



BDO SALT & REED SMITH WEBINAR - DELAWARE UNCLAIMED PROPERTY UPDATES

April 19, 2018

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With You Today



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Agenda

- ▶ Unclaimed Property Overview
- ▶ Delaware Overview
- ▶ Delaware UP Regulations
 - Secretary of Finance
 - Secretary of State Regulations
- ▶ State Outreach Methods
- ▶ Audit Process
- ▶ Mitigation Strategies
- ▶ Legal Case Update
- ▶ Kovel & Audit Defense Best Practices

Unclaimed Property Overview



Unclaimed Property Introduction

General Information

- ▶ All 50 states and the District of Columbia have enacted unclaimed property laws.
- ▶ The purpose of unclaimed property laws is to ensure the protection of abandoned property until the rightful owner is located. Moreover, states use any derivative funds earned on such property for the public good.
- ▶ States actively pursue unclaimed property as an additional source of revenue for the state, which avoids raising taxes.
- ▶ States' unclaimed property laws apply to all entity types, including:
 - Corporations
 - S Corporations
 - Partnerships
 - Limited Liability Companies



Unclaimed Property vs. Tax

What are the Differences?

- ▶ Unclaimed property is **not** considered a tax
- ▶ Nexus does not apply
- ▶ No apportionment or allocation methods utilized
- ▶ Filing deadlines vary from state to state
- ▶ Statute of limitations
- ▶ Use of Contract Auditors (paid on a contingency fee)
- ▶ Records Retention Requirements

Unclaimed Property Introduction

What is Unclaimed Property?

- ▶ Generally **intangible personal property** for which there has been no owner activity for a specified period of time (“dormancy period”).
- ▶ Examples of unclaimed property:
 - Uncashed payroll or commission checks
 - Uncashed payable/vendor checks
 - Gift certificates/gift cards
 - Customer deposits, refunds or rebates
 - Overpayments
 - Suspense accounts
 - Unused/outstanding benefits (non-ERISA)
 - Miscellaneous income/bad debt expense accounts

Unclaimed Property Introduction

Where Do I Report Unclaimed Property?

- ▶ The Supreme Court of the United States in *Texas v. New Jersey*, established the following unclaimed property sourcing rule:
 - First, to the state of the rightful owner's last known address, if known, or
 - Second, to the state of the holder's incorporation (commercial domicile for unincorporated entities).
- ▶ Priority rules in *Texas v. New Jersey* were upheld in the subsequent cases *Pennsylvania v. New York* (escheat of money orders) and *Delaware v. New York* (unclaimed dividends and interest).
- ▶ Some state statutes include a transaction rule that gives priority to the state in which the transaction took place. However, the Supreme Court in *Texas v. New Jersey*, *Pennsylvania v. New York*, and *Delaware v. New York* and just last December the Third Circuit Court of Appeals in *Marathon Petroleum v. Sec'y of State* held that only two states can escheat property: (1) the state of the owner's address under the primary rule, and (2) the state where the holder is incorporated under the secondary rule. Note that Congress enacted federal legislation that modifies the priority rules for travelers checks, money orders, official checks, and similar instruments by adopting a transaction rule for those properties only

Compliance

Dormancy

State	Period Ending	Report Due Date	Wages (years)	A/R Credit Balances (years)	A/P Checks (years)	All other property (years)	B2B
DE	12/31	3/1	5	5	5	5	No
IL	12/31	5/1	1	3	3	3	Eliminated
TX	3/1	7/1	1	3	3	3	No*
SC	6/30	10/31	1	5	5	5	No
GA	6/30	11/1	1	5	5	5	No
FL	12/31	4/30	1	5	5	5	No

