
**SECRETARY OF STATE
IMPLEMENTING GUIDELINES¹
Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program**

I. Overview

The Secretary of State is committed to administering the new voluntary disclosure agreement program, under Section 1177 of Title 12 of the Delaware Code (The “New VDA Program”), in a manner that is business-friendly and that fairly enforces the abandoned or unclaimed property law, which law is set forth in Chapter 11 of Title 12 of the Delaware Code (the “Abandoned Property Law”).

The New VDA Program is available to all business entities who have abandoned or unclaimed property on their books and records which may be owed to Delaware (each a “Holder”), and provides the greatest benefit to Delaware domiciled business entities that are not currently under audit or participating in the prior voluntary disclosure agreement program as of June 30, 2012. To be clear, the New VDA Program is not an audit, and the Holder and their Advocate Firms are expected to conduct a detailed self-review of the Holder’s books and records in order to determine if the Holder has any past due unclaimed property based on transactions beginning as early as January 1, 1996.² Property subject to being reported and remitted to Delaware pursuant to the Abandoned Property Law is defined in 12 Del. C. § 1198 and 1170. Common examples of abandoned or unclaimed property on the books and records of Holders include:³

- Outstanding or Voided Accounts Payable or Vendor Disbursements
- Outstanding or Voided Payroll Disbursements
- Accounts Receivable Credit Balances
- Unclaimed Customer Deposits
- Unidentified Cash/Miscellaneous Income General Ledger Accounts
- Suspense and/or UP General Ledger Liabilities
- Outstanding or Voided Self-Insurance Claim Payments
- Outstanding or Voided Flexible Spending Account Claim Payments
- Outstanding Retirement Account Distributions
- Unredeemed Gift Card/Certificate Balances

¹ The Implementing Guidelines (“Guidelines”) are applicable only to the New VDA Program, and companies who are being audited by the Delaware State Escheator, either currently or in the future, should not rely on these Guidelines.

² Although Holders are not required to retain advocate firms to assist them in their self-review, consulting with professional firms that specialize in unclaimed property compliance is encouraged, as such firms can make the VDA process more efficient.

³ These examples are typical property types on the books and records of most Holders and are for illustrative purposes only. This is not intended to imply that other categories will not be covered in a VDA agreement. For example, this list does not consider unique accounts of a securities company or equity accounts, or insurance specific property types.

- Unclaimed Rebates
- Untendered Stock Certificates or Bonds
- Unclaimed Royalty Payments
- Unclaimed Checking, Savings and/or CD Accounts
- Other Holder-specific Property Types

The New VDA Program provides a unique and narrow window for Holders to voluntarily report any abandoned or unclaimed property on their books and records and, in so doing, both protect themselves from future audits, while reducing the period for which they must remit abandoned and unclaimed property to the State. Even Holders who believe they are in compliance with the Abandoned Property Law will receive greater certainty by going through the New VDA Program by virtue of the Holder receiving a broad release of all historic unclaimed property liability, as well as audit protection. Once a Holder is enrolled, and then after a VDA-2 agreement is executed, the Holder will be exempt from audit by the Division of Revenue concerning abandoned or unclaimed property except under the limited circumstances described herein.

A significant benefit of the New VDA Program is that by enrolling, Holders reduce the time period required to report their abandoned or unclaimed property liability, and very likely, the total amount of their unclaimed or abandoned property liability (“UP liability”). If a Holder is subjected to an abandoned and unclaimed property audit, the audit would review the Holder’s books and records back to 1981.⁴ Under the prior voluntary compliance program, the Holder was expected to submit information dating back to 1991. Under the New Program, a Holder can come into compliance with the Abandoned Property Law by submitting appropriate documentation dating back to 1996 if the Holder executes Form VDA-1 by June 30, 2013 (or 1993 if the Holder executes Form VDA-1 from July 1, 2013 to June 30, 2014). This represents as much as a 15-year reduction in liability.

As an additional incentive for Holders to join the New VDA Program, the Secretary of State is waiving its right to audit the Holder after the final form of release agreement (the VDA-2) is executed, unless (1) there is evidence of fraud or willful misrepresentation by the Holder in its participation in the New VDA Program, or (2) the Holder fails to fulfill its future annual reporting requirements for the next three reporting cycles. This is in contrast to most state VDA Programs, including Delaware’s prior VDA program, which typically give a state the right to audit the VDA for some period of time after the final VDA is submitted.

The State’s overarching goal with respect to the New VDA Program is to increase the number of annual abandoned or unclaimed property compliance filings, and decrease the number of audits. As a result, the New VDA Program has been structured to be user-friendly, efficient and predictable.

Through an RFP process, the Secretary of State has retained the services of Drinker, Biddle & Reath LLP to serve as the new VDA program administrator (the “VDA Administrator”). The

⁴ Pursuant to 16 DE Reg. 530 (which became final on December 1, 2012), the State Escheator is temporarily auditing Holder records back to 1986. For Holders that received a notice of audit after December 1, 2012 and for Holders who do not complete the audit by June 30, 2015, the State Escheator is continuing its policy of examining records created on or after January 1, 1981.

