

Closing the Escheatment Audit

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As many businesses are now under unclaimed property audit due to increased enforcement efforts by states and their third party audit contractors, audit completion and corresponding liability have become concerns. Due to the challenging economy, the impact of the audit findings and associated exposure are heightened. Businesses undergoing audits that are near completion must carefully plan their strategy during the final stages.

Audit Closure Preparation

A Part of The Audit Strategy/Plan

If the audited business devises effective "pre-audit" strategies and follows appropriate audit matriculation plans, then audit closure preparation will be less complex and time consuming. In other words, planning for audit closure really is a function of a coordinated, well-planned overall audit strategy. This strategy must include frequent communication with the auditors in order to identify information during the process which contradicts the auditor's initial liability assumptions. This type of interaction can forestall adverse audit findings.

Further, documenting significant steps and decisions during the process may be important in preventing inaccurate and/or adverse findings in the audit report. As a part of this documentation it is important to maintain a list of the action items that includes who is responsible for each item (auditor, state, business person, etc.), the status of each item, the date each item was completed, and any resolutions or decisions made by the auditor with respect to each item. This information may be important in arguing for modifications in preliminary audit findings and associated liability assessments.

Considerations

As the audit closing approaches there are some issues that the business' audit team should consider. The team should determine who in the company must review and approve the audit findings and any final settlement. Further, if a settlement is reached, the team should ascertain who in the business' senior management must sign the agreement. Also, the team and any other pertinent business officials must consider the business' liability tolerance and on which issues or exposure levels it will seek an appeal. In

addition, if a settlement is reached, the business team and pertinent senior managers must identify the source of the funds the business will pay as required in the settlement.

Settlement/Closing Documents

Preliminary Document Review

Generally, the auditor will provide preliminary closing documents, which may include preliminary findings and assessments, a closing letter or proposed settlement. The business team should carefully review these documents to determine if they concur with:

- The facts as stated
- The legal conclusions
- The findings
- The calculations which are the basis for any findings or assessments
- Any future actions required of the business

If the business has facts or legal authority which contradicts those in the preliminary documents or has information that should be considered in modifying or eliminating findings in those documents, the business should provide this data to the auditors as soon as possible and document it.

In addition, the business team should consider who is bound by any proposed settlement agreement or closing letter. Are subsidiaries or affiliated companies bound by its terms? Are all the states involved in the audit required to provide a release of liability for the time period covered in the audit scope?

Appeals

If the auditors finalize their closing documents and the business is not in agreement with the findings and liability assessment, the business may consider making an appeal. The appeal process may be informal, formal or both, depending upon the pertinent state law. For some states, an informal appeal is a meeting with the auditors and higher state officials during which the business provides its arguments and evidence that the findings are inaccurate or otherwise have an inappropriate or insufficient basis. The next step may be a formal appeal before an administrative hearings officer. It is important to note that if the business decides to appeal that there are usually specific time periods within which the appeal must be initiated.

Of course, another avenue for appeal, if the informal and/or formal

administrative appeals do not provide a satisfactory result, is the courts.

Conclusion

While unclaimed property audits can be time consuming and expensive, they do serve as a method for communicating with state officials and for learning the states' interpretations of the laws. Further, they provide businesses with important information about possible weaknesses in their controls and in their unclaimed property compliance procedures. Finally, such audits cause senior management to focus on the enhancements that may be necessary to ensure, throughout the company, that the business is compliant with unclaimed property laws.

Next Month: Understanding Unclaimed Property Due Diligence

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