



RECLAIMING MANAGEMENT CONTROL OF UNCLAIMED PROPERTY

Unclaimed Property remains one of the least understood corporate liabilities, costing companies across the U.S. hundreds of millions of dollars each year in remittances and related penalties and interest. While not a tax, reporting and remitting Unclaimed Property to states on an annual basis is a legal requirement. Any debt or other financial obligation that remains outstanding beyond a statutorily defined period of time must be reported as Unclaimed Property to the state of the payee's last known address per the company's records. Companies can potentially have Unclaimed Property obligations in as many as 54 jurisdictions, which include all states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands.

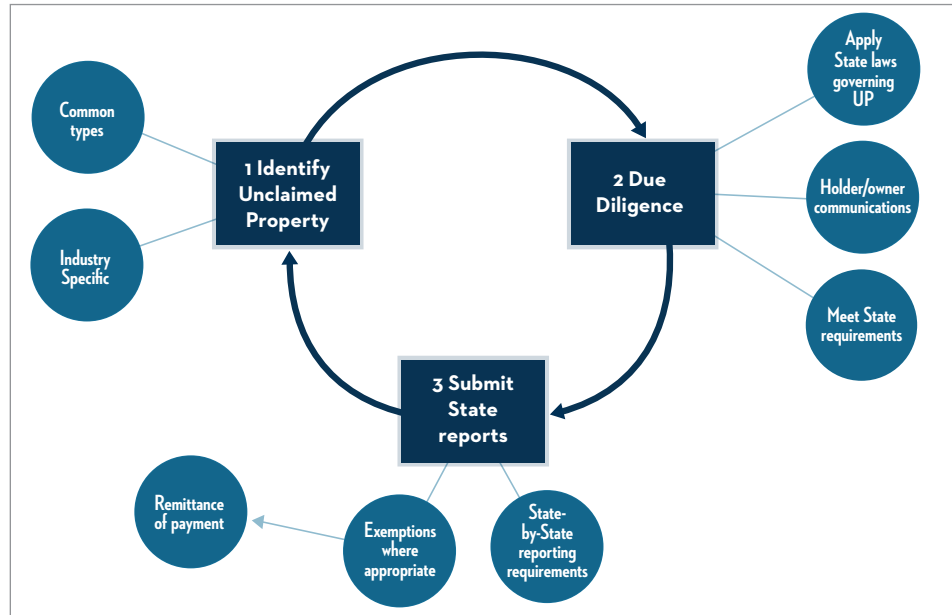
Common Unclaimed Property types that companies are required to report to states include:

- Uncashed Checks: Vendor Payments, Payroll, Royalties, Employee Benefit Payments
- Accounts Receivable: Credit Memos, Unapplied Payments, Unidentified Remittances
- Gift Certificates/Gift Cards
- Rebates/Refunds
- Deposit/Investment Accounts
- Utility Deposits
- Securities: Stocks & Dividends

The variety of state laws governing Unclaimed Property filings and the complexity of identifying and reporting Unclaimed Property to numerous jurisdictions with varying deadlines make complete and accurate compliance difficult if not impossible to manage for most companies. Add to this the onerous task of contacting payees all over the country whose property the company is holding and the Unclaimed Property reporting task quickly becomes an enormous year-round administrative burden -- a burden for which most companies are either unprepared or do not have adequate resources.

General industry-wide estimates are that only 20 percent of all companies actually have an unclaimed property management and reporting process in place internally, and of these, 50 percent are unknowingly reporting either incompletely or incorrectly. Companies may under report, over report, or both. Incorrect reporting of unclaimed property is a red flag that often leads to a state audit.

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The Delaware Equation

Many U.S. companies are incorporated in Delaware, with a business presence in numerous other states. Because of Unclaimed Property priority laws established by the Supreme Court in 1965, Delaware has jurisdiction over these companies in regard to Unclaimed Property for which an owner cannot be identified. As a result, Unclaimed Property is now the State of Delaware's third-largest source of revenue and is expected to become its second-largest by 2017. Delaware will collect in excess of a half billion dollars in Unclaimed Property liability payments just in 2013.