VDA Administrator's compensation will not be dependent on the amount of abandoned or unclaimed property recovered by the State. Members of the VDA Administrator firm are seasoned professionals in the abandoned property field who have represented Holders defending unclaimed property audits. The VDA Administrator will be appropriately diligent and thorough in working with Holders and their Advocate Firms to assist them in adhering fully to the State's Abandoned Property Law. After entering the New VDA Program, Holders and their Advocate Firms will work with the VDA Administrator to design a VDA process that is reflective of the Holder's reporting history, recordkeeping, and particular property types that may be at issue.

The New VDA Program is scheduled to sunset on June 30, 2015. These Guidelines apply only to participants in the New VDA Program while they are enrolled.

II. VDA Process

A. Enrollment

A Holder may initiate participation in the New VDA Program by contacting the VDA Administrator at 855-232-3898 or via E-mail: VDAAdministratorSOS@delawarevda.com.

Formal initiation of the process is commenced by an eligible Holder submitting a completed and signed Form VDA-1, Disclosure and Notice of Intent to Voluntarily Comply with Abandoned or Unclaimed Property Law, to the following address:

**Secretary of State of the State of Delaware
c/o Delaware Voluntary Disclosure Administrator
222 Delaware Avenue
Suite 1410
Wilmington, Delaware 19801-1621**

Or via E-mail to : VDAAdministratorSOS@delawarevda.com. Copies of the VDA-1 form can be downloaded from <http://www.DelawareVDA.com> in the "Forms" section.

The Secretary of State shall indicate acceptance of the Holder into the New VDA Program, by signing and returning the Form VDA-1 to the Holder. Any Holder is eligible to enroll in the New VDA Program, except Holders who are currently under audit by the State Escheator, or who were mailed a notice of audit prior to submitting their VDA-1 form to the Secretary of State. Upon acceptance into the New VDA Program, the VDA Administrator will contact the Holder and/or its Advocate Firm as appropriate to schedule an "introductory meeting". In advance of the introductory meeting, the State will request certain preliminary information from the Holder which can be found at the <http://www.delawareVDA.com> website under "Forms – VDA Work Plan" in order to assess the stage that a Holder is in their self-review of their books and records. This will enable the VDA Administrator to begin to establish general VDA milestones and a timeline for progress reports and VDA Administrator review. The introductory meeting may include a review of the documentation and analysis to be provided by the Holder and/or its Advocate Firm in support of its submission, a discussion of property types included in the VDA, a discussion of key accounting and legal issues likely to be at issue as part of the Holder's

review, and an opportunity for the Holder to obtain additional information about the New VDA Program from the State.

B. The VDA Process

Phase 1: Scoping the VDA Review

During Phase 1, Holders are expected to conduct a self-review of their books and records in order to determine the availability of records, as well as the property types, related entities and years to be included in the VDA. This process will very broadly create two categories of records for review and remediation – a period for which the Holder has complete records and a period for which the Holder has incomplete or no records. Complete records include, but are not limited to, business tax returns, quarterly bank statements and bank reconciliations including outstanding checklists, complete void lists for each year, detailed A/R aging reports and general ledgers. Given Internal Revenue Service (IRS) regulations regarding record retention, the assumption is that most Holders will have “complete records” for the periods that the IRS requires records to be maintained.

Holders can determine what is deemed to be in-scope for purposes of the VDA. Property types, entities and years may be excluded from the scope of review of the VDA at the Holder’s option. However, at the conclusion of the VDA, the Secretary of State will only provide a release of liability for what has been determined to be in-scope, so any property types, entities and/or years excluded would still be subject to audit.

Deliverables: At the end of Phase 1, the Holder shall provide a letter from the CFO or other authorized officer of the Holder, describing what records are available, for which property types and what years.

Phase 2: Record Review / Remediation

During Phase 2, the Holder will review its books and records to identify what past due unclaimed property is due and owing to Delaware for the in-scope entities, property types and years. If the Holder is a Delaware domiciled entity, then that would include any unaddressed property, foreign-addressed property or Delaware addressed property. If the Holder is domiciled in a state other than Delaware, the only unclaimed property owed to Delaware is property for which the owner’s last known address was in Delaware. There is no estimation involved for non-Delaware domiciled entities.

For the years in which the Holder does not have complete records, Delaware, like most states, requires the Holder to estimate its past due unclaimed property liabilities. Agreeing as to acceptable estimation methodologies that will be utilized for periods and property types where there are incomplete records as soon as practicable is very important. It will enable the Holder to complete its record review and remediation efforts more efficiently. More specific guidance regarding estimation of unclaimed property liability for purposes of the New VDA Program is provided below.

Deliverables: There are no pre-determined deliverables in Phase 2. Monthly conference calls will be conducted throughout the entire VDA process to resolve any issues or questions that may arise during the Holder's self-review.