Delaware Overview

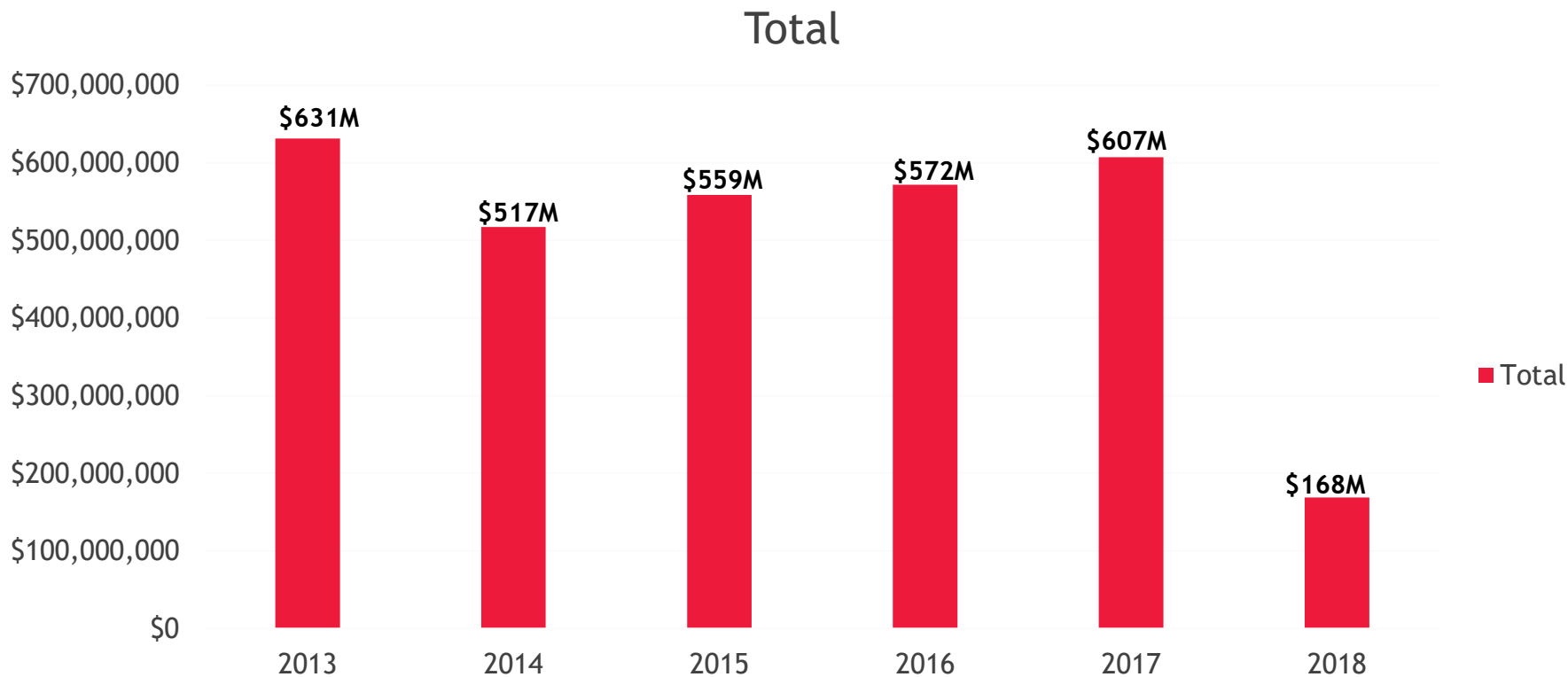
Delaware

- ▶ Unclaimed property is one of Delaware's largest source of revenue
- ▶ Delaware enforces unclaimed property laws, in part, through the use of unclaimed property audits conducted by third party auditors.
- ▶ The following audit firms are most commonly used by the State of Delaware
 - Kelmar
 - IA Group
 - Audit Services
 - Verus Financial
- ▶ Delaware also offers a voluntary disclosure program to companies that want to address historical UP exposures while avoiding an audit from a third party firm.
- ▶ The state uses two vendors to administer the VDA program
 - Drinker Biddle & Reath
 - TL2Q
- ▶ **New state Escheator - Brenda Mayrack - friendlier / reasonable / fair !!!**

Delaware - VDA vs. Audit?

CATEGORY	DE VDA	DE Audit
Penalty & Interest	Waived	Interest - 0.5% per month, max of 50% of unreported property; up to 50% may be abated; various penalties
Audit Waiver	Audit waived unless misrepresentation or fraud	N/A
Look-back	10 report years (from date of enrollment)	10 report years (from date of audit letter)
Void Waiver	90 days	30 days
Who Conducts Review	Self review	Third party audit firm (contingent fee)
Venue	DE Secretary of State (SOS)	DE Department of Finance (DOF)
Timeline	2 years + Extension	3-7 years
Estimation	Gross method	Gross method
Vetted Program	Program in place since 6/30/12 with 450 + settled, 800 + companies participating	1/1/18 under new state escheator - Brenda Mayrack
Protest Remedies	Withdraw from VDA or Exclude property type from settlement - may be referred to Audit - all remedies available upon demand issued	Informal Settlement / Litigation

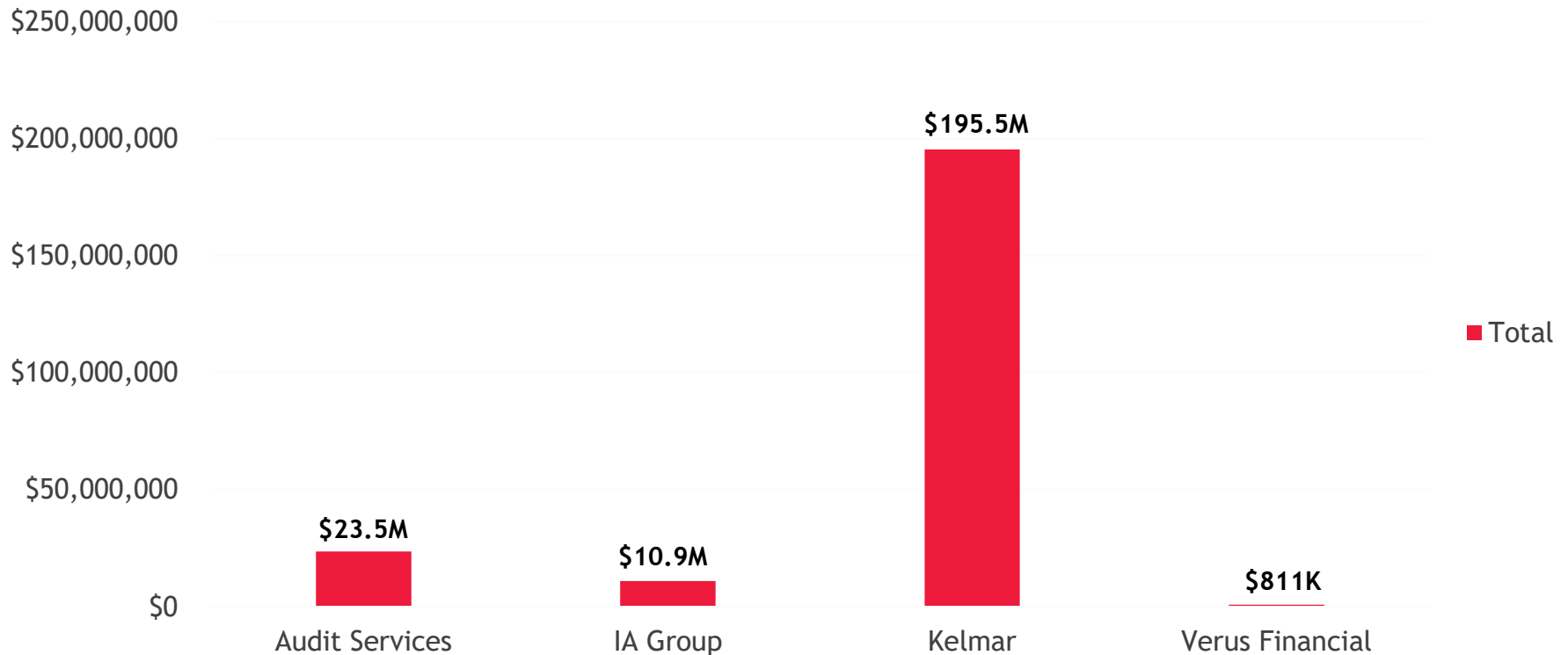
Delaware - Unclaimed Property Revenue Summary By Year



Information obtained from <https://accounting.Delaware.gov/checkbook/>; amounts may vary depending upon search criteria. Report run by year by category including (a) escheat - corporations; (b) escheat - life insurance; (c) escheat - banks; (d) escheat - courts; (e) unclaimed offender funds; (f) unclaimed restitution.

