

CHAPTER 2
FORMERLY
SENATE BILL NO. 11
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO ESCHEATS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 11, Title 12 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1155. Examination of Records

(a) The State Escheator may at reasonable times and upon reasonable notice examine the records of any person or business association or organization to determine whether the person has complied with any provision of this chapter and may by summons require the attendance of any person having knowledge in the premises, and may take testimony and require proof material for the investigation, with the power to administer oaths to such person or persons; provided, however, that the State Bank Commissioner shall act on behalf of the State Escheator with regard to examinations of banking organizations. The State Escheator is authorized to reimburse the State Bank Commissioner for the cost of examinations undertaken on the Commissioner's behalf and may pay for such reimbursement out of custodian accounts held for the State Escheator. The State Escheator may disclose such information as the Escheator possesses to the State Bank Commissioner as may aid in the Commissioner's examination of any banking organization and may disclose any information received from the State Bank Commissioner as may be required:

- (1) In conjunction with enforcement proceedings; or
- (2) In summary form to the extent necessary for the proper disposition of the property.

Where the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the State Escheator may require the holder to report and pay to the State the amount of abandoned or unclaimed property that should have been but was not reported that the State Escheator reasonably estimates to be due and owing on the basis of any available records of the holder or by any other reasonable method of estimation.

(b) The State Escheator may contract with a person to conduct an examination in accordance with this chapter but no such person shall be assigned more than fifty percent of the number of all such examinations undertaken subsequent to January 1, 2015. In addition, notwithstanding any other provision of this Code, every contract between the State and such persons conducting examinations and providing any unclaimed property examination or consulting services shall (i) be for a term of no more than five years and (ii) provide that no such person shall hire, retain, or compensate in any way any employee of the Delaware Division of Revenue or the Department of Finance who functions in a senior supervisory role, related to unclaimed property including without limitation, the Secretary of Finance, any Deputy Secretary of Finance, the State Escheator or Audit Manager, for a period of two years from the time such employee leaves the employ of the State.

Section 1156. Internal Revenue Procedure; Court of Chancery - Jurisdiction

(i) The independent reviewer shall hold an oral hearing on the appeal, which shall be held, absent agreement of the parties, within 90 days after the date on which the Secretary of Finance appoints the independent reviewer pursuant to subsection (g) of this section. At least 5 days prior to the oral hearing date, or at such other time ordered by the independent reviewer, the holder and Audit Manager shall each submit to the independent reviewer and each other a brief containing argument and referencing supporting documentation from the record before the Audit Manager or an explanation as to why such supporting documentation is not available. A decision in writing by the independent reviewer setting forth findings of fact and conclusions of law shall be ~~submitted by~~ sent simultaneously via certified mail from the independent reviewer to the Secretary of Finance and holder within 90 days from the date of the conclusion of the oral hearing or the completion of any post-hearing briefing requested by the independent reviewer, whichever is later. The independent reviewer shall assess costs, including the independent reviewer's fee, against a party or between the parties in the independent reviewer's discretion.

~~(j) The Secretary of Finance may adopt or reject the independent reviewer's determination in whole or in part. If the Secretary of Finance modifies or rejects, in whole or in part, the determination of the independent reviewer, the Secretary of Finance shall issue a decision in writing setting forth the basis of any rejection or modification of the determination of the independent reviewer. Within 60 days of the receipt by the Secretary of Finance of the independent reviewer's decision, a copy of the Secretary of Finance's determination, if any along with, the independent reviewer's written decision shall be sent to the holder by certified or registered mail at the address set forth in the holder's notice of appeal. The determination of the Secretary of Finance as to those liabilities that are the subject of the appeal shall be final as to the Department of Finance, and amounts determined to be due and owing shall be subject to collection by the State Escheator under subsection (k) of this section below if unpaid after the review. The holder may, within 30 days after the Secretary's written decision was mailed, appeal the Secretary's determination to the Court of Chancery. The Court's review shall be limited to whether the Secretary's determination was supported by substantial evidence on the record. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.~~

(j) Unless further appealed by the Secretary of the Department of Finance or the holder as hereinafter provided, the determination of the independent reviewer as to those liabilities that are subject of the appeal shall be final as to the Department of Finance, and amounts determined to be due and owing shall be subject to collection by the State Escheator under subsection (k) of this section below if unpaid after the review. Either the holder or the Secretary of Finance may, within thirty days after the Secretary of Finance shall have mailed the independent reviewer's written determination to the holder, appeal the independent reviewer's written determination to the Court of Chancery. The Court's review shall be limited to whether the independent reviewer's determination was supported by substantial evidence on the record. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

Section 2. The General Assembly hereby directs the Delaware Secretary of Finance (i) to complete the development of a detailed manual containing procedural guidelines for the conduct of Delaware unclaimed property examinations by December 31, 2015 and to update Delaware administrative regulations accordingly to ensure greater transparency and predictability as to what should be expected by holders during a Delaware unclaimed property examination; (ii) to develop such manual utilizing a process that generates input from appropriate stakeholders and interested parties; and (iii) to take steps to ensure that Delaware's contract auditors comply with such manual.

Section 3. The Delaware Department of Finance should renegotiate downward the length of its current contracts with unclaimed property auditors so that no contract with said auditors is for a longer time period than five years per initial or renewed term.

Section 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to that end the provisions of this Act are declared to be severable.

Approved January 29, 2015