Phase 3: Due Diligence / Final Report

The goal of Phase 3 is for the Holder and VDA Administrator to resolve any open issues in order for the Holder to complete its Final Report detailing the Holder's past due unclaimed property liability due and owing the State of Delaware.

Deliverables: The Final Report of Holder's Unclaimed Property Liability

Every Holder that enrolls in the New VDA Program is unique. Not only with respect to their core operations, but more importantly with respect to their historic compliance with the Abandoned Property Law, the availability of their records, and the abandoned and unclaimed property types they may be reporting. As a result, every Final Report will be different in substance. In terms of the form of the Final Report, each Final Report shall include a narrative that summarizes the Holder's presumed unclaimed property liability for the relevant property types and periods, the nature of the Holder's review of its records, a summary of the analysis that the Holder performed to reach its presumed UP liability, and the nature and reasons for exemption and/or legal positions taken by the Holder. Attached to the narrative should be documentation supporting the analysis. As a means of example only, below is a potential outline of a Final Report deliverable to be provided at the conclusion of Phase 3 of the VDA:

1. NARRATIVE

- (a) Explain the Holder background as it is relevant to the Final Report. For example:
 - Holder structure
 - Dates and states of incorporation of each reporting entity
 - Acquisition history
 - Bankruptcies and their impact on periods reported
 - Accounting issues (including whether accounting departments are decentralized vs. centralized, Holder's history of UP policies and actual accounting for UP as examples)
 - Past UP reporting history
- (b) Scope of the VDA:
 - Entities included
 - Property types included and excluded, including reasons for exclusion
 - Years included
 - Base periods used to estimate liabilities for any period for which there are incomplete records
 - Whether the Holder tested the entire population of available records or a sample in calculating the UP liability

- Due diligence efforts utilized to reunite identified unclaimed property with rightful Owners, including a sample due diligence letter
 - Property types accounted for by third-party administrators (“TPAs”)
- (c) Major Assumptions Utilized (list below not intended to be all-inclusive)
- Detail the assumptions used in all estimation calculations
 - Describe any identified unclaimed property amounts excluded from estimation “error rate” calculations
 - Describe sampling techniques used
 - Discuss any exemptions and other legal positions taken
 - Define the denominator used in estimation calculations for each property type (e.g., total revenues obtained from business tax returns)
 - Define the basis of the cost of goods sold percentage applied to merchandise gift cards/gift certificates
 - If applicable, discuss the process of netting past customer bad debt write-offs and/or debits at other Holder divisions against outstanding customer A/R credits
- (d) Summary of the total presumed liability: Broken out by year, property type and entity

2. SUPPORTING DOCUMENTATION

General examples of the documentation required to support the Final Report submission is provided below. The preferred method of receipt is to have schedules and supporting documentation provided electronically through the use of a secure E-Portal to be established by the Holder, the Holder’s Advocate Firm or by the VDA Administrator.

- For each property type and each year being reported
 - All unclaimed property identified and disposition of due diligence and mitigation
 - Summary of all items identified as escheatable
 - Detailed computation of the “error rate”⁵ for use in computing estimated exposure
 - Detailed analysis of amount due to Delaware
 - Details of records reviewed and analysis performed on such records and results of such analysis
 - Support for any assumptions or key values relied upon (e.g., cost of goods sold percentage applied to escheatable gift cards)

⁵ For an explanation of what an error rate is, please see Section III of these Guidelines.

Holders and their Advocate Firms will be given the opportunity to present their Final Report to the VDA Administrator. The VDA Administrator shall analyze and review the Final Report. This analysis will be thorough, reasonable, prompt, and in accordance with the Abandoned Property Law. In the course of conducting the review of documents, the VDA Administrator may require the Holder to submit additional materials or documentation. Assisting the VDA Administrator in performing due diligence on Holder's submissions will be representatives from one of two accounting firms, Elko & Associates Ltd. or Friedman LLP. Each Holder and/or its Advocate Firm will work with either one of the accounting firms during the entire VDA process. Like the VDA Administrator, the retained accounting firms' compensation is not dependent on the amount of abandoned or unclaimed property recovered by the State through the New VDA Program.

Once the VDA Administrator's review is complete, typically within 14 days once all documents have been provided, the VDA Administrator will make a recommendation to the Secretary of State regarding whether to accept the Holder's Final Report of presumed liability, or whether to take certain exceptions to the Holder's analysis. Any such exceptions will be detailed in writing to the Holder. As explained previously, the VDA Administrator will work with the Holder and/or their Advocate Firm to resolve any open or outstanding issues prior to the submission of the Final Report, in order to finalize the VDA quickly. In that regard, during the VDA Process, there will be periodic status reviews to monitor progress and to give Holders and their Advocate Firms an opportunity to address legal or other issues as they arise, rather than after a Final Report is submitted. Holders should finalize property types

Once the VDA Final Report is accepted, the Secretary of State will execute the VDA-2. An executed VDA-2 provides sweeping protection to the Holder, including a broad release of liability, and indemnification protection from the State in favor of the Holder. An executed VDA-2 precludes the State from conducting an unclaimed property audit of the Holder for all years up to the final year reflected in its report attached to the VDA-2. The primary limitations on this protection arise in the event that the Holder perpetrated a fraud or engaged in a willful misrepresentation during the process, if the Holder fails to comply with the Abandoned Property Law for at least the next three years, or if the Holder elects to limit the scope of the VDA either in terms of property types, entities included or years. A copy of the form of VDA-2 is available for download at <http://www.DelawareVDA.com> in the "Forms" section.

