

Delaware Unclaimed Property Law Update

September 4, 2024

Delaware Makes Technical Amendments to Unclaimed Property Statute

Signed by Delaware Governor Carney on August 15, 2024, Senate Bill 267 made numerous technical amendments to the Delaware unclaimed property statute (12 *Del. C.* § 1130 *et seq.*) as follows:

- **Foreign Addressed Property.** In the case of dormant foreign addressed property held by a Delaware formed entity, Delaware has historically claimed priority to escheat such property, as no other U.S. state has a higher priority under *Texas v. New Jersey*, 379 U.S. 674 (1965), and *Delaware v. New York*, 507 U.S. 490 (1993). Senate Bill 267 amended the Delaware unclaimed property statute to provide that it will no longer claim the right to escheat foreign addressed property if such property is either (i) reportable to, or (ii) specifically exempted from escheat by, the foreign country of such address.
- **Filing of Amended Holder Reports.** Senate Bill 267 amended 12 *Del. C.* § 1144 to provide limitations on when a holder can file an amended annual unclaimed property report attempting to seek a refund of previously escheated property purportedly in excess of the holder's Delaware escheat liability for such period. Pursuant to newly created 12 *Del. C.* § 1144(e), a holder may *not* seek a refund for previously escheated property if (i) such property has already been paid to the owner pursuant to a claim; (ii) the period to which the refund relates was the subject of an audit settlement with the Delaware Department of Finance or a voluntary disclosure agreement with the Delaware Secretary of State; or (iii) if more than three years have passed since the filing of such prior report and the basis of the refund claim is a change in the cost of goods sold calculation relating to the calculation of amount of gift card property escheated.
- **Notice to Owner of Securities Property by State Escheator.** Section 1150 of Title 12 of the Delaware Code generally requires the Delaware State Escheator to send a notice to the owner of securities property that has been escheated to the State of Delaware as soon as the Escheator deems practicable unless the value of such property is less than \$50. Senate Bill 267 retroactively amended 12 *Del. C.* § 1150 to clarify that the Delaware State Escheator only began to be obligated to send such notice to owners of escheated securities property with respect to property reported on or after February 2, 2017, the effective date of the prior restatement of the Delaware Unclaimed Property Act.
- **Proof of Date of Notice Sent by State Escheator.** Furthermore, Senate Bill 267 amended 12 *Del. C.* § 1150 to provide that in any proceeding involving property paid or delivered to the state, the State Escheator may establish the date notice was provided to the owner and the contents of such notice by providing an affidavit based on review of relevant records, procedures and practice, which affidavit may be considered evidence of notice. In recent years, certain owners have appealed the amount of reclaimed property awarded by the Delaware Office of Unclaimed



Property and have disputed that they ever received the required notice from the Delaware State Escheator under this section. This amendment generally loosens the evidentiary standard by which the Delaware State Escheator can prove that such notice was provided to the owner.

- **Timing of Payment of Escheated Property.** Senate Bill 267 amended 12 *Del. C.* § 1152 to clarify that the payment of escheated property in connection with the filing of an annual report must be done contemporaneously with the filing of such report.
- **Dormant Property Deemed Held in Trust for Benefit of State Escheator.** Senate Bill 267 enacted a new Section 1152A of Title 12 of the Delaware Code which provides that a holder in possession of dormant property which is escheatable to the State of Delaware is deemed to hold the property in trust for the benefit of the State Escheator on behalf of the owner to which the property is owed, and such holder shall establish trust accounts or otherwise segregate such property held for the benefit of the Delaware State Escheator. This statutory provision is designed to improve the state's rights to claim such property in the case of a holder that becomes subject to United States federal bankruptcy law protection prior to escheating such dormant property to the State of Delaware.
- **Limits on State of Delaware's Indemnification Obligation with Respect to Escheated Property.** In general, under the Delaware unclaimed property statute, to the extent that a holder escheats property to the State of Delaware and then another person or another state successfully claims the property from the holder, the State of Delaware will indemnify such holder with respect to such escheated property. *See* 12 *Del. C.* § 1153. Senate Bill 267 amended Section 1153 to provide that (i) the state's liability with regard to indemnification is up to the value of the property at the time of escheat; (ii) the state is not liable for interest or penalties imposed upon the holder by such other state; and (iii) the state is not liable for legal fees incurred by such holder in connection with such other claim.
- **State Escheator May Decline to Accept Custody of Certain Property.** Senate Bill 267 amended 12 *Del. C.* § 1155 to provide additional categories of property which the Delaware State Escheator can decline to accept as escheated property, including (i) property in tangible or physical form including but not limited to savings bonds and bearer bonds, (ii) property which may expose the State of Delaware to a risk of litigation, (iii) non-freely transferable securities, (iv) worthless securities, and (v) virtual currency for which no ready market exists.
- **Deadline to Request Review of Discretionary Decisions of Delaware State Escheator.** Under the Delaware unclaimed property statute, certain discretionary decisions of the Delaware State Escheator are subject to review by the Secretary of Finance of the State of Delaware upon request by the affected party. Senate Bill 267 amended the Delaware unclaimed property statute to provide that in each such case, the affected party must request such review by the Secretary of Finance in writing within 30 days of the State Escheator's determination.

For further information on the potential impact of this act or any aspect of Delaware unclaimed property, please feel free to contact Richards, Layton & Finger to discuss further.

Related Files

- [Read Senate Bill No. 267](#)