Delaware - Total Paid To Audit Firms To Date

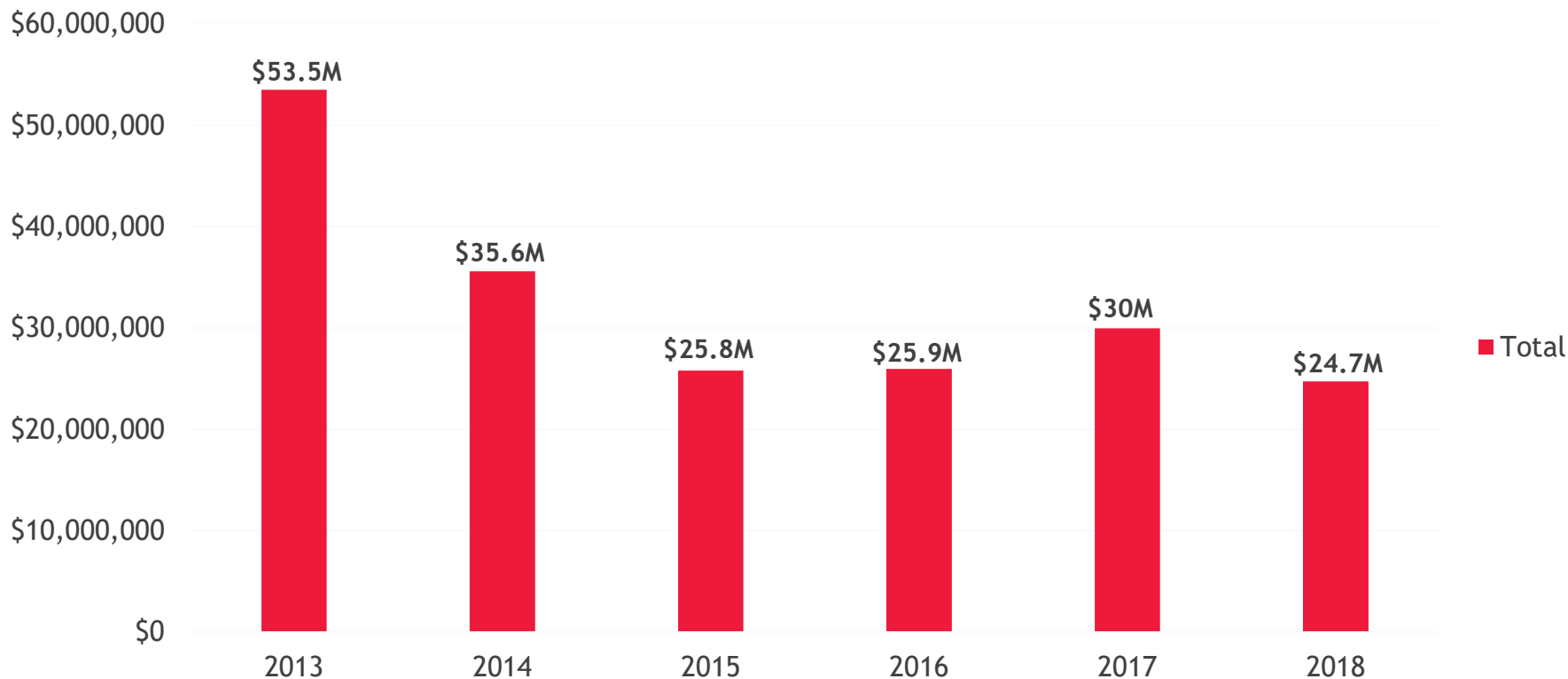
TOTAL PAID TO DATE - AUDITORS (FY13 - 2/28/18)



Information obtained from <https://accounting.Delaware.gov/checkbook/>; amounts may vary depending upon search criteria.

Delaware - Total Paid By Fiscal Year

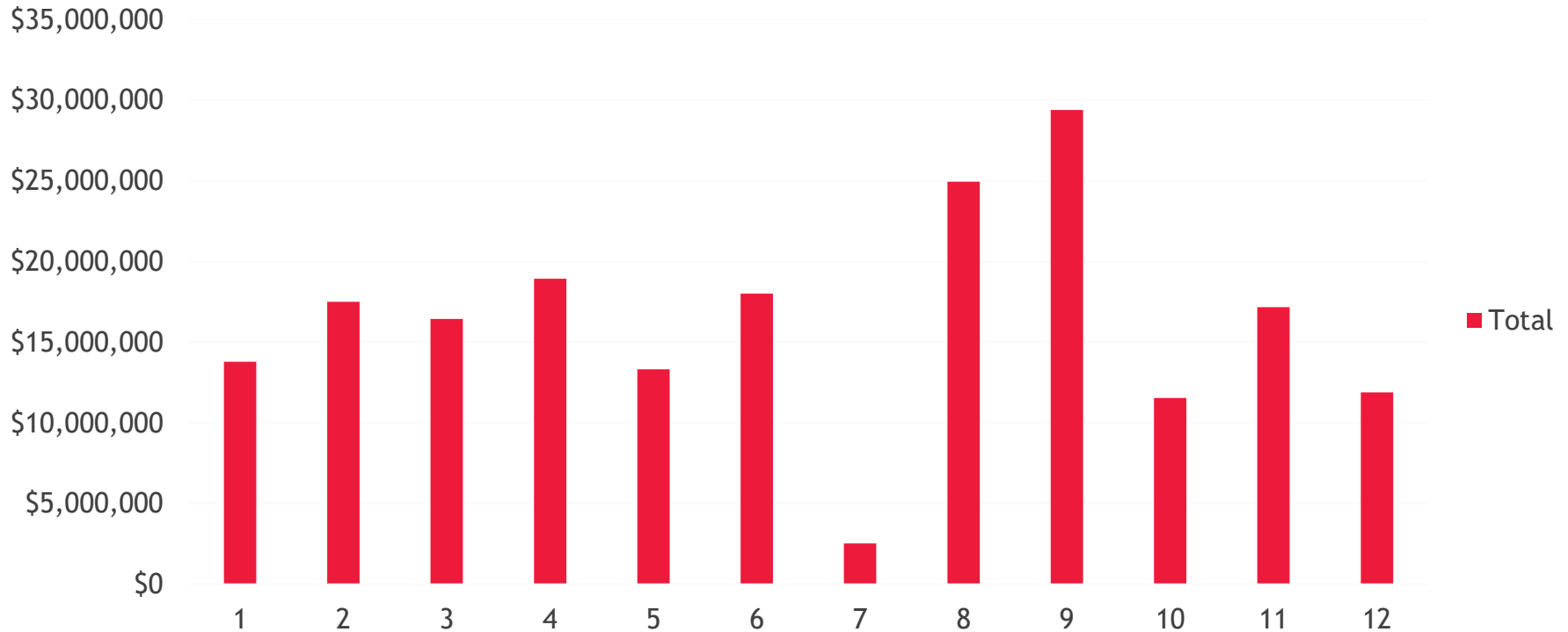
KELMAR FEES BY FISCAL YEAR (FY13 - 2/28/18)



