



Conversion from Department of Finance Unclaimed Property Examination to the SOS VDA Program

Pursuant to 12 Del. C. § 1172(b), any Holder currently under examination that received a Notice of Examination from the State Escheator on or before July 22, 2015, except any securities examinations in which estimation is not required, may convert the pending examination into a review under the Secretary of State's Voluntary Disclosure Agreement Program under 12 Del. C. § 1173. This Secretary of State policy statement outlines the administrative requirements to convert, as well as the expected process to be followed by Holders that choose to convert.

Administrative Requirements to Convert:

Eligible Holders must file an executed copy of a Disclosure and Notice of Intent to Convert Unclaimed Property Examination into a Review under the Secretary of State's Unclaimed Property Voluntary Disclosure Agreement Program ("Form NOI CONV") within 60 days of the adoption of the Department of Finance Regulations pursuant to 12 Del. C. § 1176(b). Pursuant to that statute, on October 1, 2017, the Department of Finance finalized the regulations, entitled "104 Department of Finance Abandoned or Unclaimed Property Reporting and Estimation Manual" ("DOF Regulations"). DOF Regulations become effective ten days after publication on October 11, 2017. From that date, Holders will have a 60 day period to submit Form NOI CONV, which has been executed by an officer of the company, to request a conversion. Form NOI CONV must be received by the Department of State by December 11, 2017 to be eligible for conversion. Form NOI CONV must be signed by a duly authorized officer of the Company that is seeking to convert, and may be delivered to the Department of State in the following manner:

Here is a link to **Form NOI CONV**:

<https://vda.delaware.gov/wp-content/uploads/sites/66/2017/10/Notice-of-Intent-to-Convert-10-3-2017-2.pdf>

A PDF copy of this form which has been executed by an officer of the Company can be sent via email to SOS.VDA@state.de.us.

Alternatively, Holders may send a copy of this form which has been executed by an officer of the company via overnight or regular mail to:

Secretary of State, State of Delaware
ATTN: SOS VDA Program
Townsend Building, 1st Floor
401 Federal Street, Suite 3
Dover, DE 19901

SOS VDA Process for Companies that Convert its Examination

Unlike an examination, the SOS VDA Program is a self-review process in which the Holder is expected to perform a rigorous self-review of its books and records for the entirety of the look-back period and present its findings of past due unclaimed property liability to the Secretary of State for validation, and ultimately settlement. The SOS VDA Program was designed, and will be administered, as an efficient and collaborative settlement process for determining the Holder's past due unclaimed property.

For companies that convert its examination into an SOS VDA, the expectations are the same. In order to expedite the resolution of an examination converted into an SOS VDA, Holders are not expected to begin the SOS VDA process from the beginning. Further, the Holder's examination work papers will not be transferred to the Secretary of State or its assignees, and there will be no coordination or consultation with the Department of Finance or any third-party examination firm regarding the Holder's examination after the initial transfer of information related to scoping.

For many Holders eligible to convert an examination into an SOS VDA, the examination was previously scoped by the auditor in terms of property types and/or included entities. Since most of the analysis and review performed to date by the Holder will be based on the property types / entities scoped in by the auditors, in the interest of efficiency, Holders are expected to, at a minimum, utilize the same examination scope in the SOS VDA. For examinations that have been scoped (entities, property types, and/or years), the Department of State (and its assignees) and the Holder will receive from the Department of Finance a memorandum describing the previously agreed upon scope of the examination. Holders may elect to expand the previously agreed to scope in the SOS VDA Program.

With respect to the remainder of the SOS VDA, Holders should utilize the records reviewed and analysis performed to date in the examination, as well as perform any additional self-review required, in order to present the Holder's findings of past due unclaimed property liability to the Secretary of State for validation, and ultimately settlement. The presentation of the Holder's findings shall be in accordance with the SOS VDA Program's Implementing Guidelines and Estimation Regulations. Similarly, when the SOS VDA report and schedules are presented, the findings will be validated by the Secretary of State's Office or its assignees in accordance with the Implementing Guidelines and Estimation Regulations. For Holders that have substantially completed its examination that choose to convert to a VDA, the SOS VDA process should be expedited and there is an expectation that the Holder will conclude the SOS VDA quickly.

As with any SOS VDA, every Holder that converts its examination into an SOS VDA is understood to be unique. Not only with respect to the extent of review and analysis performed to date, but also with respect to its core operations, historic compliance history, availability of records, and

abandoned and unclaimed property types to be reported. Therefore, Holders that convert its examination into an SOS VDA are encouraged to work with the Department of State (and its assignees) from the date of conversion to chart an efficient path to conclusion, and to resolve concerns or issues prior to the presentation of a final SOS VDA report and schedules.

Look-Back period for Examinations Converted to a VDA:

Pursuant to 12 Del. C. §1172(b), the look back period for examinations that convert to VDAs is ten reporting years from the year the original Notice of Examination was received by the Holder.

Partial VDAs:

If Holders have formally resolved specific property types and/or entities in an executed settlement agreement with the Department of Finance prior to converting to an SOS VDA, the SOS VDA will only cover any remaining entities and property types.

Estimation:

The Secretary of State expects every SOS VDA enrollee to reasonably estimate liabilities related to periods for which the Holder's records are unavailable to prepare a report of presumed past due unclaimed property liability. Estimation is not required for non-Delaware domiciled entities. Estimated unclaimed property for any period a Holder determines it does not have available records would be reportable to the Holder's state of incorporation or formation.

On July 1, 2017, the Department of State published final regulations relating to estimation in the SOS VDA Program. The regulations address the scope of an SOS VDA, 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.

Here is a link to the final SOS VDA Estimation Regulations:

<https://vda.delaware.gov/wp-content/uploads/sites/66/2017/07/DOS-Abandoned-or-Unclaimed-Property-Final.pdf>

Pursuant to Delaware Code § 1176 (b), on October 1, 2017, the Department of Finance published its final DOF Regulations regarding estimation methodology. These regulations provide eligible Holders that received an examination notice from the Department of Finance on or before July 22, 2015 with an opportunity to convert their Department of Finance examination to a SOS VDA. The window of opportunity to do so is from October 11, 2017 until December 11, 2017. Form NOI CONV must be received by the Department of State by December 11 for the submitting Holder to be eligible for conversion.

Here is a link to the final DOF Regulations:

<https://vda.delaware.gov/wp-content/uploads/sites/66/2017/10/21-DE-Reg-336-10-01-17.pdf>

What if the Holder cannot reach a settlement with the Secretary of State in the SOS VDA Program?

If a settlement cannot be reached on a particular property type or for a particular entity, the property type or entity will be excluded from the final settlement and release agreement. Pursuant to 12 Del. C. § 1173(a)(4), any property types or entities excluded may be referred to the State Escheator for examination. Similarly, if a settlement cannot be reached on any property type or entity, the Holder may be referred back to the State Escheator for examination.