III. Estimating Past Due UP Liability in the New VDA Program

Under the New VDA Program, the Secretary of State expects Holders to "reasonably estimate" liabilities for periods in which the Holder's records are unavailable or insufficient to prepare a Final Report of presumed past due unclaimed property liability. If a Holder lacks complete records for a year subject to review under the New VDA Program, the years for which the Holder has complete records will be used to develop a formula that estimates the unclaimed property owed for the years without complete records. Generally speaking, in order to estimate a past due unclaimed property liability, initially a base period for which the Holder has complete records must be established. The Holder will then identify the total amount of unclaimed property during the base period years (the numerator), and divide that amount by some agreed-

upon denominator (i.e., total revenue, total payroll for payroll and total cash disbursements for all accounts payable etc.) to create an “error rate” or expected rate of unclaimed property. That error rate is then applied to the period for which the Holder does not have records to create an estimated liability. Pursuant to the United States Supreme Court case, Texas v. New Jersey, 379 U.S. 674 (1965), and its progeny, all estimated unclaimed property would be reportable to the Holder’s state of incorporation or formation.

During the first several months of program implementation there have been several core questions raised by Holders and their Advocate Firms regarding generally acceptable estimation methodology and techniques for estimating past due unclaimed property liability in the New VDA Program. It became clear that providing guidance regarding some of these core questions that have general applicability would further the goals of the New VDA Program, namely efficiency and predictability. As a result, the Secretary of State is providing the guidance below, which is only applicable to the New VDA Program. Most issues that arise when estimating past due unclaimed property liability, including many of the issues articulated below, truly depend on specific facts and circumstances. Therefore, Holders and their Advocate Firms should present the estimation methodology and techniques they would like to utilize during the VDA at the appropriate time during the VDA process. Decisions regarding the final estimation methodology and techniques used will be made by the Secretary of State in consultation with the VDA Administrator in accordance with the Abandoned Property Law.

Base Periods

- The expectation is that for estimating UP liability, Holders would use a base period of at least the two oldest continuous years they have records – typically outside the dormancy period. Holders may use more than two years for their base period. As a general rule, the Secretary of State expects Holders to have complete records dating back to at least 2005 or 2006 given IRS requirements. There may be limited and narrow exceptions to this general rule, which will be addressed on a Holder-by-Holder basis.

Property Included/Excluded in the Basis for Estimation

- Payments made to the federal government that are deemed to be unclaimed property may be excluded from the numerator when estimating liability.
- Delaware law does not recognize a business-to-business exemption, therefore if an outstanding payment from the Holder to another business entity is due and payable, it should be included in the numerator when estimating liability. The same rationale would apply to state specific exemptions that are not included in Delaware Abandoned Property Law.
- Delaware law recognizes a “cost of goods sold” exception when reporting gift cards for merchandise only.

Check Testing

- In calculating past due unclaimed property liability, Holders and their Advocate Firms are permitted to review only checks voided after 90 days in the New VDA Program.
- Holders and their Advocate Firms should use a quarterly convention when testing outstanding checks.

Statistical Sampling

- When analyzing the base periods for estimation, sampling is permitted. It is expected that Holders will utilize a 90% confidence level with a standard precision level of 10% when sampling base periods. It is also highly recommended that any sampling design be discussed with the VDA administrator as soon as possible during the VDA process.
- As a general rule, when the VDA Administrator performs its due diligence procedures to finalize the past due liabilities for particular property types, it is not contemplated that every single record will be tested; instead, a representative sample will be selected and tested for which supporting documentation will be requested from the Holder.

IV. Final Submission Validation

Every Holder that is enrolled in the Delaware VDA Program is expected to perform a detailed self-review of their books and records to determine the Holder's historic compliance with Delaware's Abandoned Property Law. This self-review should include the detailed review of the Holder's general ledgers, trial balances, bank statements and bank reconciliations including outstanding and void check lists, A/R and A/P aging reports, tax returns, financial statements, organization charts, accounting policy and procedure manuals, stock and/or asset-purchase agreements, payroll records, customer deposit ledgers, rebate programs, gift and merchandise card records, employee health and benefit plan documents, shareholder ledgers and/or transfer agent agreements and historic UP reports by state jurisdiction.

