



MULTISTATE TAX

Delaware unclaimed property audit notices sent to companies that failed to respond to VDA invitations

Tax Alert

Overview

Many companies that did not respond to the July 2023 invitations to enroll in the Delaware Secretary of State's Voluntary Disclosure Agreement (VDA) program have received unclaimed property audit examination notices (on or around October 17, 2023) from Delaware's Department of Finance. While Delaware is generally required to invite and allow 90 days for companies to enroll in the VDA program prior to selecting companies for audit, there are several statutory exceptions whereby a company may be selected for audit—that may yield a harsher result—without receiving a VDA program invitation first.

Delaware unclaimed property VDA program and audit notices

In general, Delaware must invite most companies to join its unclaimed property VDA program and allow 90 days for companies to enroll in the VDA program prior to selecting companies for audit examinations. For more details on the July 2023 notice and the VDA program, please see our [Tax Alert](#) dated July 25, 2023. For more information on the VDA program, please see our previous issue of [State Tax Matters](#) dated January 6, 2023.

Note, however, that there are several statutory exceptions whereby a company may be selected for a Delaware unclaimed property audit without first receiving a VDA program invitation letter, including:

- If Delaware joins a multi-state audit that was already initiated by another state;
- If a company does not respond to a request for a verified report or a compliance review or does not timely pay a notice of deficiency resulting from a compliance review (for more details on these

compliance enforcement programs, please see our [Tax Alert](#) dated October 12, 2023);

- If a company entered into a VDA with Delaware on or before June 30, 2012; or
- Pursuant to information received under Delaware’s False Claims and Reporting Act.

For companies formed under the laws of Delaware, the audit “lookback period” is generally 15 years (i.e., ten report years, plus the state’s five-year dormancy period for most property types), and estimated liabilities must be paid to the state for any years of the audit review period where records are unavailable. Accordingly, companies that received such audit notices should confirm whether a VDA program invitation letter was sent prior to the audit notice.

Get in touch

[Nina Renda](#)

[Jenna Fenelli](#)



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30 Rockefeller Plaza
New York, NY 10112-0015
United States

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