

Unclaimed Property:

Delaware: Reminder: Voluntary Disclosure Agreement Invitation Response Deadline is Approaching

As noted in a previously issued Multistate Tax Alert, invitations to enroll in Delaware's unclaimed property voluntary disclosure agreement (VDA) program were sent to select companies on or around November 15, 2024. Companies are generally selected to receive these invitation letters due to the State's perception that they appear to be non-compliant with Delaware's unclaimed property reporting requirements. Once received, a company has only 90 days to enroll in the VDA program before being referred to the Delaware Department of Finance for an unclaimed property audit, which would be conducted by the State's third-party audit vendors (many of which are also audit vendors engaged by other states). As such, companies that received invitations in November 2024 have until approximately mid-February 2025 to respond to the letters or else risk being selected for audit.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-delaware-invitations-for-2024-unclaimed-property-voluntary-disclosure-agreement.pdf>

Note, there are significant differences between undergoing a Delaware unclaimed property audit examination versus participating in the VDA program, with the later affording, among other benefits, the ability to perform a self-review, 100% waiver of penalties and interest, and differing standards for the presumption of unclaimed property liabilities by the State's vendors performing VDA and audit reviews.

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;
- 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.

Accordingly, all companies should be on the lookout for these important VDA program invitation letters, which may be mistaken for general trivial correspondence from the State. Furthermore, even companies that do not receive these invitation letters may want to consider whether they may still be subject to audit through one of Delaware's statutory exceptions as the VDA program can be voluntarily entered at any time, but only before an audit notice is received from the State. Please contact us with any questions.

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