

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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► SUBJECT

MICHIGAN UNCLAIMED PROPERTY PROPOSED LEGISLATIVE AMENDMENTS

► SUMMARY

On October 15, 2013, proposed legislation that was previously passed by the Michigan House of Representatives (the "House") passed the Michigan Senate that would amend the Uniform Unclaimed Property Act (the "Act") to impose certain standards regarding the conduct of unclaimed property audits. It would require the State Treasurer to perform all unclaimed property examinations based on generally accepted auditing standards and would allow the amount of any abandoned or unclaimed property due and owing to be based on a reasonable method of estimation only if the person being examined did not have substantially complete records.

Also, on September 24, 2013, proposed legislation was passed by the House that would establish an administrative process to appeal a determination by the Michigan Department of Treasury that a holder of abandoned or unclaimed property had under-reported the amount of abandoned or unclaimed property that should be escheated to the State.

► DETAILS

HB 4289

As passed by the House on May 22, 2013, and passed by the Senate on October 15, 2013, House Bill 4289 would amend the Act to require the State Treasurer or its duly authorized agents (collectively, the "State") to perform all examinations in accordance with generally accepted auditing standards to the extent applicable. Further, the legislation would also require the State to give those persons who have been audited or whose books, records, and papers had been examined, a complete copy of the audit report in printed or electric format. This report would identify in detail the work performed, the property types reviewed,

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any estimated techniques employed, calculations showing the potential amount of property due, and a statement of findings as well as all other correspondence and documentation which formed a basis for the findings.

In addition, this proposed legislation permits the State to determine the amount of any abandoned or unclaimed property due and owing based upon a reasonable method of estimation consistent with the auditing standards when the person being examined did not have “substantially complete records,” as defined in the bill.

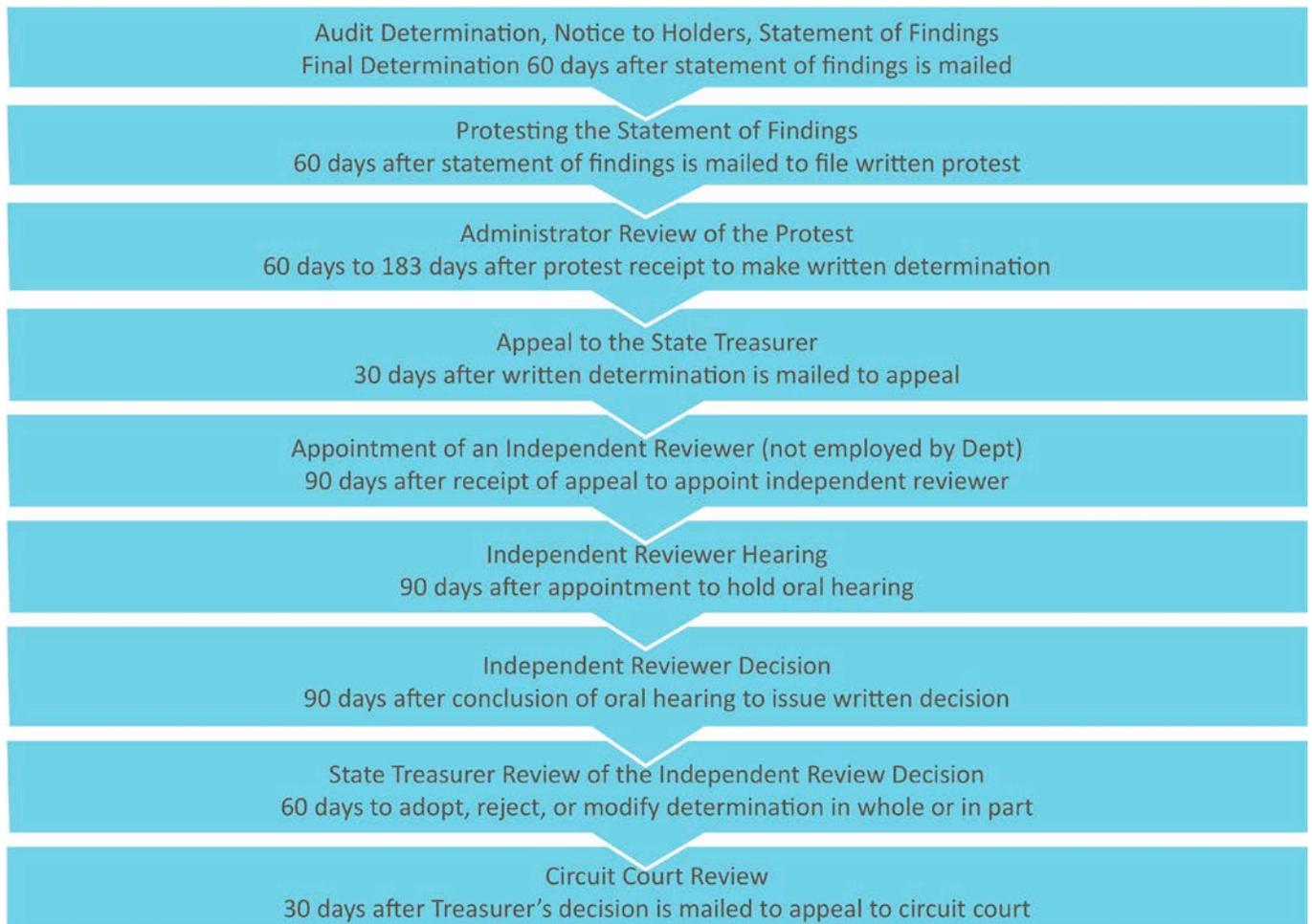
If, however, the person had filed all the requested reports and maintained substantially complete records, all of the following requirements would apply:

- The examination would have to include a review of the person’s books and records;
- The examination cannot be based on an estimate; and
- The State would have to consider all evidence presented by the holder to remediate the findings.

HB 4289 also would require the administrator to file a request for rule-making to initiate rules on auditing standards within six months after enactment.

HB 4703

In addition, as passed by the House on September 24, 2013, House Bill 4703 would amend the Act to create an administrative process for a holder of unclaimed property to appeal a determination by the State that the holder under-reported abandoned or unclaimed property. The entire appeal process could last up to 21 months assuming each step of the proposed process takes the full time as allotted or extended as provided in the bill. Below is a summary of the proposed appeal process.



► CONSIDERATIONS

Currently under Mich. Comp. Laws Ann. Sec. 567.247, a person who is aggrieved by a decision of the State or whose claim has not been acted upon within 90 days after its filing may bring an action in circuit court within 90 days after the decision by the State or within 180 days after the filing of the claim if the State has failed to act on it. An aggrieved person could still bring an action in circuit court but only upon completion of the appeals process established in House Bill 4703.

House Bill 4289 is anticipated to have the Treasury Department's support. The House will need to concur on the bill, as amended by the Senate, before it can be submitted to the Governor for his signature. It appears to be a part of the Treasury Department's Customer Centric Plan and also could help meet the Governor's goals of having a simple, fair, and efficient compliance process, including providing transparency to the process. However, the Treasury Department does not appear to support House Bill 4703 as it is written, but is working on substitute language.

BDO's national unclaimed property team specializes in providing escheat services, including but not limited to assistance with voluntary disclosure agreements; audit assistance; feasibility reviews; compliance; policy and procedure assistance; and general consulting in escheat matters.

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