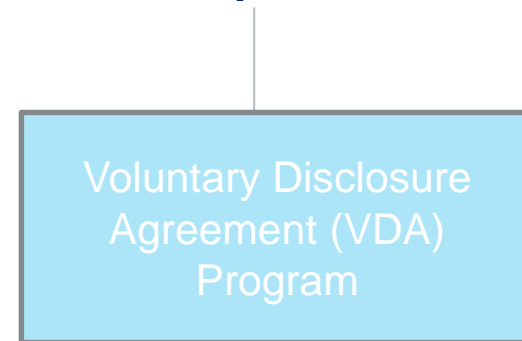
Structure

Department of Finance

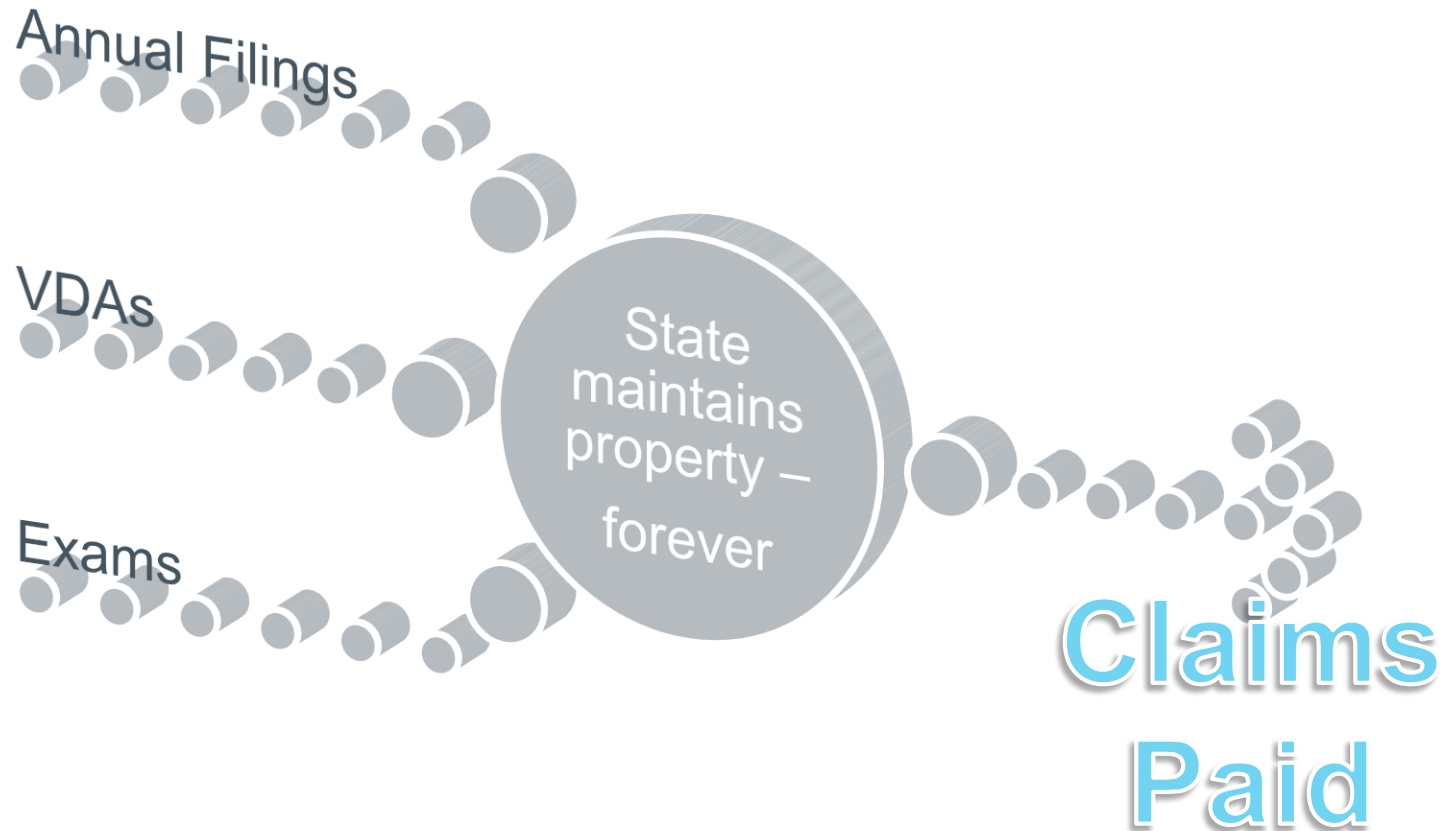
Office of the Secretary



Department of State

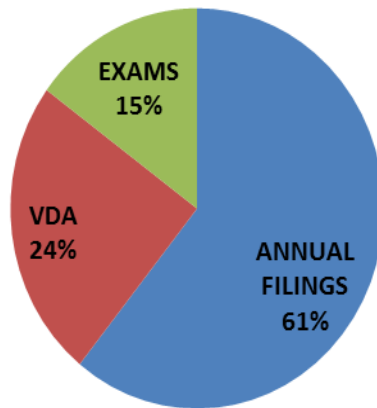


Delaware OUP Overview

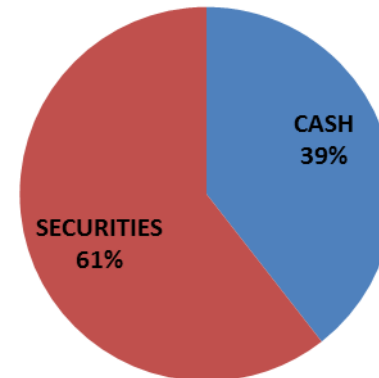


Sourcing – FY18

Compliance v. Enforcement - FY 18



Cash v. Securities - FY 18



Delaware Landscape



- Delaware's Corporate Franchise
 - 1.3 million legal entities
 - 66% of Fortune 500
 - Built on a reputation for *efficiency, predictability, and fairness*
- Approximately 10,000 unique unclaimed property filers annually
- A Compliance Gap: Many Delaware legal entities with unclaimed property liability likely are not reporting to Delaware and other states.
 - Parent
 - Subsidiaries and affiliated entities
 - Property types
 - Reporting Gaps (due to retirement, etc.)

Priorities – for Holders



- **Annual Reporting**
 - *If not reporting, begin reporting*
- **Voluntary Compliance (i.e., SOS VDA)**
 - *If have historical exposure, sign up for the SOS VDA program*
- **Enforcement**
 - *Last resort*
 - *Only as needed to promote compliance*
 - *Where holder has not voluntarily complied in annual reports or VDA*
 - *Likely involves:*
 - *Examination of books & records to determine liability*
 - *Interest & Penalties*

Annual Reporting – State’s View