Once a Holder and their advocate complete this detailed self-review and the final submission is received by the VDA Administrator for approval, the VDA Administrator may request certain source documentation in order to perform limited due diligence validations of the final VDA submission in order to support the Holder's conclusions. As indicated in Section II. B of these Implementing Guidelines, the phases of the VDA Program are designed so that some of this due diligence documentation will be received prior to the final analysis being completed, including but not limited to:

- Demonstrations of methodologies utilized;
- Affidavits signed by management, legal counsel or advocates regarding the scope of the VDA, and record availability;
- Interim quantifications of escheat liabilities for specific property types;
- Legal research and/or regulatory position memoranda; and,

- Interim update details or other means.

The expectations, procedural steps and information requests appearing in these Implementing Guidelines are not meant to be all-comprehensive in scope, but are merely to serve as guidance to illustrate the expectations and key data that may be validated by the VDA Administrator during the course of the final review of the Holder's VDA submission. Actual requests of the Holder will be tailored as appropriate to the facts and circumstances of each particular Holder.

Based on our experience closing out specific VDAs to date, potential requests for Holder source documentation and/or the VDA Administrator's expectations of the Holder's self-review are discussed below.

A. Remediated Items:

It is expected that Holders and their retained advocates will document the total potential population of unclaimed property for each property type that was reviewed, and will also document what was deemed unclaimed and what was deemed remediated (resolved with the owner) after due diligence and remediation efforts were performed. The VDA Administrator will then request a statistical sample selection of remediated potential unclaimed property items as reported by the Holder utilizing at least a 90% confidence level and 10% expected error rate sampling parameters. Sample selections may also be "stratified" to include significant items in the population of remediated items, including larger dollar items.

B. Bank Accounts/ Accounts Payable and Payroll Disbursements:

It is expected that Holders and their retained advocates will determine from the Holders' general ledger which bank accounts are deemed necessary for further review to determine if such accounts held any unclaimed property during the VDA Period. Holders and their retained advocates should be prepared to demonstrate which accounts were selected and why. In that regard, as part of the VDA Administrator's due diligence validation procedures, the Administrator may request:

1. A listing of all Holder bank accounts and years which were included as part of the self-review, as well as addressing the other bank accounts appearing in the Holder's books and records which were considered, but not included as part of the Holder's analysis, in order to ascertain completeness.
2. Sample trial balances for selected year-ends during the VDA period in which the Holder has complete and researchable records.
3. Documentation of the policies and procedures for unclaimed property, outstanding checks/voided checks, years the policies were implemented and testing performed to determine if the policies were being followed, and results if they were relied upon.
4. Void check listings and/or bank reconciliations, including outstanding check listings for randomly selected years during the VDA Period with complete records.

5. Confirmation that a 90-day convention⁶ was in fact used to test void and outstanding checks in accordance with Section III of these Implementing Guidelines.
6. A summary of the dates outstanding checks were analyzed and those >90 days outstanding were identified as potential unclaimed property and analyzed by the holder or its retained advocate.

C. Extrapolations:

As noted in Section III of these Implementing Guidelines, Holders and their retained advocates are expected to estimate their historic UP liability due to Delaware for periods in which the Holder does not have complete and researchable records. If a Holder has to estimate liability for any period, the VDA Administrator may request:

1. Confirmation with appropriate support of the source documents used to develop the denominator utilized for estimation purposes. This support could include audited financial statements, tax returns and/or general ledgers.
2. An articulation of the amounts used in the numerator and the base year(s) used in the error rate calculation, including any assumptions utilized.

D. Accounts Receivable Credits including Customer Deposits:

It is expected that Holders and their retained advocates will perform both an A/R aging analysis as well as a credit tracing analysis of A/R credit balances as part of their self-review.⁷ In performing due diligence validation on the A/R credits being reported, the VDA Administrator may request:

1. A discussion of the nature of accounts receivable giving rise to dormant credits.
2. An understanding of any netting process or other assumptions used to remediate A/R credit balances.
3. Details of the tracing analysis performed (number of items traced, detailed results of such work) and the conclusions drawn from such analysis.
4. Sample A/R detailed aged trial balances for random years with complete records during the VDA Period.

⁶ This refers to the time period a check was voided after the date of issuance. For purposes of the VDA Program being administered by the Delaware Secretary of State only, checks voided < 90 days after the date of issuance are considered to have been voided in the normal course of business and are not deemed potential unclaimed property.

⁷ A credit tracing analysis is an analysis of a representative sample of A/R credit balances as of a point in time in order to catalogue the typical resolution of such credits.

E. Merger and Acquisition Activity including Acquisitions and Dispositions:

Because Holders can acquire the UP liability of their target in an acquisition, it is expected that Holders will provide an analysis describing the treatment of potential unclaimed property liabilities relating to acquisitions and/or dispositions (including both Stock and Asset Purchases/Dispositions). For Asset Purchases, Holders should be prepared to provide a schedule of assets purchased, a schedule of liabilities assumed, and confirm that any unclaimed property that was assumed (e.g., bank accounts, A/R credits, A/P liability) is being tested. Relevant excerpts of the underlying asset and/or stock purchase agreements may also be requested

F. Prior Reporting History:

For some Holders, any prior UP reporting history, to Delaware or other states, will impact that Holder's total potential UP exposure under the VDA Program. It is expected that Holders and their retained advocates will provide all necessary support demonstrating that prior UP filings are complete with respect to both amounts and/or property types. The VDA Administrator may request copies of prior filings.

