

## Delaware Senate Passes Unclaimed Property Reform Bill

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On June 18, 2015, a bill (**S.B. 141**) was unanimously approved by the Delaware Senate that would place limits on the look-back period and permanently extend the **Voluntary Disclosure Agreement (VDA)** program. This represents the second bill this year that seeks to implement the recommended changes contained in the Unclaimed Property Task Force's (Task Force) December 2014 final report (the first, S.B. 11, was signed by Governor Jack Markell on January 29, 2015). If passed by the House, the legislation would offer several additional protections to holders; however, it also contains a number of traps for the unwary that should not be overlooked.

### Look-back Period Shortened

First, and most significantly, the bill would limit the examination look-back period in Delaware to 22 years, starting in 2017. For periods before 2017, the bill would limit the look-back period to 1986 (if currently under examination) or 1991 (for any examinations initiated after enactment). While this proposed look-back period decrease would be a significant improvement from the status quo (which allows Delaware to look-back to any period after 1980), it would still represent one of the longer look-back periods in the country. Notably, the proposed 22-year look-back period would remain over twice as long as most state unclaimed property look-back periods (which are usually 10 years or less).

### Permanent VDA Program

Second, the VDA program is amended to authorize the Secretary of State to request that any potential holder enter into an unclaimed property VDA. If the potential holder does not agree to the VDA within 60 days, they will be referred to the State Escheator for examination. The bill provides for a 19-year (reduced) look-back period for any holder that enters the VDA program on or after January 1, 2017, and allows two years to complete the VDA process. Additionally, S.B. 141 would strike the sunset provision for the VDA program, which is currently scheduled to expire July 1, 2016. Certain holders are not permitted to participate in the VDA program, including those that: (1) formally withdrew from the voluntary disclosure agreement program, or (2) were removed from the VDA program for failure to work in good faith to complete the VDA program as soon as practicable.

## Interest

The bill would also amend the governing statute to allow interest of 0.5 percent per month (up to 25 percent of the amount due) to accrue from the due date for any late-filed unclaimed property reported and remitted on or after March 1, 2016. The current unclaimed property statute in Delaware does not have a provision permitting the accrual of interest (former interest provisions were repealed in June 2014 with the enactment of S.B. 228). Even before their repeal, the interest provisions were largely unenforced. Because the look-back period would remain over 20 years in Delaware, the added costs associated with the proposed interest increase (and actual enforcement) will likely be more than the amounts no longer owed due to the proposed look-back period reduction.

## Mandatory Holder Contact

One procedural change included in the bill is a requirement that holders designate an employee (as opposed to outside counsel) to serve as the primary contact for all correspondence with the state when filing their annual report. Delaware appears to be attempting to forbid holders from outsourcing contact with the state to outside advisors, yet ironically Delaware has outsourced their unclaimed property audit and policy functions. It is not clear what the policy behind such a change is, other than to create an additional burden on holders, who often hire an advisor because they do not have the infrastructure in place to manage an audit on a daily basis.

## Practice Note

The bill was introduced in the House last Friday (June 19, 2015) and referred to the Economic Development/Banking/Insurance/Commerce Committee. While the legislation takes several steps in the right direction, it subsequently takes several steps back. Notably, the proposed VDA program is far from voluntary (*i.e.*, participate or be audited), especially when paired with the new threat of interest and only a slightly reduced look-back period (that was egregious in the first place). It remains to be seen whether additional legislation implementing the Task Force recommendations is still to come. Regardless of whether S.B. 141 passes, Delaware will continue to be one of the most aggressive enforcers of unclaimed property and holder remittance should be carefully evaluated and managed.

*Eric Carstens is a co-author of this article.*

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National Law Review, Volume V, Number 174

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