- **Dormancy Period**
 - 5 years – most property types
 - 3 years – securities
- **Online reporting required**
 - Upload NAUPA File
 - Manual Entry
- **No paper/disk reports accepted after March 1, 2018**
- **Deadlines**
 - Banks: 11/10
 - Insurance: 12/20
 - All Other Holders & Businesses Associations: 3/1
- **Negative reports accepted but not required**
- **Owner outreach (“Due Diligence”) required for all cash property > \$50 and for all securities property**
- **OUP sends filing reminders to holders**
- **Extension requests accepted**



Voluntary Disclosure Agreements (VDAs)



- Administered by Secretary of State (“SOS”)
- If holder receives invite from SOS, and does not opt in to VDA Program, holder will receive exam notice after 60 days
- 2-year process
- Holder-directed review
- VDA will reflect scope of review
 - (entities, property types)
- Penalties & interest waived

Annual Compliance Reviews



- **Established by SB 13 (12 Del. C. § 1170)**
- **Selecting holders based on certain criteria and at random for review**
- **Opportunity for holder to remedy any errors in filing without an exam**
- **Educational opportunities for holders without regulatory consequence**
 - Policies & Procedures
- **Respond promptly to requests**
 - Designation of holder type requests
- **Do not ignore, or will be escalated for enforcement**