Holders who have entered the VDA Program and are asserting that based on a robust filing history in the past they have zero or nominal past due unclaimed property liability should be prepared to demonstrate how they have tested this assertion. This testing performed by the Holder as a part of its self-review should include identifying potential unclaimed property in prior years and tracing such to either remediation or inclusion in an unclaimed property filing made in the Holder's ordinary course of business.

G. Completeness of Property Types Considered:

It is expected that Holders and their retained advocates will provide support demonstrating the completeness of the property types reviewed for potential UP liability. This can be accomplished through a certification or affidavit asserting the completeness of all property types included in the analysis, which should have some relationship to other available information such as financial statements or SEC filings, property types reported in the past and industry practices. General ledger account histories may also be requested during a sample time period for Holders maintaining unclaimed property liability balance sheet accounts.

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DELAWARE SECRETARY OF STATE

**Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program
Addendum to Implementing Guidelines**

Purpose

As of the June 30, 2014, over 550 companies have enrolled in the Delaware VDA program, and the State has resolved 81 VDAs to date in full or in part. More importantly, of the VDAs closed by June 30, 2014, a vast majority of the Holders had been enrolled in the program less than one year. In short, the Delaware Secretary of State set out to design a VDA program that would reach a final agreement with enrollees on any past due unclaimed property liability approximately nine months from the day Holders enter the Program, and we have been largely successful in that endeavor.

In our continuing effort to administer the Delaware Secretary of State (“SOS”) Unclaimed Property Voluntary Disclosure Agreement (“VDA”) program in a way that sets clear expectations in order to achieve efficiency and predictability, the Delaware VDA Administrator is publishing this addendum to the VDA program’s February 12, 2014 Implementing Guidelines. Through the experience of working with Companies over the past year as they conduct a detailed and thorough self-review of their books and records in order to ultimately reach resolution on their past due unclaimed property payable to Delaware, best practices and issues/areas that could use additional clarity have emerged. This addendum is designed to further clarify the VDA process as well as further define the VDA Administrator’s expectations.

This addendum is not intended to replace the Implementing Guidelines; rather, it serves as a supplement to the guidelines published as of February 12, 2014. Due to the volume of Holders enrolled in the program, all Holders and their Advocate Firms should strictly adhere to the Implementing Guidelines and this addendum. These guidelines are intended to minimize the time required to review a submission and ensure the VDAs will be reviewed and finalized predictably and efficiently.

I. Transmission of Documents

Due to the volume of VDA’s, as a general rule the VDA Administrator will be transmitting documents to Holders electronically, typically in PDF format via email. Similarly, the VDA Administrator prefers that all documents be submitted electronically.

If a Holder wishes to receive a paper copy of any documentation, please request so at the time the document is submitted.

II. Engagement of Holder Advocates

As noted previously in the Implementing Guidelines, although Holders are not required to retain third party advocate firms to assist them in their self-review, consulting with professional firms that specialize in unclaimed property compliance is encouraged, as such firms can make the VDA process more efficient. As a result of legislation that was recently enacted, in order to communicate directly with a Holder Advocate, the VDA Administrator must obtain written permission from the Holder.

When completing the Form VDA-1, the Holder has the option of assigning a Holder Advocate who will be assisting the Holder with the VDA. By noting the Holder Advocate on the VDA-1 form, you are providing permission for the Department of State and/or the VDA Administrator and its assignees to communicate with the Holder Advocate. If additional Holder Advocates are retained, changed, or added after enrollment, written confirmation must be provided by the Holder.

III. VDA Process

A. VDA Final Report Submission Timetable

As a result of recently enacted legislation, the VDA program is now scheduled to sunset on June 30, 2016. **For the avoidance of any doubt**, for any Holder who enrolled prior to June 30, 2013, the legislation has no impact on when their VDA must be statutorily completed. Therefore, Holders enrolled prior to June 30, 2013 still must complete their VDA by June 30, 2015. The legislation did extend the enrollment deadline of the VDA Program to September 30, 2014 for new enrollees, and any Holders that enrolled after June 30, 2013 and before September 30, 2014 have until June 30, 2016 to complete their VDAs.

Even though Holders that enrolled prior to June 30, 2013 have until June 30, 2015 to complete their VDA, there is a heavy expectation that a vast majority of the pre-June 30, 2013 enrolled Holders will complete their VDA well before June 30, 2015. With few exceptions, Holders that enrolled prior to June 30, 2013 should be completing their self-review and submitting their Final Report by the third and fourth quarter of 2014, as those Holders have been enrolled in the program longer than one year. As a result, the VDA Administrator will contact Holders and their Advocate Firms to schedule a due date for the submission of the Final Report.

