



Unclaimed Property ADVISORY ■

DECEMBER 1, 2023

Holders Should Be on Alert for Delaware Verified Report Process Notice Letters

In recent weeks, holders have received notice letters from the Delaware Department of Finance, Office of Unclaimed Property (OUP) requesting that holders complete the state's verified report process as authorized under Section 1170 of the Delaware Escheats Law. These notice letters require holders to submit to Delaware: (1) a notarized verified report for the most recent filing year; (2) a list of legal entities related to the holder; and (3) a response regarding whether the holder has written unclaimed property compliance policies and procedures in place (and if available, a copy of such policies and procedures).

Along with the notice letter, holders have received a blank verified report document, a blank schedule to list legal entities related to the holder, and a list of frequently asked questions (FAQs) related to verified reports from the OUP. These notice letters are part of what appears to be one of Delaware's first large-scale campaigns to request that holders submit verified reports. And for the first time, the OUP has contracted with a handful of third-party audit firms to review holders' submissions.

The holder's 30-day deadline for making initial contact with the assigned audit firm is quickly approaching—most notices we have seen are dated November 8 or November 13.

Background of the Delaware Verified Report Provision

Section 1170 authorizes the State Escheator to conduct a one-year, limited review of any holder's most recent annual filing (or non-filing) by requesting that the holder file a verified report. A holder's verified report must do all the following:

1. State whether the holder is holding property reportable under the Escheats Law.
2. Describe property "not previously reported or about which the State has inquired or about which there is a dispute as to whether it is reportable under" the Escheats Law.
3. State the amount or value of the property.

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As we described in detail in our June 7, 2022 [advisory](#), Senate Bill 281 expanded the scope of Section 1170 to authorize the OUP to request a verified report for any reason, including from holders that have previously filed a report or that otherwise appear to be compliant with the Delaware Escheats Law. Before June 30, 2022, under former Section 1170(a), Delaware could only require a holder to file a verified report if the holder either did not file a report or, to the extent the holder did file a report, if the state believed that the holder may have filed an inaccurate, incomplete, or false report.

While a request to file a verified report is not an examination or an audit (the FAQs attached to the OUP's recent verified report process notices go so far as calling it an "educational opportunity for both the State and the holder"), as a technical matter, the notice (1) requires a complete response from the holder; and (2) states that failing to properly respond may result in enforcement actions, including an issuance of a notice of examination and the assessment of interest and penalties. Notably, Section 1172 authorizes the OUP to initiate an audit of a holder that does not complete or respond to a verified report request from the OUP without first allowing the holder the opportunity to enroll in the Delaware Secretary of State Voluntary Disclosure Agreement (VDA) program.

Navigating the Verified Report Notice Process

The verified report process notices provide conflicting information on when submissions are due to the OUP (and Section 1170 does not provide guidance on this point). In the text of the letter, the OUP states that the holder is required to reply by providing all requested information to the listed audit firm within 30 days of the notice date (which would appear to be an unreasonable completion deadline). The FAQs attached to the notice indicate a different timeline, stating that while the holder should acknowledge receipt of the notice letter within 30 days, all requested information should be provided no later than 180 days from the date of the notice. Finally, the FAQs indicate a firm deadline of one year to complete the process. Out of caution, it would be advisable for a holder to contact the audit firm as far in advance of the 30-day notice date as possible and confirm that the holder does in fact have 180 days to make the submission, pending any clarification that the OUP provides on this question. Because most notices are dated November 8 or November 13, this deadline is quickly approaching.

In addition to the apparent conflicting information, the OUP does not allow for any extension beyond the stated one-year deadline to complete the verified report process. The FAQs provide that a failure to complete the process within the one-year timeframe will result in either a referral to the VDA program or an audit.

The notice also directs holders to consult the OUP's website for more information on how to comply with the verified report process. However, it appears that the OUP has yet to publish additional information on the process.

Given all the uncertainties here as well as the presence of third-party audit firms, we suggest discussing the verified report process notice with legal counsel. As an initial matter, holders should determine whether they require the audit firm to execute a nondisclosure agreement before any information will be provided, which is common practice in audits that involve these same firms.

Is the Verified Report Process a Backdoor to an Unclaimed Property Audit?

The receipt of a verified report process notice from the OUP could be a trap for unwary holders that view the process as only an “educational opportunity.” This is because the State Escheator is authorized to initiate an audit directly from a verified report request in certain situations without first allowing the holder to request participation in the VDA program. This could result in holders that are deemed nonresponsive to the request for a verified report being placed under audit if requested information is not timely produced.

However, under Section 1170(b), filing a verified report does not preclude a holder from participating in the VDA program. In fact, pursuant to the FAQs, the OUP will “terminate the Verified Report Process for any holder who enrolls in the VDA Program after receiving a Notice Requesting a Verified Report (upon notification by the holder and confirmation by the VDA Program).”

Given the potentially severe consequences of failing to comply with the verified report process, holders should be on the lookout for verified report process notice letters and be prepared to respond appropriately within the required timeframe.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any member of the [Unclaimed Property Team](#).

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