

DEPARTMENT OF STATE
ABANDONED OR UNCLAIMED PROPERTY VOLUNTARY DISCLOSURE AGREEMENT PROGRAM
Statutory Authority: 12 Delaware Code, Section 1173(a)(6) (12 **Del.C.** §1173(a)(6))

PROPOSED

PUBLIC NOTICE

**Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations
Relating to Estimation**

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.** §1173(a)(6), the Delaware Department of State proposes to introduce regulations related to the Department of State's Voluntary Disclosure Agreement Program in the Delaware Abandoned or Unclaimed Property Law.

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

Kristopher Knight
Deputy Secretary of State
Department of State
820 N. French St.
4th Floor
Wilmington, DE 19801

Notice may also be directed via electronic mail to SOS.VDA@state.de.us. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Department of State no later than **4:30 p.m. EST, Wednesday, May 3, 2017**.

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 written comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that the Department of State, in consultation with the Delaware Department of Finance's Office of Unclaimed Property, State Escheator, proposes to promulgate rules and regulations to establish instructions and guidelines for the administration of the Department of State Voluntary Disclosure Agreement Program. The regulations provide a framework to ensure that Holders of unclaimed property have a basic understanding of the estimation methodology expected of Holders enrolled in the Department of State Voluntary Disclosure Agreement Program. The regulations contained herein are to be implemented consistently, so as to ensure fair and uniform treatment of Holders of unclaimed property participating in the Department of State Voluntary Disclosure Agreement program.

Statutory Authority

Delaware Code, Title 12 §1173(a)(6)

Background

On February 2, 2017, the Governor of Delaware signed into law Senate Bill 13 of the 149th General Assembly, which revised and updated the Delaware Abandoned and Unclaimed Property Law. The Department of Finance Unclaimed Property Audit Program and the Department of State Voluntary Disclosure Agreement Program are administered separately, and it is not legally permissible for any one Holder, including the Holder's subsidiaries and related entities, to be in both programs. Section 1176(b) directed the Secretary of Finance, in consultation with the Secretary of State, to promulgate regulations to create consistency in any examination or voluntary disclosure. The Department of Finance has introduced regulations containing an Examination Manual, which includes proposed regulations regarding permissible base periods in an examination, items to be excluded from the estimation calculation in an examination, aging criteria for outstanding and voided checks in an examination, and the definition of what constitutes complete and researchable records in an examination in accordance with Section 1176(b). In order to establish expectations for Holders that enroll in the Department of State Voluntary Disclosure Agreement Program, the Department of State has proposed these regulations to demonstrate how these issues will be administered in the Department of State Voluntary Disclosure Agreement program.

**Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations
Relating to Estimation**

1.0 Purpose, Scope and Authority

1.1 Purpose

1.1.1 On February 2, 2017, the Governor of Delaware signed into law Senate Bill 13 of the 149th General Assembly, which revised and updated the Delaware Abandoned or Unclaimed Property Law. Section 1176(b) states as follows:

The Secretary of Finance, in consultation with the Secretary of State, shall, on or before July 1, 2017, promulgate regulations regarding the method of estimation to create consistency in any examination or voluntary disclosure. These regulations must include permissible base periods, items to be excluded from the estimation calculation, aging criteria for outstanding and voided checks, and the definition of what constitutes complete and researchable records.

1.1.2 These are the Department of State's companion regulations regarding the method of estimation in the Department of State's Voluntary Disclosure Agreement program.

1.2 Scope

1.2.1 The Secretary of State may make such rules and regulations as deemed necessary to enforce Section 1173, the Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement ("VDA") program.

1.3 Statutory Authority

1.3.1 12 Del.C. §1173(a)(6) Rule-making.

2.0 Delaware Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Estimation Regulations

2.1 Effective Date

2.1.1 The effective date of these Regulations shall be the date the Regulations are adopted, and the standards contained therein shall apply to all Department of State voluntary disclosures pursuant to 12 Del.C. §1173 commenced after that date. To the extent practical, the Regulations shall apply to any ongoing Department of State voluntary disclosure pursuant to 12 Del.C. §1173 that commenced prior to the effective date of these Regulations, though the failure of the Department of State to have conformed to these regulations not-yet-in-existence would not invalidate a previously settled voluntary disclosure agreement.

2.2 Scope of Abandoned or Unclaimed Property Voluntary Disclosure Agreement ("VDA")

2.2.1 The Holder may determine the scope of the entities and property types included in the Department of State Voluntary Disclosure Agreement program. At the conclusion of the VDA, the Department of State will only provide a release of liability for what has been determined to be in-scope, so any property types and/or entities excluded would be subject to audit pursuant to 12 Del.C. §1173(a)(4).

2.2.2 Once entity scoping has been established by the Holder, no additional entities may be scoped into the VDA without the Department of State's consent.

