Abandoned & Unclaimed Property Alert

Tracking the dramatic changes in the way states enforce abandoned and unclaimed property laws

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Delaware legislature passes VDA incentives, awaits governor's signature

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In brief

Companies are particularly susceptible to significant unclaimed property exposure in Delaware because holders of property with an unknown owner address generally must remit such property to their state of corporation - which often times is Delaware. Since holders have potential exposure to report property back to 1981, the Delaware VDA program under S.B. 258 would offer companies an opportunity to decrease their unclaimed property exposure by limiting their lookback of liability.

In detail

On June 28, 2012, the Delaware House of Representatives unanimously passed Senate Bill 258, previously passed unanimously by the Senate, which creates incentives for holders of unclaimed property to report the property via a Voluntary Disclosure Agreement (VDA) administered by the Secretary of State. S.B. 258 is now awaiting the governor's signature.

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As previously reported in a June 18, 2012 Alert, the bill would enact the following timelines for the incentives:

- Submitting a notice of intent to file a VDA on or before June 30, 2013 and payment made (or a payment plan developed) on or before June 30, 2014 limits the lookback period to 1996, rather than the current lookback to 1981 for holders that are not in compliance
- Submitting a notice of intent to file a VDA after June 30, 2013, but on or before June 30, 2014 with payment made (or a payment plan developed) on or before June 30, 2015 limits the lookback period to 1993

Eligible holders would include those who are not currently reporting any or all amounts or types of abandoned property. Additionally, eligible holders would not include the following:

- Those that have indicated in writing their intent to enter into a VDA with the State Escheator prior to June 30, 2012, however, if payment is made in relation to the VDA by either the June 30, 2014, or June 30, 2015 deadline, they will be entitled to the same respective lookback periods under the new legislation;
- Those that have entered into a VDA with the State Escheator on or before June 30, 2012;
- Those to whom a notice of examination has been mailed by the State Escheator; and
- Those who have previously been referred to the State Escheator by the Secretary of State.

The new process would involve the resolution of claims before the Secretary of State, rather than the State Escheator. However, if unable to resolve the claims by agreement, the Secretary of State may refer the resolution of such claims to the State Escheator at any time.

In addition to these previously reported provisions, Senate Bill Amendment 1 to S.B. 258 passed on June 21, 2012, which would provide the following:

- After the Secretary of State enters a VDA with a holder, the State will not seek further payment of abandoned property covered by that agreement unless it can establish evidence of fraud or willful misconduct in the VDA;
- Unless the Secretary of State refers that holder to the State Escheator for examination, the State Escheator will not initiate, prior to July 1, 2015, an examination of any holder participating in the new VDA program who completes, executes and delivers to the Secretary of State, on or before June 30, 2014, such form as is acceptable to the Secretary of State; and
- The Secretary of State's issuance of forms for participation in the program is expedited.

Actions to think about

What does this mean for my business?

If the governor signs S.B. 258, companies with potential unclaimed property due to Delaware and that are contemplating filing a VDA should examine the enacted provisions carefully to take advantage of the new incentives. After June 30, 2014, the Secretary of State can no longer accept a notice in writing of intent to enter into a VDA, and can no longer accept payment after June 30, 2015. Therefore, Delaware businesses, and businesses incorporated in Delaware, may need to act quickly to take advantage of these incentives.

Let's talk

If you have questions about Delaware's VDA incentives, please contact:

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