



SPONSOR: Sen. Marshall & Rep. Hudson

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 420

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
2 read as follows”

3 “§ 1158 Limitations.

4 (a) The State Escheator as soon as is practicable after receipt of any report
5 required by this Chapter shall examine it to determine if it is correct. If the Escheator finds
6 that the report is not correct, the Escheator shall notify the holder in writing by certified or
7 registered mail of the amount of any underreported abandoned or unclaimed property due and
8 owing. Notice of the proposed deficiency in payment shall be mailed to the holder within
9 three (3) years from the date the report was filed. A report filed before the due date shall be
10 deemed to have been filed on the due date for purposes of this section. No suit to enforce the
11 payment of a deficiency in payment of abandoned or unclaimed property shall be brought
12 under § 1156 against a holder unless the notice of deficiency in payment is mailed to the
13 holder within the three (3) year period provided in this subsection. In the case of an omission
14 of abandoned or unclaimed property from a report having a value in excess of 25 % of the
15 amount of abandoned or unclaimed property disclosed in a report, a notice of deficiency in
16 payment may be mailed to the holder within six (6) years from the date the report was filed.

(b) If no report is filed, or if a false or fraudulent report is filed with the intent to evade the obligation to pay over abandoned property, a notice of deficiency in payment may be mailed to the holder at any time.

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

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

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

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

§ 1159 Penalties

(a) In the case of the failure to file any report required by this Chapter on or before the due date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not willful neglect, there

40 shall be added to the amount of abandoned or unclaimed property required to be shown on the
41 report 5% of the amount thereof if the failure is not for more than one (1) month, with an
42 additional 5% for each additional month or fraction thereof during which such failure
43 continues, not to exceed 50% in the aggregate. For purposes of this section the amount of
44 abandoned or unclaimed property required to be shown on any report shall be reduced by the
45 amount of property which is paid on or before the date prescribed for payment of the
46 abandoned or unclaimed property.

47 (b) In the case of the failure to pay the amount of abandoned or unclaimed
48 property required to be shown on any report required by this Chapter on or before the due date
49 prescribed for the payment of such property (determined with regard to any extension of time
50 for payment), unless it is shown that such failure is due to reasonable cause and not willful
51 neglect, there shall be added to the amount of such property required to be shown on any
52 report 0.5% of the amount of such property if the failure is for not more than one (1) month,
53 with an additional 0.5% for each additional month or fraction thereof during which such
54 failure continues, not to exceed 25% in the aggregate. For purposes of this subsection, the
55 amount of property shown on any report shall be reduced by the amount of any property
56 which is paid on or before the beginning of the month for which a calculation is made under
57 this subsection.

58 (c) If any part of a deficiency in payment of abandoned or unclaimed property
59 required to be shown on any report is due to fraud, there shall be added to the property
60 required to be shown on the report an amount equal to 75% of the portion of the deficiency in
61 payment which is attributable to fraud. The penalty prescribed by this section shall apply only

in cases where a report of abandoned or unclaimed property is filed and only to that part of the deficiency in payment the Escheator establishes is attributable to fraud.

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

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

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

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

SYNOPSIS

This Act creates periods of limitation and penalties for unclaimed property similar to those pertaining to tax requirements.

Specifically, Section 1 creates a limitation on audit assessments of three years following the date of filing or the due date, whichever is later. The period becomes six years in the case of a deficiency in the report of over 25% of the amount reported. There is no limitation on assessments where no report is filed or where the filed report is false or fraudulent. The holder of unclaimed property and the State may agree to extend the period of limitations.

Section 2 creates penalties. Failure to file a report at the required time triggers penalties of 5% per month up to 50%. Failure to pay creates penalties of .5% per month up to 25%, and fraud penalties equate to 75%.

Sections 3, 4 and 5 consolidate interest provisions already present in the unclaimed property law. Interest on unclaimed property is computed at a rate of .5% per month up to a maximum of 50%.

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