Information obtained from <https://accounting.Delaware.gov/checkbook/>; amounts may vary depending upon search criteria.

Delaware - Total Paid By Month

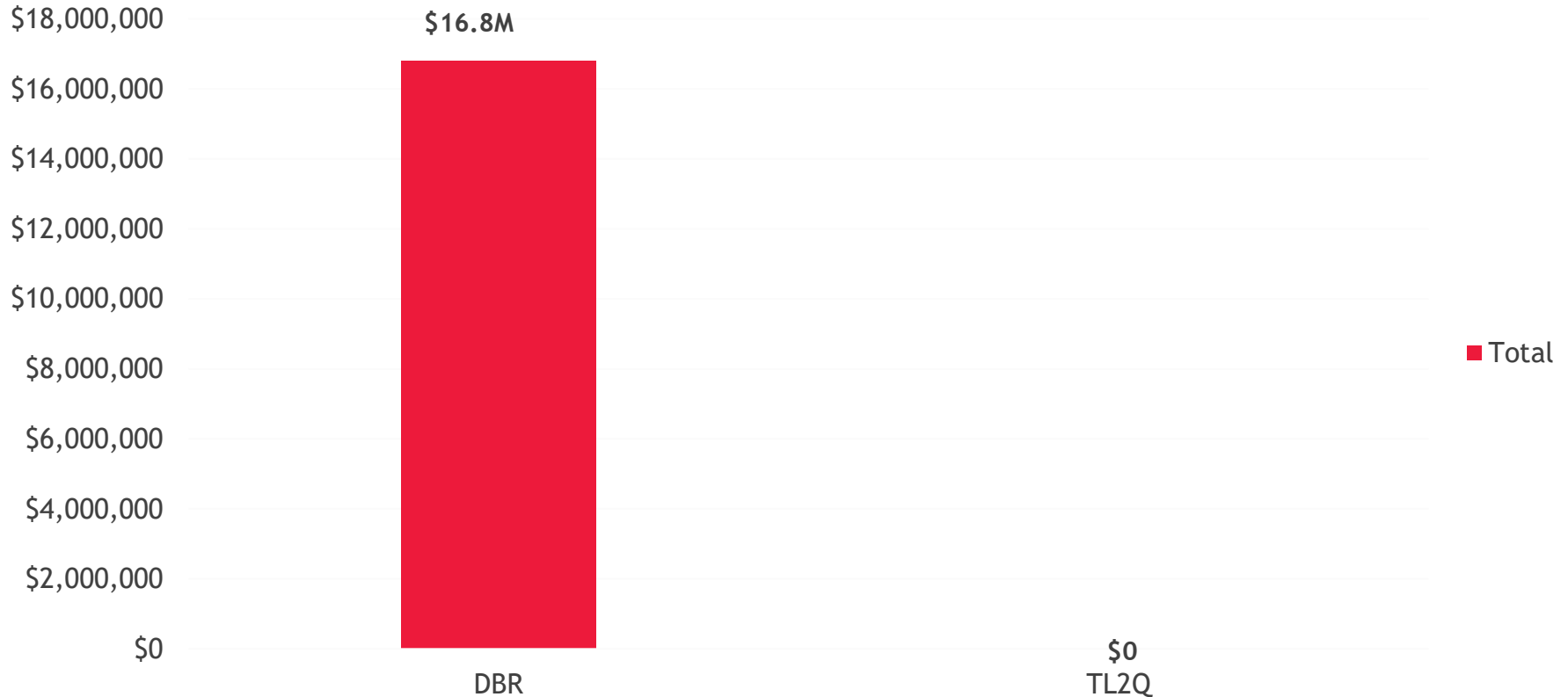
KELMAR FEES BY MONTH (FY13 - 2/28/18)



Information obtained from <https://accounting.Delaware.gov/checkbook/>; amounts may vary depending upon search criteria.

Delaware - Total Paid To VDA Admin Firms To Date

TOTAL PAID TO DATE - VDA ADMINISTRATORS FY13 - 2/28/18)



Information obtained from <https://accounting.Delaware.gov/checkbook/>; amounts may vary depending upon search criteria.

Delaware - Unclaimed Property Spending Summary

CATEGORY	DE VDA	DE Audit
Period	FY13 - 2/28/18	FY13 - 2/28/18
Total Spend	~\$16.8M	~\$231M
Payment Type	Hourly	Contingent + Hourly
Venue	DE Secretary of State (SOS)	DE Department of Finance (DOF)

Information obtained from <https://accounting.Delaware.gov/checkbook/>; amounts may vary depending upon search criteria.

