Housekeeping

- Your phone lines have been muted.
- This session is being recorded and will be viewable on our website after the live recording has concluded.
- Questions have been pre-submitted via email and phone.
- Please send any additional questions following the webinar to SOS.VDA@Delaware.gov.
Agenda

• Introductions
• Unclaimed Property Overview
• Delaware SOS VDA Program
• Delaware SOS VDA Workflow
• Benefits of the VDA Program
• Common and Submitted VDA Questions & Answers
Unclaimed Property Overview
Unclaimed Property Overview

• Unclaimed property consists of accounts, securities, and other financial instruments (usually intangible) being held at Insurance Companies, Banking Organizations, and other types of corporations / organizations that have gone dormant for a specified period of time.

• Dormancy Period is a statutorily prescribed period that begins from the date of creation of the property type (e.g., check issuance date) and ends after the passage of a certain number of years.

• Delaware’s Dormancy Period:
  • Securities: 3 years
  • All other property types: 5 years
Unclaimed Property Overview

- Common types of unclaimed property include:
  - checking and savings accounts
  - uncashed wage and payroll checks
  - uncashed stock dividends and/or stock certificates
  - insurance payments
  - Utility, customer and other deposits
  - accounts payable
  - credit balances
  - refund checks
  - money orders
  - traveler’s checks
  - mineral proceeds
  - court deposits
  - uncashed death benefit checks
  - unused gift cards
  - life insurance proceeds

- Unclaimed property does not include real estate or vehicles.
Unclaimed Property Overview

• All 50 states and the District of Columbia have enacted unclaimed property laws.
  • Enacted as a means of consumer protection to return property to rightful owner.

• Unclaimed property is **not** considered a tax.
  • Nexus Standards are **not** applicable.

• States’ unclaimed property laws apply to all entity types, including:
  • Corporations
  • S Corporations
  • Partnerships
  • Limited Liability Companies
Unclaimed Property Overview

• Once deemed abandoned/unclaimed, it triggers the obligation to report and remit the value of the UP to the appropriate jurisdiction.

• U.S. Supreme Court has established a two-prong approach for determining priority among states: Texas v. New Jersey, 379 U.S. 674 (1965)
  • First Priority: State of Owner’s last known address.
  • Second Priority: If no last known address for the Owner is available in the Holder’s records, or if last known address is in a foreign country, then report and remit the UP to the company’s state of incorporation.
Delaware SOS VDA Program
Glossary

- **DOS**: Delaware Department of State.
- **SOS VDA Program**: Secretary of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program.
- **Administrator**: The Department of State and/or its outside Vendor and Vendor’s assignees assisting the Department of State with a review of the SOS VDA Submission packages.
  - Current vendors: Faegre Drinker Biddle & Reath LLP and TL2Q LLC.
- **Holder**: Business entity with potential unclaimed property reportable to Delaware.
- **Advocate**: Third-party service provider who represents the Holder in presenting its SOS VDA Submission to Delaware.
  - Current list at: https://vda.delaware.gov/forms/
DE SOS VDA History

**July 2012:** The Secretary of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement (SOS VDA) program was established.

**February 2017:** Senate Bill 13 (SB 13) re-wrote Delaware’s abandoned or unclaimed property statutes, which was subsequently updated in June 2017 by Senate Bill 79.

**July 2017:** Department of State finalized regulations (SOS VDA Estimation Regulations) related to the SOS VDA Program on estimation and other SOS VDA related matters.

**October 2017:** Department of Finance finalized regulations (DOF Regulations) entitled “104 Department of Finance Abandoned or Unclaimed Property Reporting and Estimation Manual.”

**July 20, 2018:** SOS VDA Program Guidelines published to revise the prior Implementing Guidelines. This document summarizes practices in place and accounts for changes/updates in Delaware’s Abandoned or Unclaimed Property statutes.
DE SOS VDA Program

• Delaware’s Abandoned or Unclaimed Property Law is found in Chapter 11, Title 12 of the Delaware Code.

• Under 12 Del. C. § 1173, the Secretary of State is permitted to settle abandoned or unclaimed property voluntary disclosure agreements with Holders.

• SOS VDA Program is not an audit.

• Enrollees are expected to conduct a thorough and detailed self-review of their books and records to determine their own unclaimed property liability.

• The process is rigorous but fair, providing Delaware corporations a more predictable and efficient means of coming into compliance.

• As of March 2020, over 1,200 companies have enrolled, and over 600 VDAs have been settled.
Delaware SOS VDA Work Flow
Delaware VDA Work Flow

• Step I: Enrollment
• Step II: General Company Information
• Step III: Phase 1- Scoping of the SOS VDA
• Step IV: Phase 2- Quantification of Abandoned or Unclaimed Property Reportable to Delaware
• Step V: Phase 3- SOS VDA Submission and Validation
• Step VI: Phase 4- Closing Process and Documentation
Step I: Enrollment

• To enroll, Holder should send in Form VDA-1 “Disclosure and Notice of Intent to Voluntarily Comply with Abandoned or Unclaimed Property Law” to SOS.VDA@Delware.gov.
  • Form VDA-1 can be found at https://vda.delaware.gov/forms/
  • VDA-1 must be signed by executive or a person with similar authority.
  • Do not need to fill out entity list yet, but can be filled out if you have it.
  • You are not required to have an advocate, and can add or change one at any time.

• Once submitted to SOS, VDA Administrator will:
  • Cross check active VDA/Audit List.
  • Send to SOS for signature if all items are in accordance with rules and regulations.
  • Email Holder with decision.