For many companies, because of the lengthy look-back period associated with an audit, liability and owner records may not be available for all years under review. A company's record retention policy and prior financial system changes can also contribute to a lack of available records. This generally leads to the extrapolation of current year reporting errors back to years in which companies do not have the records available to refute the results, generating significant liabilities and associated penalties and interest.



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With Unclaimed Property VDAs now administered by Delaware's Secretary of State instead of the Department of Revenue, new incentives are being offered for companies to file a VDA.

A Unique Offering by Delaware

A unique opportunity related to Unclaimed Property has presented itself to Delaware-incorporated companies. With Unclaimed Property Voluntary Disclosure Agreements ("VDAs") temporarily administered by Delaware's Secretary of State instead of the Department of Revenue, new incentives are being offered for companies to file a VDA. The look-back period, which is to 1981 under audit, is now reduced to 1996 for companies filing a VDA under this new short-term program. Companies can benefit significantly with 15 years truncated from their liability, but only if they sign up for the Delaware VDA program before June 30, 2013.

After this June 30, 2013 deadline, companies may continue to enter into the new VDA program up until June 30, 2014; however, the look-back period will be 1993 with 12 years of liability truncated instead of 15. Prior to Delaware's new VDA program administered by the Secretary of State, companies filing a VDA with the Division of Revenue had to comply with a look-back period of 1991. Based on a study of VDAs completed under the prior program, early registrants for the new VDA program can expect to realize savings of 40 to 60 percent or more when compared to the previous VDA program's look-back period. The savings associated with completing a VDA under the new program rather than waiting to be selected for an audit is immeasurable.

Delaware continues to administer a robust audit program through the Division of Revenue. Any company can be contacted for audit at any time, and once a company has received the audit notice that company is no longer eligible to participate in the VDA program. The look-back period in a State of Delaware audit can extend as far back as 1981. For years where no records exist, liability is estimated with all estimated property payable to Delaware for companies that are incorporated in Delaware. The state can also impose interest up to 50 percent of the liability assessment, as well as penalties of up to 50 percent, effectively doubling a company's Unclaimed Property liability under a Delaware audit. In addition to liability reduction resulting from shortened look-back periods, companies filing a VDA with Delaware now will benefit from complete abatement of any interest and penalties, and - unlike under previous arrangements - could also receive the benefit of additional protection from future audits.



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Benefits of Voluntary Disclosure

The State of Delaware's window of opportunity for Delaware-incorporated companies to file under the new VDA program should be urgently considered, since filing a VDA with the state will not only result in significantly reducing liabilities – for many companies in the millions, perhaps tens of millions, of dollars -- but also protect companies from the risk of audit. Whether companies are Delaware-incorporated or not, however, filing a VDA holds great advantages when compared to delaying Unclaimed Property reviews.

The potential value to a company that files a VDA cannot be overstated. Companies that voluntarily come forward are able to work more flexibly within more manageable timeframes and exercise greater influence in the results of the Unclaimed Property review. This flexibility disappears if a company is selected for an audit, placing a company in a defensive posture. In that case, timeframes for reporting are pre-set by the state, all samples are selected by the auditor – decreasing the likelihood of a favorable review – and there is very little time afforded to research Unclaimed Property liabilities for a more favorable outcome. Companies under a state audit scenario may have their Unclaimed Property liabilities represented in ways that do not reflect the real world status of those liabilities. Moreover, state audits are typically conducted by third-party contractors that are either wholly or partly paid on contingency, incentivizing them to maximize a company's liability through aggressive estimation techniques and unreasonable methodologies.

What If You Are Selected for Audit?

Unclaimed Property state audits may be imposed for any number of reasons. Non-reporting, incorrect reporting or untimely reporting are key triggers for a state to select a company for audit. At times, a lack of compliance may be perceived even though a company is fully compliant with the state. For example, companies have been audited by states because their reported and paid liabilities were significantly lower than those of companies in the same or similar industries.