Delaware Regulations



Delaware Secretary Finance Regulations

Overview

- ▶ **Published** October 1, 2017; **effective** October 11, 2017
- ▶ Guiding Principles: “shall be to determine .. Compliance with the Delaware abandoned or unclaimed property laws. . . . and the priority rules and other provisions set forth in ... *Texas v. New Jersey* ... and *Delaware v. New York* ...”
(2.2.1)
- ▶ Grants authority to settle an examination without creating legal precedent.
(2.11.2)



Delaware Secretary Finance Regulations

Address & Owner Interest

- ▶ Address of owner to establish priority **requires two of the following**: city, state or foreign code, and postal code (2.8).
- ▶ Indication of Owner Interest in Property
 - **Excludes** automatic actions
 - Interest in one account applies to other accounts with the same holder (**multiple accounts**)

Delaware Secretary Finance Regulations

Record Retention

- ▶ Record retention: documenting date, place and nature of circumstances giving rise to property right. (2.9)
 - “may” include **tax returns**, **org charts**, **chart of accounts**, **UP filing history** (for all states if organized in Delaware), VDAs/audits, **bank statements**, reconciliations, **o/s check lists**, detail general ledgers, **aged AR records**, aged AP reports, policies and procedures related to record retention, “information surrounding gift card issuances/redemptions”

Delaware Secretary Finance Regulations

Estimation

- ▶ Estimation
- ▶ “**Base Periods**” = at least 3 year period “for which the Holder possesses complete and researchable records” (2.18.2 & 2.18.2.2)
 - “**complete and researchable records**” = records that reconcile to the general ledger and allow holder to “research the resolution of an item,” but at a minimum includes items with a last known owner address. (2.20.2)
- ▶ State Escheator has “**sole authority**” to determine Base Period (2.18.2.1)
- ▶ Authorizes sampling (2.18.4.1)
 - Can elect to sample less than all entities and extrapolate to all Delaware entities (2.18.4.4)

Delaware Secretary Finance Regulations

Projection

▶ Projection:

- “**To the extent permitted by law**, names and addresses identified in the Base Period shall not be used to determine which state has the priority claim to the abandoned property estimated to be due over periods where records of owners’ addresses to not exist.” (2.19.1 (emphasis added))

▶ BUT:

- “Because defendants employed estimation in a manner where the characteristics and qualities of the property within the sample were not replicated across the whole, it created significantly misleading results” based on a “troubling” interpretation of *Texas and Delaware. Temple-Inland Inc. v. Cook*, 192 F.Supp. 3d 527, 549 (D. Del. 2016).



Delaware Secretary of State (SOS) Regulations

Overview

- ▶ Around 4/11/2017 the Department of State finalized regulations (SOS VDA Estimation Regulations) related to the SOS VDA Program on estimation and other SOS VDA related matters.
- ▶ VDA Scoping:
 - Determined by the holder. SOS will only provide a release of liability for what has been determined to be in-scope (2.2.1).

Delaware Secretary of State (SOS) Regulations

Record Retention

▶ Complete and Researchable Records

- Expectation is that **Holder at a minimum** have complete and researchable records for **7-8 years**. However if there are unique circumstances the SOS will work with Holder to determine alternative data set. (2.4.1)
- **Complete records** shall reconcile to the general ledger with the understanding that immaterial differences may occur. **Researchable records** are records to which the Holder may research the resolution of an item. At a minimum, researchable records shall include those items that contain a last known address of the owners of property. (2.4.2)

Delaware Secretary of State (SOS) Regulations

Estimation

▶ Estimation

- The “**Base Period**” is the period of time for which the holder possesses complete and researchable records (2.3.2). The base periods utilized by the Holder shall consist of **at least the two (2) oldest continuous years** the Holder has complete and researchable records outside the dormancy period (2.3.2.2)

▶ Record Availability Representation

- At the conclusion of the Holder's analysis and with the submission of the Holder's findings to the State, Holder shall prepare a **management representation letter signed by an officer** of the company and notarized 2.3.2.4.

Delaware Secretary of State (SOS) Regulations

Projection

Projection

- ▶ If for certain periods the amount of reportable property cannot be ascertained from the books and records of the Holder, projection techniques may be used to determine the reportable amounts for such periods. Such determination shall be made by first examining records during periods in which records exist to establish a “base period” of data from which statistical inferences can be made for periods in which records are incomplete or do not exist. To the extent permitted by law, names and addresses identified in the base period shall not be used to determine which state has the priority claim to the abandoned property estimated to be due over periods where records of owners’ addresses do not exist. (2.3.5.1)

State Outreach Methods



State Outreach Letters

- ▶ What are they?
 - Compliance
 - Audit
 - Other
- ▶ What do they mean?
- ▶ Who are they addressed too?
- ▶ How are companies identified/selected?
- ▶ What is my timeline for response?
- ▶ What are the consequences or impact of the letters?
- ▶ Examples: DE, NY, PA, NC



Delaware - Outreach

- ▶ Change in law as of July 2015
 - Prior reach-out (no notification)
 - Current reach-out (notification)
- ▶ Main Types
 - DE 60 day VDA Letter
 - DE Audit Letter (post 60 day notification)
 - DE Audit Letter (piggy-back audit) - [see subsequent slides]
 - General Compliance Reminder
 - Notice of Conversion Letter (VDA or Expedited audit)
 - <https://vda.delaware.gov/converting-audit-vda-faqs/>

Delaware - Outreach (cont'd)

DE Characteristics

- ▶ The State Escheator **shall not use collection goals or quotas** during the conduct of an examination to assess a Holder's compliance. (*Del. Regs. § 2.2.3*)
- ▶ State **may consider several factors in selecting** a business for unclaimed property audit. These include, but are not limited to the following:
 - A review of past Holder reports for inconsistencies, omissions or a lack of detail;
 - A comparison of a Holder's past reports to the reports of similar Holders within the same industry and of the same approximate size;
 - Any information available from the State, such as Holder reporting and compliance history; and
 - Available public data regarding the Holder, including without limitation, annual company reports, and press materials. (*Del. Regs. § 2.12.1-4*)
- ▶ **Compliance Reviews may be authorized** - The compliance review must be limited to the contents of the report filed as required by §§ 1142 (report required to be filed), 1143 (contents on report), and 1170(a) (Request for report of property; compliance reviews) of this title, and all supporting documents related to such reports.
 - Deficiency Assessed
 - Refer to DE SOS VDA Program
 - Audit (if holder does not participate in VDA post 60 day notice) (*SB 13 § 1170*)

Delaware - Outreach (cont'd)

Back Door Audit - Piggy-back Audit

SB § 1172. Rules and procedures for conducting an examination.