It is worth noting that pursuant to the terms of a Holder's enrollment in the VDA program, each enrollee agreed to work with the VDA Administrator in good faith to complete the VDA program as soon as practicable. Failure to meet the due date for the Final Report established by the VDA Administrator could result in either (i) removal of the Holder from the VDA program, or (ii) the imposition of interest on any unclaimed property payable to the State.

B. Scoping the VDA Review

As part of Phase 1, Holders and their Advocate Firms are expected to establish the scope of the VDA, *i.e.*, the entities, property types, and years included in the scope of the VDA, the period of record availability for each included entity and property type, as well as any entity, property type, or years excluded from the scope of the VDA. Upon completion of the scoping, Holders should submit the Scoping Spreadsheet (available at www.delawarevda.com) along with a letter from the CFO or other authorized officer of the Holder, describing what records are available, for which property types and what years. As a reminder, the Scoping Spreadsheet should be completed within 90 days from enrollment in the VDA program.

The VDA Administrator will use the Scoping Spreadsheet to determine the complexity of the VDA review. Based on review of the Scoping Spreadsheet and the date of enrollment, the VDA Administrator will assign an expected completion date to the VDA. As noted above, Holders should adhere to the assigned completion date.

C. Analysis of Merger and Acquisition History

Holders often acquire or retain the unclaimed property liability of the target in an acquisition. As such, it is expected that Holders will provide an analysis describing the treatment of potential unclaimed property liabilities relating to mergers, acquisitions and/or dispositions (including both Stock and Asset Purchases/Dispositions). There should be a separate analysis for each acquired entity, and if unclaimed property was acquired, the Holder may be required to estimate any potential unclaimed property liability for periods the acquired entity does not have complete records.

D. Records Review Remediation / Due Diligence Validation

As part of the VDA review, the Holder will determine its available records and identify any past due unclaimed property. As noted previously in the Implementing Guidelines published in February 2014, it is expected that for each entity reviewed, the Holder will be able to provide the trial balance showing each general ledger account, account number, beginning balance, total debits posted, total credits posted, and ending balance. The trial balance will assist the VDA Administrator in determining whether all applicable accounts for a particular property type have been included in the review.

E. Specific Accounts and Property Types

Disbursement Accounts

The following should be considered when reviewing disbursement accounts:

- **Completeness of Cash Accounts** - Holders and/or Holder Advocates should document the completeness of the cash accounts analyzed. This analysis should identify the cash accounts from the trial balance and the underlying bank accounts. This analysis may include list of bank name, account number, GL number, date account opened, and date account closed.

- **Voided Checks** – Depending upon record availability and the capabilities of the general ledger systems, Holders should obtain a list of voided checks (if possible generate a report from the general ledger system). The voided check report should include the following information: payee name, address, amount of check, check number, issue date and void date. It is recommended that the voided check report be provided for as many periods as are available. The Holder is expected to provide documentation of the accuracy of the report, which may be done by comparing the voided checks on one month's bank reconciliation to the voided checklist. As set forth in the February 2014 Implementing Guidelines, all checks voided 90 or more days after the date of issuance must be included in the review.
- **Outstanding Checks** – Assuming all voided checks for the review period appear on the list above, the most recent bank reconciliation and outstanding checklist may be used as source documentation for outstanding checks. If the voided checklist is not complete, then a review of additional bank reconciliations may be required. As set forth in the February 2014 Implementing Guidelines, all checks outstanding 90 or more days from the date of issuance must be included in the review.
- **Bank Reconciliations** – When providing copies of bank reconciliations the following should be included: bank statement, reconciliation, outstanding checklist and any other documents which are part of the reconciliation process.

Accounts Receivable

It is expected that the Holder will conduct a complete and thorough review of accounts receivable, including all subsidiary ledgers, unapplied cash, unidentified remittances, dummy customer accounts, holding accounts and write-off policies.

The review should include, at a minimum, a detailed review of multiple accounts receivable aging reports to identify customers with aged credits and an analysis of all accounts used as disposition or write-off accounts for aged credits.

Gift Cards / Gift Certificates

The review of gift cards / gift certificates should include documentation of the accounting for gift card sales and redemptions, such as full transactional detail for the general ledger accounts for gift cards.

Miscellaneous Income and Expense Accounts

While Miscellaneous Income and Expense Accounts are not specific unclaimed property types, these accounts may contain transactions that result in unclaimed property. As such, it is expected that the Holder and/or Holder Advocate analyze the general ledger detail (*i.e.*, all debits/credits posted to each account) related to Miscellaneous Income and Expense accounts to ascertain if any transactions within these accounts might be unclaimed property.

