

Unclaimed Property:

Delaware: Invitations for 2023 Unclaimed Property Voluntary Disclosure Agreement Coming Soon

Abandoned or Unclaimed Property VDA Program: 2023 SOS VDA Invitations Mailing Dates, Del. Sec. of State (rev. 7/23). A recent posting on the Delaware Secretary of State's voluntary disclosure agreement (VDA) website page announces that invitations to enroll in its unclaimed property VDA program are expected to be sent to companies on or around July 14, 2023. 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).

URL: <https://vda.delaware.gov/vda-invitation-dates/>

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.

See forthcoming Multistate Tax Alert for more details on this significant development, and please contact us with any questions in the meantime.

— Nina Renda (Morristown)
Partner
Deloitte Tax LLP
akrenda@deloitte.com

Lauren McGuire (Morristown)
Senior Manager
Deloitte Tax LLP
laumcguire@deloitte.com

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