- ▶ (a) Effective July 1, 2015 and subject to subsection (d) of this section, the **State Escheator shall not initiate any new examination of records** or an investigation of any person under this section **unless** the person has first been **notified in writing by the Secretary of State that the person may enter into an unclaimed property voluntary disclosure agreement**, or the holder fails to otherwise comply with a requirement imposed on such holder pursuant to § 1173 of this title. **[60 day notification requirement]**
- ▶ (d) The State Escheator **may authorize an examination** of records or an investigation **of any person** under this section **without the person having been notified in writing** by the **Secretary of State** as outlined in subsection (a) of this section in any of the following circumstances:
 - (1) Pursuant to information received under Chapter 12 of Title 6.
 - (2) As a joint examination initiated by another state under § 1182 of this title after consultation with the Secretary of State. **[Exception to 60 day notification requirement, no requirement that DE SOS required to provide authorization before audit issued]**

Delaware - Outreach (cont'd)

Back Door Audit - Piggy-back Audit

SB § 1182. Action involving another state.

- ▶ (a) The State Escheator may join other states to examine and seek enforcement of this chapter against any person believed to be holding property reportable under this chapter.
- ▶ (b) On request of another state, the Attorney General may commence an action on behalf of the other state to enforce, in this State, the law of the other state against a holder of property presumed abandoned and therefore subject to a claim by the other state, if the other state agrees to pay costs incurred by the Attorney General in the action. [Other state request DE official to enforce other state UP law in DE]
- ▶ (c) The State Escheator may request the official authorized to enforce the unclaimed property law of another state to commence an action to recover property in the other state on behalf of the State Escheator. This State shall pay all costs, including reasonable attorney's fees and expenses, incurred by the other state in an action under this subsection. [DE request other states official to enforce DE UP law in other state]
- ▶ (d) The State Escheator may pursue an action on behalf of this State to recover property subject to this chapter but delivered to the custody of another state if the State Escheator believes the property is subject to the custody of the State Escheator.

Delaware - Outreach (cont'd)

Back Door Audit - Piggy-back Audit

SB § 1182. Action involving another state.

- ▶ (e) The State Escheator may retain a private attorney in this State or another state or foreign country to commence an action to recover property on behalf of the State Escheator and may agree to pay attorney's fees based in whole or in part on a fixed fee, hourly fee, or a percentage of the amount or value of property recovered in the action. [\[state can retain attorney to recover property\]](#)
- ▶ (f) Expenses incurred by this State in an action under this section may be paid from property received under this chapter or net proceeds of the property. Expenses paid to recover property may not be deducted from the amount that is subject to a claim under this chapter by the owner. [\[Expenses paid from proceeds\]](#)

New York - Outreach

- ▶ Two Main Programs/Options for Reporting - 1 Letter
 - Voluntary Compliance Program
 - Voluntary Compliance Agreement
- ▶ NY Characteristics
 - Revenue not threshold for outreach criteria
 - UP questionnaire
 - High volume
 - Timeline/Follow-up
 - 6 months to file returns or VDA (initial letter)
 - If no response, receive multiple reminder letters
 - Final letter is 30 day final notice before audit



Pennsylvania - Outreach

- ▶ Unclaimed Property Questionnaire
 - PA property
 - Sales Tax Cross Over
- ▶ Third Party Audited Questionnaire
 - Audit letter
 - Further inquiry based on response
 - Property needs to be submitted



North Carolina - Outreach

- ▶ Recent Outreach - 2 Main Letters
 - General Inquiry (Questionnaire)
 - Audit Inquiry (Phone Interview)
- ▶ NC Characteristics
 - Revenue not threshold for outreach criteria
 - Selection criteria (location, state of inc., etc.).
 - High volume
 - Timeline/Follow-up
 - 30 days for questionnaire
 - 10 days for phone screening

State Outreach Mitigation



Outreach Mitigation Strategies

▶ VDA Blocker Strategy

- Understand where your UP risk resides
- Consider what participating states are on your audit
- Opportunity to “block” material states from participating by entering directly into VDA

▶ Non Disclosure Agreement

- Specific NDA may help limit participating state involvement

▶ Scoping

- Remove entities prior to audit kick off
- Holding companies or immaterial entities based on sales
- Recently formed entities
- Bankruptcy
- Dispositions
- Recent Asset Acquisitions

Audit Process

Who are these 3rd Party Auditing Firms?

