

THE  
NATIONAL LAW REVIEW

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## Delaware Starts Unclaimed Property “Compliance Reviews” (Different from Audits)

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Wednesday, January 16, 2019

If the Delaware Office of Unclaimed Property believes that a person may have filed an “inaccurate, incomplete, or false report,” the State Escheator may authorize a “compliance review” under Del. Code Ann. tit. 12, § 1170(b). This is not a standard audit and as a result, the target is not entitled to the option of entering the state’s voluntary disclosure program rather than being subject to the audit. Nevertheless, the compliance review can result in a finding of liability.

Correspondence between the Unclaimed Property Professionals Organization and the Delaware State Escheator’s Office acknowledges that several holders have been selected for this review. According to the Escheator’s Office, if a holder has no report or a negative report, the state will typically request a copy of the holder’s unclaimed property policies and procedures that would support the lack of property due to the state. By statute, the state may review the filed reports and “all supporting documents related to such reports.” The scope of the concept of “supporting documents” is not clear.

**Practice Note:** Companies, particularly those domiciled in Delaware, not filing Delaware unclaimed property reports or filing reports showing no liability, should review their policies and procedures related to unclaimed property, including how voided checks and unidentified remittances are handled. Furthermore, recent audits have included an expanded Automated Clearing House (ACH) payment review request, so a company should also review its treatment of failed ACH payments. Such a review should take place in an environment that will protect the attorney-client privilege – so, including internal counsel and/or external counsel is critical. Such an internal review should: (a) verify that the holder is in compliance with its policies and procedures; and (b) provide any necessary policy or operational changes. Conducting such a review and maintaining attorney-client privilege for appropriate elements of the review is especially important given recent false claims act developments in the unclaimed property space.

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