Annual Compliance Reviews



- **Based on common holder reporting errors & filing history**
 - Paper filing
 - Late
 - Incorrect Information
 - Variance by year
 - Variance by Property type
 - Variance with comparable holders/industry
- **Non-filers will be asked to file a Verified Report**
- **Targeted selection of filers for additional review**
 - Completed within one year
 - Not an exam
 - Abbreviated review of filing
 - Opportunity to correct errors in report
- **Non-response → escalation**



- » **All holders receive an invitation to the VDA Program before receiving a Notice of Examination**
 - Delaware Registered Agents receive a copy
 - Holder has 60 days to enter VDA program
 - **After 60+ days, Holder will receive Notice of Examination, unless Holder has entered VDA program.**

- » **Exam Process**
 - Interest & Penalties
 - Expectation is that all exams are completed within 2-3 years
 - Holders have 30-60 to respond to all IDRs, or
 - 30-day letter
 - Subpoena, if necessary

Claims

- **Searchable online database**
 - Smart device accessible
 - Process improvements
 - Technology improvements
 - Fraud prevention enhancements
- **Holders are also “owners” and may claim property.**
 - Holder reimbursement claims
 - Wrongful escheatment
 - Business as owner claims
 - » Must designate & authorize representative to file claims
- Business Claimants must prove
 - Identity / Authority to claim on behalf of business
 - Right to the property / relationship with holder



What Can Holders Do?



- **Implement robust policies & procedures to track potential unclaimed property, conduct owner outreach, and report to all states.**
- **Comply with annual unclaimed property reporting deadlines and requirements for all jurisdictions.**
- **If company is not reporting annually to Delaware, begin filing annually and consider the SOS VDA program for historical liability for Delaware legal entities.**
 - Other states offer a variety of VDA/amnesty programs.
- **Search for unclaimed property owed to company as an owner and pursue claims in all states.**
- **If correspondence received regarding Delaware unclaimed property, treat it seriously and respond in timely manner.**
 - Annual Reporting Reminder / Follow-Up Request
 - Invitation to SOS VDA Program
 - Annual Compliance Review Request
 - Notice of Examination
- **Escalate to company leadership, if needed, to ensure that sufficient internal and external resources are available to meet compliance obligations.**



Contact Information



Brenda R. Mayrack

State Escheator / Director, Office of Unclaimed Property

Brenda.Mayrack@delaware.gov

D: 302-577-8891

<https://unclaimedproperty.delaware.gov>

Section 3

Comparison of Delaware's Voluntary Compliance v. Audit Programs

Comparison of Delaware's Voluntary Compliance v. Audit Programs

- If your firm receives an invitation to Delaware's VDA program – it is advisable to enroll in the program.
- It is important to ensure that senior management is aware of this initiative and is consistently monitoring for receipt of an invitation.
- Most view the VDA program as more advantageous, allowing a company to complete the process more rapidly and efficiently.
- Both programs could require the creation of an estimation or extrapolation if sufficient researchable records do not exist during Delaware's 15 year look back period.
- There are distinct differences and similarities in the review processes for VDAs and audits.

Comparison of Delaware's Voluntary Compliance v. Audit Programs

- Key **distinct differences** between VDAs and audits:

- Aging criteria for population selection
- Base period selections
- Credit for historical filings
- Base for estimation calculations
- Abatement of interest and penalties
- Remediation review

Comparison of Delaware's Voluntary Compliance v. Audit Programs

- Key **similarities** between VDAs and audits:

- Scope of review (reach back period)
- Use of statistical sampling
- Use of estimations

Comparison of Delaware's Voluntary Compliance v. Audit Programs

- The VDA program allows a company to avoid spending time educating a third party audit firm on the ins and outs of its business practices, systems and records availability.
- Generally it has been the case that VDAs take less time than audits.
- Third party audit firms maintain contract with most states, so a third party conducted audit generally includes states other than Delaware.

Comparison of Delaware's Voluntary Compliance v. Audit Programs

- For those in the VDA program, it is advisable to take this initiative as an opportunity to confirm compliance with all jurisdictions and consider VDA and compliance options in other jurisdictions.
- Delaware recommends companies engaged in either program to select an experienced advisory firm for guidance.
- Both efforts require significant participation from internal resources and it is advisable to seek executive level participation.
- At the end of either program, it is advisable to implement policies and procedure to ensure robust prospective compliance with unclaimed property laws.

