

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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► SUBJECT

DELAWARE PROPOSES NEW VDA PROGRAM

► SUMMARY

On June 28, 2012, the Delaware House passed SB 258 creating a new and alternative unclaimed property Voluntary Disclosure Agreement Program (“VDA”) as an incentive for holders of unclaimed property to report in exchange for a shortened look-back period. The provision will become effective immediately upon signature by the Governor, which is expected shortly. Holders that wish to take advantage of the shortened look-back period to 1996 must enroll by June 30, 2013. Holders that enroll by June 30, 2014, may be eligible for the shortened look-back period to 1993 as discussed below.

► DETAILS

Under the new VDA program, VDAs filed would be overseen by the Delaware Secretary of State and provide holders a two-year window to enter into the new VDA to report any past-due unclaimed property liabilities.

In order to qualify for the shortened look-back period commencing with transaction year 1996, unclaimed property holders must enroll in the VDA program on or before June 30, 2013, and make payment in full or enter into a payment plan within one year (on or before June 30, 2014). After June 30, 2013, unclaimed property holders may still participate in the VDA program but would qualify instead for the longer look-back period (commencing with transaction year 1993). This less favorable alternative requires that holders enter into the program after June 30, 2013, and on or before June 30, 2014, and make payment in full or enter into a payment plan within one year (on or before June 30, 2015). Under Delaware’s current VDA program, the look-back period requires holders to report property arising from transactions back to 1991.

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A holder interested in participating in this anticipated VDA program may not qualify if any one of the following applies:

1. An audit notice has been mailed to the holder;
2. The holder has been referred to the State Escheator by the Secretary of State;
3. The holder has filed Delaware VDA Form (DE-AP1), indicating an intent to enter into a VDA, on or prior to June 30, 2012; or
4. The holder has entered into a VDA with the State Escheator on or prior to June 30, 2012.

On June 21, 2012, while the bill was still under consideration by the legislature, the language was amended to clarify that VDA participants, which would not be subject to an unclaimed property audit by the Delaware Secretary of State once enrolled in the program, are also protected from audit by the State Escheator unless there is evidence of fraud or willful misrepresentation by the holder. The amendment also clarifies that the State Escheator will not have authority to audit any holder participating in the State's VDA program prior to July 1, 2015, unless the Secretary of State refers such holder to the State Escheator for examination.

CONSIDERATIONS

Holders that have never reported unclaimed property to Delaware, as well as those that have found errors in previously reported holdings, will be eligible for the new program. The following are significant benefits to the new VDA program:

1. Participants will be entitled to a shortened look-back period to either 1996 or 1993 depending on the application date.
2. Participants will be entitled to an abatement of penalty and interest (*e.g.*, up to maximum of 125% of assessment).¹
3. The Secretary of State and the State Escheator will not have the right to audit the periods covered by the VDA (1993 or 1996, as the case may be, to the current report year), except where willful misrepresentation or fraud is present.
4. The Secretary of State may not audit participants for periods prior to the commencement of the VDA period (1981 through 1996 or 1993, as the case may be).
5. It appears that the State Escheator may still audit periods prior to the commencement of the VDA period, but only after June 30, 2015.

BDO's national unclaimed property team has experience in providing escheat services, including but not limited to assistance with voluntary disclosure agreements, audit assistance, feasibility reviews, compliance, policy and procedure assistance, and general consulting in escheat matters.

¹ See Tit. 12 Del. Code Ann. Sec. 1159.

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