



SALT Alert! 2025-05: Delaware VDA Invitation Mailings Underway

The Delaware Secretary of State's Office (Secretary) has announced that it will be mailing letters to companies inviting them to join the state's Unclaimed Property Voluntary Disclosure Agreement (VDA) Program on or around **April 11, 2025 and August 15, 2025**.

Companies that do not respond and enroll in the VDA Program within 90 days of the date of the letter will be referred to Delaware's Department of Finance and may be selected for audit. As such, it is imperative that companies be on the lookout for these mailings and respond in a timely manner.

[Link to the Secretary of State's Official VDA Invitation Mailing Announcement](#)

Background

The State's unclaimed property VDA invitations are usually addressed to a company's Chief Financial Officer and/or Tax Director and can be easily overlooked. Companies at risk of receiving this outreach have historically ranged from middle-market companies through Fortune 100 companies, both privately and publicly held, across a wide range of industries including oil and gas, retail, banking, utilities, technology, media, healthcare, manufacturing, pharmaceutical, and consumer products. These VDA invitations follow additional [mailings](#) made by the State requesting "Verified Reports" from filers in the state.

These notifications accompany a marked increase in the receipt of audit and enforcement notices from certain states directed to (A) companies that have a long filing history but may have made recent acquisitions or inadvertently excluded certain categories of property typical of their industries, and (B) companies that may have formed within the last ten years but have experienced rapid growth within the last few years (for example, start-ups that have recently gone public, SaaS companies, and companies with online and transient customer bases such as payment processors, money transmitters, and online marketplaces).

In Delaware, for both unclaimed property audits and the VDA program, the lookback period is 10 report years, plus the five-year dormancy period for most property types, which equates to a 15-year "lookback." It is not unusual for a company to be unable to produce complete accounting records for the entire lookback period. As a result, if a company's state of incorporation or formation is Delaware, the state's

statute requires the calculation of an estimate of liability for any periods where complete books and records are not available.

Guidance for Businesses Receiving a VDA Invitation Letter

The benefits of enrolling in the VDA program versus being selected for audit include, but are not limited to, the following:

- Waiver of Delaware’s statutory penalties and interest charges.
 - changes to the Delaware law limit the State Escheator’s authority to waive penalties and interest for companies under audit. For audits authorized on or after August 1, 2021, a 20 percent assessment of interest on past due property uncovered (including estimated amounts) is now considered “un-waivable,” unless participation in an “expedited audit” option, which contains its own risks and an “un-waivable” 1 percent interest assessment, is elected by the holder.¹
- A 90-day aging criteria for voided disbursement checks applies under the VDA program, while a normal audit uses a 30-day period and presumes that all checks voided more than 30 days after issuance are unclaimed property liabilities unless the company under audit can prove otherwise. This can provide a substantial benefit in terms of reduction of volume of checks requiring remediation, as well as the associated dollars of potential exposure.
- Control over the process: under the VDA program, a company is allowed to perform a “self-review” of its own records to identify and remediate areas of exposure. This contrasts with a standard audit in which the auditors will review all records and entities that they determine are “in-scope,” require extensive supporting documentation to support any claims that assessed items are not unclaimed property liabilities, and calculate their own assessments of liability that must then be refuted by the company under audit.
- As previously noted, businesses that do not enroll in the Secretary’s VDA program are eligible for audit by Delaware’s Department of Finance and State Escheator. Delaware law also provides for an “expedited” audit program option for audits authorized after August 1, 2021. As a result, certain considerations for the “expedited” audit program are discussed below:
 - Expedited audit requests by businesses are granted or denied at the sole discretion of the State Escheator within 60 days of the request. If accepted, a holder must provide “sufficient responses” to auditor requests within prescribed timeframes generally following an 18-month timeline. If a holder provides sufficient responses during the expedited audit, the Escheator must provide an audit report within two years, as compared to historical audits that have typically taken three to five years or more to complete.
 - As discussed, the State Escheator cannot waive the 20 percent assessment of interest on past due property for audits authorized on or after August 1, 2021. However, if a business elects to resolve an examination through the expedited audit process, it may only be subject to a reduced 1 percent interest assessment.²
 - Current law prohibits Delaware’s use of records that are received in an audit from being used in joint audits with another state, unless the other

state is legally bound to maintain the security and confidentiality of the information in a manner similar to Delaware's confidentiality provisions.³ For examinations initiated after August 1, 2021, documents obtained in an examination initiated by Delaware may be used in a multistate examination if the holder agrees in writing to such use. The requirement that the other state must have substantially equivalent confidentiality provisions is eliminated.⁴

KPMG Observations

Holders of unclaimed property that received audit notices from Delaware are often companies that did not respond to an invitation to participate in the state's VDA program. Delaware's unclaimed property law allows the state to initiate audits of companies without first sending a VDA invitation if (A) an audit was initiated by another state, (B) the company applied for or entered into VDAs with Delaware prior to June 30, 2012, or (C) the company enrolled but later withdrew from Delaware's VDA program on its own or were removed from the program due to not working in good faith to complete the program.⁵

Companies in receipt of an audit notice should consider the following:

- Securing a non-disclosure agreement with Delaware or, most often, the third-party firm conducting the audit on behalf of multiple states, prior to disclosing any information to the auditor.
- Requesting a list of states invited to participate in the audit, as well as copies of all state audit notices sent, from the third-party audit firm conducting the audit to confirm the auditor is indeed authorized to be conducting the audit on behalf of the states.
- Considering how the company's fact pattern may limit the scope of the audit (e.g., entities divested via stock acquisition, entities that underwent bankruptcies) or whether the auditors are entitled to receive all information being requested (e.g., data requests extending beyond the lookback periods employed by the states).
- Identifying the periods for which records are available and/or researchable, which will be important as the auditors will use certain "base years" to develop error ratios for the calculation of potential estimated assessments for the state(s) of incorporation participating in the audit.

Companies that receive a VDA invitation letter, a compliance review, a verified report request, or an unclaimed property audit notice from Delaware or other states should evaluate next steps and risk areas related to unclaimed property non-compliance. Additionally, companies that are incorporated in Delaware but are not in compliance and have not yet received an invitation should proactively assess their overall compliance with unclaimed property and consider enrolling in Delaware's unclaimed property VDA program.

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Footnotes

¹ Del. Code Ann. tit. 12 § 1185

² Id.

³ Del. Code Ann. tit. 12, § 1174

⁴ Id. 4

⁵ Del. Code Ann. tit. 12, § 1172 (a) and 1173 (e)