

UNCLAIMED PROPERTY NOTICE

► SUBJECT

PRESSING NOTICE POTENTIAL MICHIGAN UNCLAIMED PROPERTY AUDITS LOOMING

On October 29, 2013, Michigan passed into law amendments to the Uniform Unclaimed Property Act (the "Act") which impose certain standards regarding the conduct of unclaimed property audits.

The State Treasurer or its duly authorized agents (collectively, the "State") are now required to perform all examinations in accordance with generally accepted auditing standards to the extent applicable. Further, the State is required 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.

In addition, the State is permitted 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:

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

Finally, the administrator is required to file a request for rule-making to initiate rules on auditing standards within six months after enactment.



BDO SUPPORT:

If you have received a notice, have not addressed your unclaimed property posture, or would like to learn more about Michigan and other state's escheat climate, we urge you to contact BDO to discuss this as soon as possible. There is still time to mitigate exposures, comply with the laws efficiently and drive long term practice.

JOSEPH R. CARR

Tax Partner, National Unclaimed Property Practice Leader
312-616-3946
jcarr@bdo.com

ANGELA D. ACOSTA

Tax Senior Director, Michigan Unclaimed Property Practice Leader
248-688-3313
aacosta@bdo.com

History of Michigan Unclaimed Property:

The Michigan Department of Treasury has gone through substantial efforts to educate the unclaimed property (“UP”) holder community doing business in Michigan regarding its abandoned property laws including:

- Conducted independent study of escheat compliance adherence for sample companies around 2010;
- Sent around 370,000 letters to holders on Michigan escheat law changes such as reporting deadlines changing to 7/1, dormancy period changes (from 5 years to 3 years);
- Initiated Amnesty Program for holders that filed by 1/31/2011;
- Sent additional notices on new escheat compliance requirements by 7/1/2011;
- Initiated 8 - 10 Michigan lead escheat audits for period 2010 - Current;
- Participated in 100s of piggyback Delaware lead audits through third party auditing firms;
- Adopted Business to Business exemptions for periods 4/1/2009 and forward only (no retroactive application);
- Adopted new VDA program effective for periods 7/1/2012 and after; and
- Governor signs new escheat audit guidelines.

Potential Risks for Unclaimed Property Holders:

- Piggyback audits performed by contingent fee auditors representing in some cases over 25 states on a single audit.
- Penalties (25% automatically applied without ability for abatement) plus interest.
- Look-back period for Michigan audits is generally 10 report years (15 years under old dormancy).
- Business to business exemption does not apply retroactively.
- In the new statutory audit guidelines, the definition of “complete record” as used by some 3rd party auditing firms is any listing of transactions (e.g., check register) with address information for a period regardless whether a taxpayer has the ability to research it.

Michigan VDA Program and Its Benefits:

Voluntary compliance initiation and timeline:

Step 1: Execute and sign Michigan Form 4869 - Michigan Unclaimed Property Voluntary Disclosure Agreement.

Step 2: Prepare reports for the current and last four report years for electronic submission to the Michigan Department of Treasury.

Step 3: Submit payment for the amount of unclaimed property reported, as the filing will not be complete until payment has been submitted.

By participating in the Michigan VDA program, the following protections are afforded to voluntary compliance filers:

- Filers become current by virtue of filing four voluntary compliance reports;
- Michigan Department of Treasury will assess interest 7/1/2012 and forward but they will not assess penalties on amounts reported under voluntary compliance; and
- Although the State reserves the right to audit holder (all estimation techniques required to be supplied to State), the Department has indicated that this practice would not be used on holders that file in good faith under the VDA program.

Closing Considerations:

Lastly, the following are key considerations which detail our best practices:

- Ongoing compliance
- Policy and procedures
- Robust record retention policies
- Application of Void Form to void process
- Due diligence letter process for resolving outstanding checks or credits in Account Receivables in a manner that will suffice escheat reviews.

Michigan Headquartered or Located Companies that are incorporated in Delaware:

For companies headquartered/domiciled in Michigan that are incorporated in the State of Delaware, please review the following links below as Delaware's deadline to enter into the new VDA program is swiftly approaching.

BDO Links on Michigan

[Act. No. 148 of Public Acts of 2013](#)

[MI Unclaimed Property Proposed Legislative Amendments, October 2013](#)

[MI Unclaimed Property VDA Agreement](#)

[MI VDA Decision Tree](#)

BDO Links for Delaware Incorporated Companies

[DE Pressing Notice](#)

[DE VDA Decision Tree](#)

BDO is the brand name for BDO USA, LLP, a U.S. professional services firm providing assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies. For more than 100 years, BDO has provided quality service through the active involvement of experienced and committed professionals. The firm serves clients through 49 offices and more than 400 independent alliance firm locations nationwide. As an independent Member Firm of BDO International Limited, BDO serves multinational clients through a global network of 1,204 offices in 138 countries.

BDO USA, LLP, a Delaware limited liability partnership, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms. For more information, please visit: www.bdo.com.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.