



SPONSOR: Sen. Marshall & Rep. Hudson

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 420

AS AMENDED BY

SENATE AMENDMENT NO. 1

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:

- 1 Section 1. Amend Title 12 of the Delaware Code, by adding thereto a new section 1158 to read as follows:
- 2 “§ 1158 Limitations.
- 3 (a) The State Escheator as soon as is practicable after receipt of any report required by this
- 4 Chapter shall examine it to determine if it is correct. If the Escheator finds that the report is not correct, the
- 5 Escheator shall notify the holder in writing by certified or registered mail of the amount of any underreported
- 6 abandoned or unclaimed property due and owing. Notice of the proposed deficiency in payment shall be mailed
- 7 to the holder within three (3) years from the date the report was filed. A report filed before the due date shall be
- 8 deemed to have been filed on the due date for purposes of this section. No suit to enforce the payment of a
- 9 deficiency in payment of abandoned or unclaimed property shall be brought under § 1156 against a holder unless
- 10 the notice of deficiency in payment is mailed to the holder within the three (3) year period provided in this
- 11 subsection. In the case of an omission of abandoned or unclaimed property from a report having a value in excess
- 12 of 25 % of the amount of abandoned or unclaimed property disclosed in a report, a notice of deficiency in
- 13 payment may be mailed to the holder within six (6) years from the date the report was filed.
- 14 (b) If no report is filed, or if a false or fraudulent report is filed with the intent to evade the
- 15 obligation to pay over abandoned property, a notice of deficiency in payment may be mailed to the holder at any
- 16 time.

17 (c) If the holder shall file an amended report changing or correcting the amount of any abandoned
18 or unclaimed property previously reported, a notice of deficiency in payment may be mailed to the holder at any
19 time within two (2) years from the date the amended report is filed.

20 (d) Where, before the expiration of time prescribed in this section for the mailing of a notice of
21 deficiency in payment, both the Escheator and the holder have consented in writing to the extension of the time
22 within which a notice of deficiency in payment may be mailed, a notice of deficiency may be mailed at any time
23 prior to the expiration of the time agreed upon. The time agreed upon may be extended by subsequent
24 agreements in writing made before the expiration of the time previously agreed upon.

25 (e) The running of the period of limitations provided for in this section for the mailing of a notice
26 of deficiency in payment shall, in a case under Title 11 of the United States Code, be suspended for the period
27 during which the Escheator is prohibited by reason of such case from mailing a deficiency in payment plus 60
28 days."

29 Section 2. Amend Title 12 of the Delaware Code, by adding thereto a new section 1159 to read as follows:

30 § 1159 Penalties

31 (a) In the case of the failure to file any report required by this Chapter on or before the due date
32 prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such
33 failure is due to reasonable cause and not willful neglect, there shall be added to the amount of abandoned or
34 unclaimed property required to be shown on the report 5% of the amount thereof if the failure is not for more
35 then one (1) month, with an additional 5% for each additional month or fraction thereof during which such
36 failure continues, not to exceed 50% in the aggregate. For purposes of this section the amount of abandoned or
37 unclaimed property required to be shown on any report shall be reduced by the amount of property which is paid
38 on or before the date prescribed for payment of the abandoned or unclaimed property.

39 (b) In the case of the failure to pay the amount of abandoned or unclaimed property required to be
40 shown on any report required by this Chapter on or before the due date prescribed for the payment of such
41 property (determined with regard to any extension of time for payment), unless it is shown that such failure is
42 due to reasonable cause and not willful neglect, there shall be added to the amount of such property required to
43 be shown on any report 0.5% of the amount of such property if the failure is for not more than one (1) month,
44 with an additional 0.5% for each additional month or fraction thereof during which such failure continues, not to

45 exceed 25% in the aggregate. For purposes of this subsection, the amount of property shown on any report shall
46 be reduced by the amount of any property which is paid on or before the beginning of the month for which a
47 calculation is made under this subsection.

48 (c) If any part of a deficiency in payment of abandoned or unclaimed property required to be
49 shown on any report is due to fraud, there shall be added to the property required to be shown on the report an
50 amount equal to 75% of the portion of the deficiency in payment which is attributable to fraud. The penalty
51 prescribed by this section shall apply only in cases where a report of abandoned or unclaimed property is filed
52 and only to that part of the deficiency in payment the Escheator establishes is attributable to fraud."

53 Section 3. Amend Title 12 of the Delaware Code by striking sections 1152 and 1192 as they appear in said
54 chapter.

55 Section 4. Amend § 1207, Title 12 of the Delaware Code, by striking subsections (a), (b), and (c) of said
56 section; by striking the word "subchapter" as it appears in subsection (d) of said section and substituting in lieu thereof the
57 word "chapter"; and by re-designating said subsection (d) as subsection (d) of § 1159 of Title 12.

58 Section 5. Amend § 1159(d), Title 12 of the Delaware, as designated pursuant to Section 4 of this Act, by
59 striking the phrase "subsection (a) or (b)" as it appears in said subsection and substituting in lieu thereof the phrase
60 "subsections (a), (b), or (c)".

61 Section 6. This Act shall be effective for reports filed or required to be filed on or after the date on
62 which this Act shall be enacted into law.