

DEPARTMENT OF FINANCE
DIVISION OF UNCLAIMED PROPERTY
Escheator of the State of Delaware
Statutory Authority, 12 Delaware Code, Section 1155 (12 **Del.C.** §1155)

FINAL

ORDER

Regulation on Practices and Procedures for Records Examinations by the State Escheator

NATURE OF PROCEEDINGS

Delaware Department of Finance ("Department"), Division of Unclaimed Property, Escheator of the State of Delaware (the "State Escheator"), initiated proceedings to adopt a regulation on practices and procedures for records examinations by the State Escheator as described in 12 **Del.C.** § 1155. The Department's proceedings to adopt its regulations were initiated pursuant to 29 **Del.C.** §10115, with authority prescribed by 12 **Del.C.** § 1208.

The Department published its notice of proposed regulation pursuant to 29 **Del.C.** §10115 in the July 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulation to be produced by July 31, 2012 at which time the Department would receive information, factual evidence and public comment to the proposed regulation.

SUMMARY OF PROPOSAL

The proposal creates a regulation on practices and procedures for records examinations by the State Escheator as described in 12 **Del.C.** §1155. The regulation sets forth the rules governing the historical periods for which the State Escheator will examine historical records to determine whether the person whose records are being examined has complied with any provision of 12 **Del.C.** Ch. 11.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

12 Delaware Code, § 1154, State Escheator to make regulations.
12 Delaware Code, § 1155, Examination of records.
12 Delaware Code, § 1208, Rules and regulations.

SUMMARY OF COMMENTS RECEIVED AND RESPONSE AND EXPLANATION OF CHANGE

Morris, Nichols, Arsht & Tunnell LLP ("MNAT"), Council on State Taxation ("COST"), and Reed Smith LLP ("Reed Smith") offered the following observations. The State Escheator has considered each of the comments and responds as follows.

Reed Smith requests the regulation include a provision requiring the Department to provide a "Remediation Impact Statement" at the request of a holder in order to allow the holder to decide whether to terminate remediation efforts in order to complete its records examination by June 30, 2015. COST requests that the Department be required to provide a reasonable and accurate statement of the holder's potential liability no less than ninety (90) days prior to June 30, 2015.

Response: Holders may already request a preliminary Report of Examination that provides data sufficient to allow examinees to make informed decisions whether to terminate remediation efforts.

MNAT, COST, and Reed Smith concede that Section 2.1 is literally true, but they contend that it may create confusion because of other statutory provisions that limit, for example, the period during which the State Escheator must provide notice of a proposed deficiency in payment under 12 **Del.C.** § 1158.

Response: The regulation by its terms governs only the historical period for which the State Escheator may conduct examinations under 12 **Del.C.** § 1155.

MNAT, COST, and Reed Smith contend that the completion of an examination is largely not within the control of the holder. Reed Smith and MNAT note that examinations are sometimes bifurcated by category of property, so that an examination may be completed for some types of property before completion of the examination of other types of property.

Response: Appropriate language has been added.

COST proposes addition of a provision abating interest and penalties for all examinations that qualify for the shortened look-back period.

Response: There are a number of examinations that may qualify for the shortened look-back period for which abatement of interest and penalties are not warranted. A blanket abatement would reward those holders for no good

reason.

FINDINGS OF FACT

The Department, acting through the State Escheator, finds that the proposed regulation set forth in the July 2012 Register of Regulations should be adopted, subject to the modification described above which is not substantive.

THEREFORE IT IS ORDERED, that the proposed Regulation on Practice and Procedure for Records Examinations by the State Escheator, with the modification indicated herein, is adopted and shall be final effective December 1, 2012.

Mark Udinski, State Escheator
Department of Finance

Regulation on Practices and Procedures for Records Examinations by the State Escheator

1.0 Construction of Rules of Practice and Procedure

- 1.1 Unless otherwise provided, these Rules of Practice govern examinations of records of any person or business association or organization to determine whether the person has complied with any provision of 12 Del.C. Ch. 11.
- 1.2 For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate.

2.0 Length of Examination Periods.

- 2.1 There is no provision of Delaware law that now limits the historical period for which the State Escheator may examine records under 12 Del.C. §1155 to determine whether the person under examination has complied with any provision of 12 Del.C. Ch. 11.
- 2.2 As a matter of policy, in previous examinations the State Escheator has not examined records created before January 1, 1981 to determine whether the person under examination has complied with any provision of 12 Del.C. Ch. 11.
- 2.3 As a part of a larger revenue stabilization initiative, the State Escheator has determined that in order to encourage compliance with 12 Del.C. Ch. 11, the following starting periods for examinations will be observed:
 - 2.3.1 For all persons who are now the subject of a records examination under 12 Del.C. §1155, or who become the subject of an examination before the effective date of this regulation, no records created before January 1, 1986 will be included in the determination of compliance with the provisions of 12 Del.C. Ch. 11, provided that the examination is completed by June 30, 2015.
 - 2.3.2 For all persons who become the subject of examinations on or after the effective date of this regulation, and for all other persons whose examinations are not completed by the close of business on June 30, 2015, the State Escheator will continue his existing policy of examining records created on or after January 1, 1981 to determine whether the person under examination has complied with any provision of 12 Del.C. Ch. 11.
- [2.3.3 For purposes of this regulation only, an examination is deemed to be complete for any category of property as of the date on which the Audit Manager mails the statement of findings and request for payment as described in 12 Del.C. §1156(a) for that category of property.]**

16 DE Reg. 530 (11/01/12) (Final)