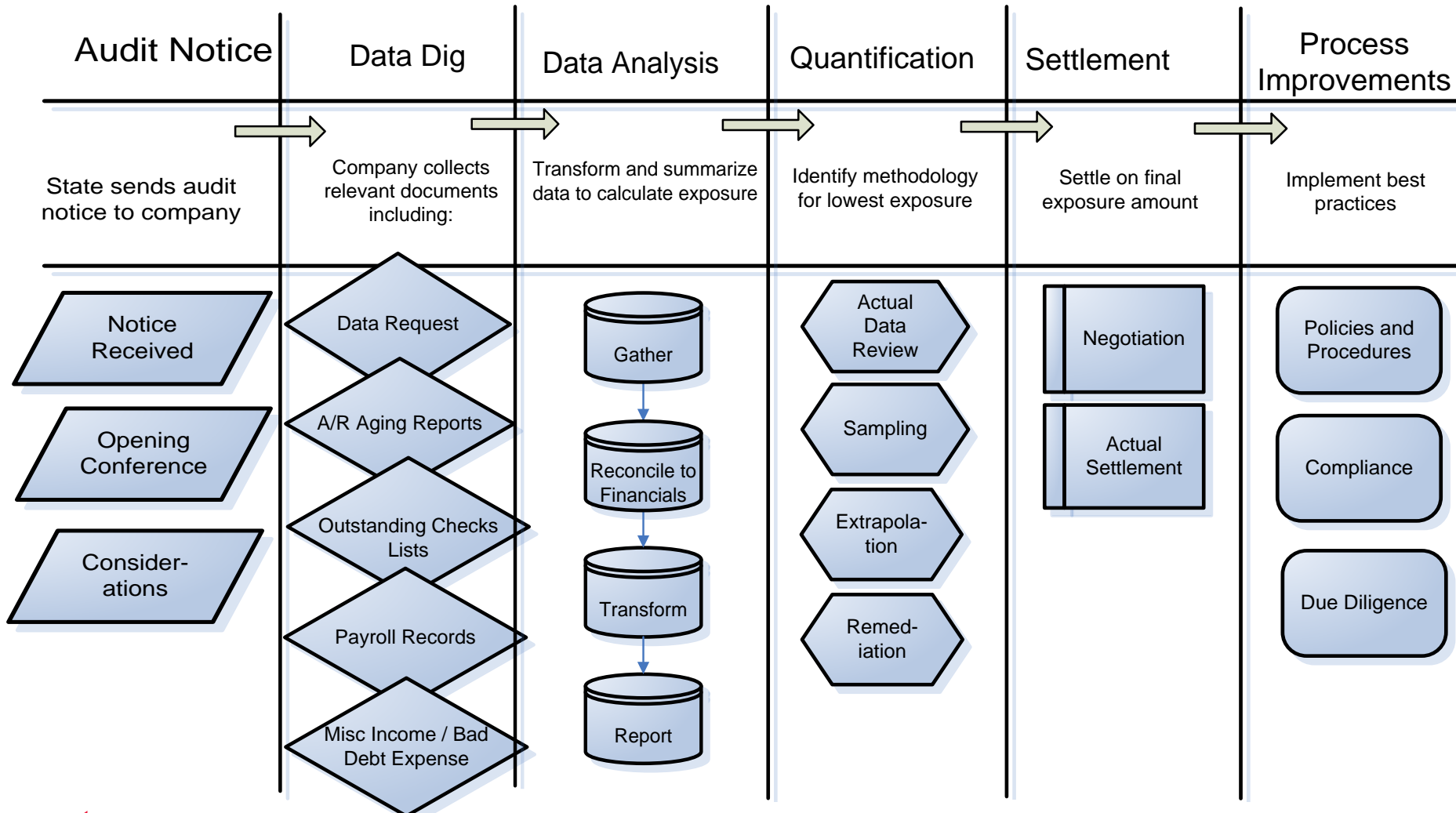
#	Firm	Comments
1	Kelmar Associates, LLC	Leading audit firm for DE and certain other states
2	Audit Services US	Maintain contracts with 46 states
3	Verus Financial LLC	Leader in Life Insurance audits
4	Treasury Services Group LLC (TSG)	Bought Bankrupt APEX; newer firm 2012-2013
5	Discovery Audit Services LLC (DAS)	Firm outside LA; Performing audits for LA since 2003
6	TL2Q	Newer Firm, started in 2012 - 2013 - based in NY
7	Innovative Advocates Group, Inc.	Newer Firm, started in 2013



Audit Process

- ▶ 3 - 7 years on average
- ▶ Multi-state audits
- ▶ Decreased decision making, increased company resources and liability
- ▶ Third part contingency fee auditors
- ▶ In-depth review of books and records
- ▶ Potential increased look-back/estimation
- ▶ Potential increased interest and penalty
- ▶ Increased population sizes (can result in increased liability)

Audit Process (cont'd)





Audit Process - Settlement

- ▶ What can be negotiated?
 - Accounting vs. Legal
- ▶ Understand your audience
- ▶ When is it appropriate to negotiate?
- ▶ Considerations
 - Scope
 - Property types
 - Voids
 - Estimation
 - Outliers
 - Remediation
 - Others

Mitigation Strategies

Ways to Mitigate Unclaimed Property Exposure

▶ Voluntary Disclosure Agreements

- All property types (AP, PR, AR)
- Limited scope of review
- Brings company into compliance
- Limited reach-back

▶ Compliance

- Execute strong annual unclaimed property filings and due diligence compliance
- Policy and Procedures
 - Develop and implement firm-wide process to help mitigate future risk
 - Evaluate M&A Activity
 - Evaluate System conversions and banking relationship changes

▶ Feasibility Review

- Review to address the scope of your unclaimed property exposure and internal control risks

Legal Case Update



Litigation Update

▶ Rulings:

- *Marathon Petroleum Company v. Secretary of Finance*
- *Plains All American v. Secretary of Finance*
- *Bed Bath & Beyond Inc. v. New Jersey*

▶ Dismissed; No rulings

- *JIL Invest, S.A.*

▶ Still Pending

- *Moneygram*
- *Delaware ex rel. French v. Card Compliant et al*

Kovel & Audit Defense Best Practices



Kovel & Audit Defense Best Practices

- ▶ Put *Kovel* agreement in place
- ▶ Protecting attorney/client privilege
- ▶ Document holds: internal and third parties
- ▶ Document production issues:
 - Confidentiality & document retention by third party auditors
 - Privacy: employees and shareholders
 - Scope of information requests

Bios

Biography

Joseph Carr, J.D.



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With 20 years of combined experience in state and local taxation, financial statement auditing, and operational auditing, Joe has worked with a broad range of the Firms' largest clients including manufacturing, retail, distribution, financial institutions, investment companies, and business services. He specializes in state and local tax issues with an emphasis on income/franchise taxation and unclaimed property compliance and consulting.

Joe leads BDO's National State and Local Tax Business Development and Marketing function. In this role, Joe touches many folks in corporate community through dedicated BDO Knows Webinar Series on various topics, Alerts, pressing notices and other educational outreach efforts. Joe also maintains a standing column with State Tax Notes entitled "A View from the Windy City" where he along with his colleagues discuss various state and local topics important to the taxing community at large. Recent articles have included: (a) State and Local Tax Due Diligence Exposures and Procedures, (b) Extension of Delaware's Friendlier Voluntary Disclosure Program, (c) Chicago Taxes Cloud-Based Services and Amusements and (d) Unclaimed Property Concerns for the Healthcare Industry. Mr. Carr is a frequent speaker at firm and organizational events on unclaimed property and other state and local topics.

In addition, Joe manages the SALT practice for Chicago office and heads up the firms National Unclaimed Property practice. He has had success in mitigating client escheat exposures in VDA and audit settlements before many state escheat divisions. Joe in concert with his colleagues works closely with clients to enhance their accounting practices, systems and ongoing efforts for operational efficiency through Accounting Assessment Reviews. This success is largely attributable to his deep understanding of accounting principles, transaction flow and unclaimed property law. Having evaluated financial and operational corporate risks, Joe offers clients facing escheat issues valuable accounting experience and an unique perspective in dealing with unclaimed property matters.