Employee Benefit Payments

A common property type Holders typically include in the scope of their VDA is employee benefits. If an employee benefit plan is a qualified plan under the Employee Retirement Income Security Act (ERISA), then there is a legal argument based on the principles of federal preemption that any unclaimed payments would not be reportable unclaimed property to a state. Simply stating that a plan is an ERISA qualified plan is not sufficient for purposes of resolving a Holder's potential unclaimed property liability. The VDA Administrator expects Holders to first establish that an employee benefit plan is ERISA qualified by either providing copies of IRS Form 5500 to confirm a plan is subject to ERISA, or providing a certification from benefits counsel that an employee benefit plan is ERISA-qualified (such certification should also include any plan documents demonstrating the same). In addition, Holders should be able to demonstrate that any funds distributed from the plan that go unclaimed were reinvested or transferred back into the plan.

Securities Related Property

If a Holder intends to include securities in their review, then, at a minimum, the following should be provided:

- Documentation showing the transfer agent(s), if any, for all years included in the VDA.
- Documentation of whether the transfer agent, if any, assumed the unclaimed property reporting responsibility.
- Confirmation from the transfer agent, if any, that all dormant accounts have been reported as unclaimed property.
- Detail for all registered shareowners including open date, contact date, undeliverable date, outstanding and suppressed checks, outstanding shares, and all nominee positions.
- Unclaimed securities can include stock, bonds, fractional shares, interest, dividends, cash, coupon interest, liquidation value of stocks and bonds, funds to redeem stocks and bonds, and distributions. Holders should be prepared to demonstrate that they reviewed their books and records for all securities, including unredeemed shares or consideration paid to shareholders as part of all acquisitions.

Third Party Administrators ("TPA")

Many functions are outsourced by a Holder to a TPA. These may include, but are not limited to, payroll, accounts payable, benefits, etc. For all TPAs, the following should be documented:

- Identification of the TPA used for each property type and the applicable years.
- Copies of all applicable contract(s) demonstrating the roles and responsibilities of both the Holder and TPA in relation to any unclaimed property.
- Confirmation as detailed in the contract indicating whose bank account issued the payments.
- Confirmation whether the TPA had the unclaimed property reporting responsibility.

- Confirmation from the TPA that any outstanding amounts have been reported as unclaimed property.

If the TPA did not have the unclaimed property reporting responsibility, unclaimed property should be reviewed as follows:

- Obtain copies of monthly reports from the TPA showing check issuances and checks returned to the Holder;
- Schedule such checks and document the resolution; and,
- Identify any unclaimed property due to Delaware.

F. Remediation Support

As a supplement to the due diligence validation procedures contained in the prior version of the Implementing Guidelines, it is noted that with respect to all remediation support provided, Holders and their advocates should provide the following with any remediation support provided:

- Remediation Support should be clearly identified for cross referencing purposes.
- The remediation code or reasoning should be clearly marked (*e.g.*, denote on the documents where a check has been reissued, cashed, etc.).

It is recommended that all remediation support be scanned and presented with the Final Report as PDF documents.

G. The VDA Closing Process

Once a past due unclaimed property liability has been established, the VDA can be closed. The following must be provided in order to close a VDA:

- **Form VDA-2** - edits to the VDA-2 will be made by the VDA Administrator to reflect property types and any limitations to the VDA. This form should be completed as appropriate by the Holder and signed by an Officer.
- **Form VDA-2 Exhibits** – several exhibits are referenced and made part of the Form VDA-2. When completing the Form VDA-2 the Holder and/or Holder Advocate should include the following Exhibits :
 - *Exhibit A* - a list of all legal entities included in the VDA along with EIN and state of incorporation. (If there are several legal entities, a request might be made to obtain this exhibit electronically so this information can be entered into a data base.)
 - *Exhibit B* - Form AP-1 Verification and Checklist and AP-2 Detailed Report. A consolidated report may/should be prepared for all entities and years included within the VDA (i.e., a report does not need to be prepared for each legal entity or for each Report Year included in the VDA).
 - *Exhibit C* – summary report presented to the VDA Administrator. *Note, if changes have been made to the original schedules presented to the VDA*

Administrator, the Holder/Holder Advocate will be asked to provide updated spreadsheets which tie to the amounts being reported.

- **NAUPA File** - If a Holder is reporting more than 10 line items as unclaimed property, a NAUPA file will be required. A NAUPA file is an electronic summary of the amounts reported. This is needed so that the Holder information can be uploaded to Delaware’s Unclaimed Property database identifying amounts owed to individuals. *See Resources section below for a link to free reporting software and information related to the NAUPA file format.*

Once the executed Form VDA-2 has been received along with the above attached Exhibits, as well as any other requested documentation, the Secretary of State will countersign the Form VDA-2, and a Demand Letter will be issued via email to the Holder Contact identified on the VDA-2. The Holder will have ten days to make payment of the amount due. Payment can be made via check or wire transfer. Information related to specific payment methods will be provided in the Demand Letter.

Additional Resources

Contacts

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Recommended Websites

Delaware VDA Website – see link below. The website provides an overview of the SOS VDA program and additional information about the VDA process.

<http://www.delawarevda.com/>

NAUPA Website – see link below for free reporting software and a handbook detailing the standardize NAUPA format.

<http://www.unclaimed.org/reporting/free-holder-reporting-software/>