2.2.3 At the Holder's discretion and with the consent of the Department of State, legal entities whose acquisition commenced after the conclusion of entity scoping would have the option of being added to the existing VDA.

2.3 Estimation

2.3.1 Overview. Section 1145 requires that a Holder, who is required to file an annual unclaimed property report, retain records for 10 years after the date the report was filed. The record retention requirement corresponds with Section 1173(c)(2) of Title 12 of the Delaware Code authorizing the Department of State to enter into a voluntary disclosure agreement with a Holder based on a self-review of a 10 year period of dormant property. Section 1173(a)(2) grants the Secretary of State the full and complete authority to determine and resolve all such claims consistent with Chapter 11 of Title 12 of the Delaware Code and exercise such authorities as are granted to the State Escheator in Chapter 11 of Title 12 of the Delaware Code, including the authority to estimate the amount of property due using a reasonable method of estimation based on all information available.

2.3.2 Base Periods: The "Base Period" is the period of time for which the holder possesses complete and researchable records. Consistent with a majority of states, Delaware requires that a Holder retain records for a minimum of 10 years plus dormancy (15 years total for most property types). It is expected that the Holder shall possess several years of dormant records even if the Holder does not possess records for the entire 10 year period.

2.3.2.1 If the Holder fails to retain sufficient dormant years of records, the Department of State and Holder shall agree on the records to be utilized for the base period.

2.3.2.2 Base periods shall consist of complete and researchable records. (See definition in subsection 2.4 of these Regulations). In order to draw a representative error rate, the base periods utilized by the Holder shall consist of at least the two (2) oldest continuous years the Holder has complete and researchable records outside the dormancy period. Holders may use more than two years for the base period. Depending on the unique facts and circumstances of each Holder, the Department of State and the Holder may agree to include non-dormant periods in the base periods.

2.3.2.3 At the conclusion of the Holder scoping its voluntary disclosure, the Chief Financial Officer or other officer of the Holder shall provide in a form amenable to the Department of State, a representation of the Holder regarding what records are available, for which property types and what years. The Holder is bound by this representation, absent good cause in the determination of the Secretary of State. A determination by the Department of State of a false statement will be considered willful misrepresentation made with intent to mislead the Secretary of State.

2.3.3 Items to be Excluded from Estimation Calculation

2.3.3.1 Items payable to an owner that is a United States federal department or agency shall be removed from the population subject to estimation.

2.3.3.2 Funds returned in the normal course of business, prior to enrollment in the Department of State Voluntary Disclosure Agreement program will not be included in the population of potential unclaimed items. Conversely, funds returned outside of the normal course of business (i.e. change in process) after enrollment in the Department of State Voluntary Disclosure Agreement program, will be included in the population of potential unclaimed items.

2.3.4 Aging Criteria

2.3.4.1 Checks that are outstanding or are voided less than 90 days after issuance shall be excluded from the estimation population.

2.3.4.2 As part of the Holder's self-review, it is expected that Holders will perform the following analysis of its Accounts Receivable a) an analysis of aged credit balances remaining on the company's books and records and b) an analysis to determine whether accounts receivable credits have been written off. For the former, Holders may review quarterly Accounts Receivable aging reports for Accounts Receivable credits aged 90 days or greater. For the latter, the Holder should conduct a credit tracing analysis of Accounts Receivable credit balances to test for any Accounts Receivable credits that may have been adjusted off of a customer's account. All credits adjusted off a customer's account and all of the accounts used to adjust credits off a customer's account should be included in the Holder's review.

2.3.5 Projection

2.3.5.1 If for certain periods the amount of reportable property cannot be ascertained from the books and records of the Holder, projection 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. To the extent permitted by law, 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.

2.3.5.2 All sampling, projection and estimation techniques used by the Holder to determine unclaimed property due to Delaware shall be presented to the Department of State. The Department of State and the Holder must agree to the sampling, projection and estimation techniques in order to complete a Voluntary Disclosure Agreement. It is the intent of the State that any estimation methodologies used shall result in a reasonable representation of the unclaimed property potentially due for the estimated periods.

2.4 Complete and Researchable Records

2.4.1 The expectation is that a Holder, at a minimum, may have complete and researchable records for a period that would cover seven to eight (7-8) years from the date the Holder voluntarily enrolled in the Department of State Voluntary Disclosure Agreement program. If there are unique circumstances where a Holder does not have 7-8 years of researchable records, the Holder may present the circumstances to the Department of State and the Holder and the Department of State may agree to use an alternative data set with fewer years.

2.4.2 Complete records shall reconcile to the general ledger with the understanding that immaterial differences may occur. Researchable records are records to which the Holder may research the resolution of an item. At a minimum, researchable records shall include those items that contain a last known address of the owners of property.

20 DE Reg. 776 (04/01/17) (Prop.)