



This Week in State Tax (TWIST)

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Delaware: State Escheator issues guidance for reporting dormant “Illicit Property”

Recently, the Delaware State Escheator, administrator of the state unclaimed property law, issued [guidance](#) on reporting “illicit property”. The new policy applies in situations in which a business (holder) reasonably believes that an owner has provided a false name, identity, or address, and the holder has a reasonable belief (more than just a suspicion) that fraud or illegal activity concerning the property has occurred. The guidance may affect the compliance and reporting processes of businesses in possession of such property.

The guidelines indicate that if a holder has identified property as “illicit,” its first step should be to contact the appropriate law enforcement agency and attempt to turn the property over to them, or if appropriate, attempt to return the property to the source. If neither of those courses is successful, and the holder has determined that the property is escheatable to Delaware under state and law and U.S. Supreme Court priority, the policy requires that, once the applicable dormancy period has run (usually 5 years without owner-generated activity in Delaware), the holder should file an “Illicit Property” unclaimed property report. The following procedures are to be used for the “Illicit Property” report:

- The “Illicit Property” report must contain only information about items that are considered illicit and should not be commingled with other reportable items.
- The holder must send an email to escheat.holderquestions@delaware.gov with “Report of Illicit Property” in the subject line. The email must include specific information about the holder and disclose the basis on which the holder reasonably believes a false identity, or fraudulent or illegal activity has occurred.
- The Escheator may decline to accept such property; if this occurs, the Escheator must notify the holder in writing within 90 days, reject the report, and return any Illicit Property. The guidance states that the Delaware unclaimed property office will not post to the unclaimed property search website or perform public outreach on Illicit Property that has been reported.
- Holders are specifically directed in the policy not to alter or delete the owner name and address information (even if there are legitimacy concerns) for the property to be considered reportable to Delaware under the first or second priority rules. The guidance further states that holders should not take actions to induce reporting the funds to Delaware (such as transferring obligations between legal entities).
- Holders that fail to comply with the policy may be determined not to have reported in good faith and may be subject to liability for which Delaware will not indemnify the holder.

For more information on the [Delaware Illicit Property Reporting Guidelines](#), please contact a member of the KPMG National Unclaimed Property team: [Will King](#), [Marion Acord](#), [Ryan Hagerty](#), [Keela Ross](#), [Karen Anderson](#), or [Quin Moore](#).

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