• If accepted and signed by SOS, Holder will be referred to one of our Vendors to continue the VDA process.
Step II: General Company Information

- Vendor sent documents in Welcome Email may include:
  - Introductory Document Requests ("IDRs") for Holder to fill out
  - Non-Disclosure Agreement for Holder to sign
  - List of Advocates (list is on the VDA Website)
  - Sample Work plan (if no advocate chosen)
  - Sample Scoping Memorandum Worksheet

- Holder should provide responses within 30 days.
- Intro materials establish the baseline core information about a Holder.
- The better information received at the beginning of the process, the more your VDA can be tailored to your company’s unique attributes.
Step III: Phase 1- Scoping

• The scope, as determined by Holder and agreed upon by Vendor, is the skeleton of the final report.

• Entities Included in Review
  • Entities incorporated in Delaware
  • Entities conducting business in Delaware
  • Acquired entities

• Property types included in review
  • Property types or entities may be permitted to be scoped out on a case by case basis.

• Years to be included in the scope of the VDA.
  • Look-back period is 10 report years after the dormancy period has passed.

• Availability of complete and researchable records.
Step IV: Phase 2- Detailed Records Review

- Holder performs a detailed, transaction-level review of the available records for each in-scope property type and entity in accordance with the SOS VDA Program Guidelines (https://vda.delaware.gov/forms/).
- Form of work plan provided in Welcome Email – outlines expectations of the level of detailed self-review generally required to finalize VDA.
- Holder will check-in with vendor on the methods used and/or assumptions to be made during this process; i.e. when a population of records is not perfect, or too many records to review, etc.
  - Check-ins/status reports are designed to address and resolve issues as they arise instead of after the work has been completed.
- For years where complete and researchable records are not available, DE will estimate the amounts due using base years.
Step IV: Phase 2- Detailed Records Review

- Expected source documents for detailed self-review:
  - General ledgers, trial balances, bank statements, bank reconciliations
  - Outstanding and void check register
  - A/R aging reports
  - Tax returns, financial statements, organization charts
  - Accounting policy/procedure manuals
  - Stock and/or asset purchase agreements
  - Payroll records
  - Customer deposit ledgers and rebate programs
  - Gift and merchandise card records
  - Employee health and benefit plan documents
  - Shareholder ledgers and/or transfer agent agreements
  - Historic unclaimed property reports by state
Step V: Phase 3 - Quantification of UP

- Following the detailed self-review Holder presents Final Report of assessment to Vendor.

- Vendor reviews the analysis and conclusions reached in the report and request supporting documentation as necessary for:
  - Remediation testing
  - Certain source records based on review presented – trial balances, bank reconciliations, full data population sets, AR tracers, etc.
  - Ensuring review was done in accordance with the Implementation Guidelines
  - Any other items as needed
Step VI: Phase 4 - Closing Process

• Once settlement has been reached, Vendor assembles closing packet.
• Vendor submits final VDA closing package to DOS for review.
• Holder responds to any questions from DOS, and makes necessary changes.
• DOS approves VDA closing package.
• VDA-2 signed by Holder and State, and Holder pays State.
• The average VDA takes two years to complete.
Step VI: Phase 4- Closing Process

- **Failure to Reach Settlement**: 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)**, if a settlement cannot be reached on any property type or entity, the Secretary of State may refer the resolution of such claims to the State Escheator at any time.
Benefits of the VDA Program
Benefits of Completing the SOS VDA Program

• Designed to be **business friendly** and provide an **efficient** means of coming into compliance with a company’s unclaimed property reporting obligations.
  • Tailored to each enrollee’s facts and circumstances.
  • Holders and State work together to reach agreement of quantification of liability.

• Typically **faster** and **less expensive** than an audit.
  • Waiver of all interest and penalties for past due unclaimed property.

• Provides **certainty** for Holders.
  • Holder has greater control over the scope and related liability, as well as the settlement amount.
  • State will release and discharge the Holder from any and all liability related to the entities and property types that were included in the VDA.
Common and Submitted Questions and Answers
Questions about the VDA

Q: Why should I enroll?

• I have no business operations, customers or vendors in Delaware, so why should my company enroll in the Delaware VDA Program?
• My company has been reporting and remitting unclaimed property to the various states for many years, therefore why should my company enroll in the Delaware VDA Program?
• I have never heard of Unclaimed Property, and I asked around and we do not have any, so why should my company enroll?
• We completed a VDA/Audit 5 years ago, why should we go through another VDA?

A: There are many reasons to enroll in the SOS VDA Program including the benefits discussed previously in this webinar. Given the benefits of the VDA over an audit, we recommend everyone sign up for a VDA. It will be tailored to your business to complete the process as quickly as possible. VDA Invitation Letters cannot be rescinded once sent. Companies that do not enroll in the SOS VDA Program within 60 days of receipt of the Invitation Letter will be referred to the State Escheator for examination.
Questions about the VDA

Q: Who is contacting me?

A: After a Holder is accepted into the VDA Program, the DOS will let them know they have been accepted and that the next contact they will receive is from one of our Vendors. Our Vendors will work with Holders throughout the VDA process, and have all authority to do so.
Questions about the VDA

Q: When is estimation appropriate?

A: Generally, estimation is used to determine a liability for periods where complete and researchable records are not available.

Q: What constitutes complete and researchable records for a given year?

A: Generally, complete and researchable records show a full year’s activity, can be reconciled to a trial balance, and can be researched by the Holder to determine resolution or remediation of an item.
Thank You for attending!

Please send questions to:
SOS.VDA@Delaware.gov

Today’s Presenter:
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