Prior to joining the Chicago office of BDO USA, LLP, Joe worked with KPMG LLP and Deloitte & Touche LLP in state and local tax and audit divisions respectively. In addition, Joe also managed the Internal Audit Division of a middle market food cooperative.

Biography

Ricardo Garcia



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Ricardo has over 13 years of experience advising multinational and domestic companies on unclaimed property matters. Ricardo has provided clients with unclaimed property general consulting, audit defense, and compliance services in many industries including healthcare, manufacturing, entertainment, oil & gas, business services, multi-level marketing, logistics, real estate and retail.

As the firm's West Coast and Texas Unclaimed Property Practice Leader, Ricardo has established professional relationships with many of the state unclaimed property administrators in handling client matters, and has successfully negotiated voluntary disclosure agreements on behalf of clients and provided audit representation services. Ricardo manages all of the firm's voluntary disclosure agreements with state of Delaware. As part of this role, he is directly responsible for completing and securing appropriate settlements for over 75 DE VDA clients.

In addition, Ricardo has significant experience with oil & gas and related field services companies in Texas and the Southwest. Ricardo has negotiated many Texas VDAs and audits with Texas Comptrollers office mitigating millions of dollars of risk for his clients relating to misclassified suspense accounts and royalty issues.

Ricardo has significant escheat planning experience and has helped many clients mitigate exposures through intercompany planning techniques and strategies. Through reviews of client records and assistance with escheat matters, Ricardo has developed Global Mapping consulting that assists clients in further reviewing, identifying internal control or accounting weaknesses and provision of recommended corrective action steps for process improvement. Through these process improvements, Ricardo is able to further assist clients in achieving their operational and financial goals.

Ricardo is a frequent presenter at COST, TEI, FEI and other accounting and tax organizations. He has presented on numerous BDO and external webinars as well. Prior to joining BDO, Ricardo worked with Ryan, Inc. and True Partners Consulting in their unclaimed property consulting practice.

Biography

Michael Kenehan, CPA, MBA.



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Michael has more than 11 years of combined experience in abandoned and unclaimed property (AUP) and internal audit related matters. He possesses vast experience in handling large unclaimed property audit engagements for the nation's largest contract AUP firm in a variety of industries including healthcare, retail, manufacturing/distribution, oil and gas, entertainment, food and beverage, automobile, and hospitality. Mike leverages his extensive knowledge of the audit process, property types, and the rules and regulations associated with AUP to assist clients in mitigating exposure and proactively addressing its escheat issues.

Michael is the Northeast Practice Leader for BDO's unclaimed property group based out of the Philadelphia office. He specializes in audit defense, escheat planning, general consulting, mitigation strategies and voluntary disclosure agreements (VDA), etc. In addition to being the NE Practice Leader Michael also heads up BDO's gift card escheatment practice nationally and does a lot of work within the restaurant/retail space. Michael has established professional relationships with many state unclaimed property administrators and offers clients with a unique perspective in dealing with all unclaimed property related matters.

Michael is an avid speaker in the unclaimed property community and regularly presents at tax/accounting functions across all industries.

Prior to joining BDO, Michael worked with Kelmar Associates, LLC as a Senior Audit Manager in charge of unclaimed property audits contracted on behalf of various states. Michael also worked as a Team Leader in internal audit for ABC Supply Company.

Biography

Diane Green-Kelly



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Court Admissions


U.S. District Court - Northern
District of Illinois Trial Bar U.S.
Court of Appeals - Seventh
Circuit

U.S. District Court - Northern
District of Illinois U.S. Court of
Appeals - Third Circuit
Professional Admissions Illinois

Diane is a partner in the firm's Chicago office, and is a member of the firm's Global Regulatory Enforcement Group. She represents clients in a wide variety of industries that are engaged in commercial litigation and arbitrations, as well as administrative, regulatory and government proceedings. Her representations include cases involving antitrust, consumer fraud, privacy, Lanham Act, trade regulation, trade secrets, unfair competition, tortious interference, healthcare, and state attorney general actions, both in individual actions and in class actions. Diane is AV-rated by Martindale-Hubbell.

Diane is a leading attorney in the area of escheat laws. She represents clients in state audits of unclaimed property and in negotiations and/or litigation arising from state unclaimed property audits. Diane successfully represented McKesson Corporation, Staples, Inc., Select Medical Corporation and Temple-Inland Inc. (a subsidiary of International Paper Corporation) in lawsuits against the state of Delaware challenging the legality of administrative action in connection with escheat audits, and she currently represents Marathon Petroleum Corporation, Speedway LLC and Office Depot in similar litigation. She currently represents numerous Fortune 500 companies in unclaimed property audits. Diane represented Temple-Inland Inc. in a case of first impression in which Delaware's escheat practices were held to violate substantive due process. As a former practicing CPA, Diane combines her experience and understanding of accounting, business transactions, and litigation in unclaimed property audits to assist companies in identifying the relevant facts needed to develop strong factual and legal defenses. In addition, Diane represents clients in antitrust consultation and litigation, including private class actions, government actions, and antitrust compliance programs. Her representations have generated numerous published opinions on a variety of antitrust issues, including relevant market definition and antitrust injury. Diane has been named an "Illinois Super Lawyer in Antitrust Litigation" every year since 2006 and is listed in The Best Lawyers in America; in Antitrust Law.

Finally, Diane has extensive experience representing clients, in litigation, arbitrations, and consultation matters, in the area of franchise and distribution law (general and industry-specific). She is on the Governing Committee of the ABA Forum on Franchising, has written numerous articles and made presentations on franchise and distribution law, and she is a former Associate Editor and Articles Editor of The Franchise Law Journal. Diane is listed in Chambers USA, The Best Lawyers in America; and Who's Who Legal in Franchise Law and has been honored as a "Legal Eagle" in franchise and distribution law in the Franchise Times. For more than 15 years prior to becoming a lawyer and joining her previous firm in 1993, Diane, who is a Certified Public Accountant, served in both the tax and audit departments of large national and regional CPA firms.



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