Unclaimed Property Services

Risk assessments

Remediation

Statistical sampling and extrapolation

Voluntary disclosure agreements

Audit defense

Policy and procedure development

Education and training

Litigation and legislation updates and interpretation

Outsourced annual compliance

Outsourced asset recovery

Sonia Walwyn

Director, Unclaimed Property and Tax Risk Advisory



Duff & Phelps
Chicago, IL
+1 312 697 4662
Sonia.Walwyn@
duffandphelps.com

Sonia Walwyn is a Director in the Chicago office and part of the tax services group with specific oversight and responsibility in the area of abandoned and unclaimed property (unclaimed property). Sonia has almost 25 years of experience assisting clients, across all industry sectors, gain effective compliance in the area of unclaimed property while maximizing overall savings and efficiencies for her clients.

Throughout her career, Sonia has utilized her extensive unclaimed property knowledge and experience to assist clients in all areas of unclaimed property services. Specifically, Sonia provides audit support services by successfully assisting clients manage and defend against state-initiated audits; quantifies fair estimates and effecting favorable settlements for clients not contacted for audit through proactive reviews and quantification of liability. Sonia also assists companies develop and implement essential written policies and procedures to ensure not just timely but accurate compliance and works with clients to implement effective planning strategies to legitimately minimize unclaimed property liability prospectively.

Sonia is a frequent speaker on abandoned and unclaimed property topics for different industry groups and educational summits sponsored by various certified public accountant chapters including the Pennsylvania Institute of Certified Public Accountants, Tax Executive Institute and the Unclaimed Property Professional Organization (UPPO), where she currently serves as chairperson of the bylaws committee. Sonia has authored articles on unclaimed property for publication in industry journals such as the Journal of Accountancy and has conducted in-house and external audit training in the area of unclaimed property. Sonia has also qualified as an expert in abandoned and unclaimed property litigation.

Sonia served as sworn Deputy Treasurer/Deputy General Counsel to the Pennsylvania State Treasurer with responsible for, among other things, audit and legal enforcement of Pennsylvania's unclaimed property law and successfully defended Pennsylvania's unclaimed property statute before the Pennsylvania Supreme Court. Sonia has also worked for two Big 4 accounting firms serving as National Director and regional practice leader respectively as well as for a regional firm providing consulting and advisory services in the area of unclaimed property.

Sonia earned an LLM in taxation from Villanova School of Law in 2000, a J.D. from Dickinson School of Law in 1988 and holds a B.S. in accounting from Elizabethtown College in Pennsylvania. Sonia is a member in good standing of the Pennsylvania Bar and is a licensed CPA in Pennsylvania and Illinois.

Scott Regan

Director, Unclaimed Property and Tax Risk Advisory



Duff & Phelps
Philadelphia
+1 215 430 6046
Scott.Regan@
duffandphelps.com

Scott Regan is a Director in Duff & Phelps' Unclaimed Property and Tax Risk Advisory practice in Philadelphia. He has over 13 years of experience advising large public and private companies on developing unclaimed property compliance programs. Scott's clients have included the country's largest banks, brokerages, mutual funds, manufacturers, pharmaceutical companies, healthcare providers, insurance carriers, retailers, utility providers, social media companies and FINTEC.

Prior to joining Duff & Phelps, Scott spent 11 years at Keane as an Executive Vice President. During his career, he has helped hundreds of companies address their unclaimed property compliance obligations by building custom programs that include risk assessments, remediation strategies, voluntary disclosure programs, asset recovery and outsourced annual compliance and reporting. He is particularly experienced in providing guidance with regards to single and multi-state unclaimed property audit and voluntary disclosure programs. Scott is an experienced unclaimed property subject matter expert, conference and webinar speaker and digital content creator.

Scott holds a Bachelor of Arts in History from Hamilton College and is a member of the Unclaimed Property Professionals Organization (UPPO).