If a company is selected for audit before taking the opportunity to file a VDA, the Unclaimed Property liability review is conducted under state-imposed constraints, such as abbreviated deadlines. A company under audit has less flexibility in the review, with the critically important processes of sample selections and estimations developed by the state or third-party auditor. Although a company under state audit is in a defensive posture, this situation provides an opportunity to establish the company's Unclaimed Property processes and procedures in a way that will ensure its compliance with ongoing obligations, favorably impacting future reporting, and so leading to future liability reduction.



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Using an advocate that specializes in Unclaimed Property is critical to the success of a company's VDA filing.

Who Is Your Advocate?

Selection of the right advocate is a significant decision that could have an impact of millions of dollars to a company's bottom line. Many companies understand the value of having an advocate when facing a state audit. However, much of this value also translates into a voluntary disclosure scenario. Filing a VDA and managing a company-wide Unclaimed Property review is an art as well as a science. When coming forward voluntarily, it is critical to have an advocate with experience and an understanding of how states operate and what they expect through the Unclaimed Property filing and reporting process. Moreover, as comprehensive as an Unclaimed Property review is, an experienced, client-focused advocate will know how to streamline the review process to significantly reduce company liability while avoiding unnecessary, excess effort.

Using an advocate that specializes in Unclaimed Property is critical to the success of a company's VDA. Some advocates do not employ dedicated teams to Unclaimed Property services, since they do not have the resources to focus exclusively on Unclaimed Property, and so share their staff with other practices. The chance of missing important liability reductions therefore increases, and depending on the scale and scope of these missed opportunities, the difference in final remittance to a state could be considerable.

Unclaimed Property compliance requirements are completely different from those associated with other compliance driven practices. Remember, Unclaimed Property is not a tax, though it is a corporate liability. The process of complying with state Unclaimed Property laws requires coordination across many internal departments - a complex process of extensive communication, property review, and owner outreach - all under various deadlines. Experienced and best practices management is needed for uncovering, processing, and measuring liabilities and for ensuring operational procedures are manageable and fluid through the entire engagement.

The advantage of dedicated Unclaimed Property expertise is also seen across the table when meeting with state representatives. A superficial knowledge of various state mandates as they affect Unclaimed Property liability and a less than thorough understanding of how state administrators operate can adversely affect negotiations - whether during the VDA process or while under state audit. A dedicated Unclaimed Property advocate is far more likely to be intimately aware of both the written and unwritten rules under these scenarios, and is thus more able to favorably represent the client company.



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Advantage to Acting Now

In recent years, most states – but especially Delaware – have become more aggressive with Unclaimed Property liability audits because of state budgetary concerns. This means “business as usual” in this often overlooked area of corporate liability can no longer be assumed. Companies that are proactive in filing a VDA stand the best chance of defending themselves against overly aggressive state audits, potentially saving millions if not tens of millions of dollars. Even if selected for audit, companies can still resolve to develop a strategy for defense that, if properly handled by a dedicated Unclaimed Property advocate, can translate into significant savings when compared to passively relying on state audit representatives. A decision to act when selected for audit also leads to curtailing future liability and risk reduction of further Unclaimed Property audits.

For Delaware-incorporated companies, this is the most favorable environment in decades for coming forward voluntarily to report Unclaimed Property liability. By filing a Delaware Voluntary Disclosure Agreement by June 30, 2013, a company can reduce its look-back period by as much as 15 years when compared to a state audit. This translates into immeasurable savings of a company’s Unclaimed Property liability to the State of Delaware. Companies incorporated in Delaware that miss this deadline but still file a VDA by June 30, 2014 will also have their look-back period reduced, but by 12 years when compared to a state audit review. This also provides companies with an opportunity for significant savings. Filing a VDA under this short-term program mitigates the risk of audit that, for Delaware-incorporated companies, can extend back to 1981 – an audit that in all likelihood would result in estimated liability, interest assessments and penalties. Whether incorporated in Delaware or not, companies have the opportunity to proactively preempt costly and resource-draining state audits, if they act now.

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