

California State Controller's Office
Proposed Regulatory Action: Regulations Governing Procedure for Administrative
Review of Unclaimed Property Audit Findings and Interest Assessments
Notice

NOTICE IS HEREBY GIVEN that the California State Controller is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Persons in this Notice, must be received by the State Controller's Office not later than March 28, 2022.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact persons listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the State Controller's Office, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: February 11, 2022 through March 28, 2022.

AUTHORITY AND REFERENCE

Guidelines for Requesting an Informal Review of an Unclaimed Property Examination as of September 2003, issued by the California State Controller

There is no statute expressly providing for administrative review of audit findings and interest assessments.

INFORMATIVE DIGEST

As required by California Code of Civil Procedure § 1571(c), following a 1999 public hearing, the State Controller's Office adopted guidelines as to the policy and procedures governing the activities of third-party auditors who are hired by the Controller (the "Policies and Procedures"). These Policies and Procedures were adopted in 2003, and amended in 2020.

However, on April 27, 2021, the Superior Court of the County of San Francisco, ruling in the case of *Yee. v. Clubcorp Holdings, Inc.*, Case No. CGC-19-576314 ("*Clubcorp*"), held that the California Administrative Procedure Act "applies to the Policies and Procedures." Order Re Demurrer to Petition for Writ of Mandate and Cross-Complaint (April 27, 2021), p. 6.

While not directly at issue, the logic of *Clubcorp* would be applicable to the Guidelines for Requesting an Informal Review of an Unclaimed Property Examination, which were also adopted in September 2003 (the "Guidelines"). Under the Guidelines, reviews are independently

conducted by the State Controller's Legal Office. Currently, the audit review process allows unclaimed property holders to request an informal review of audit findings and/or interest assessment. There is no formal administrative review process in place at this time.

In order to ensure consistency and efficiency in the audit review process, the Controller proposes regulations implementing and governing a process by which holders may request a formal review of audit findings and/or interest assessments (the "Proposed Regulations").

Policy Statement Overview / Anticipated Benefits of Proposal

The State Controller's Office seeks to implement a standardized procedure by which holders can request a review of audit findings and/or interest assessments made at the conclusion of an unclaimed property audit. The review process being proposed is voluntary on the part of the holder.

The Proposed Regulations will give holders the opportunity to seek review of audit findings and assessments on which the notice is based by persons within the Controller's Office who will not have had direct involvement in the audit. The panel will have the authority to correct audit findings in whole or in part based upon an incorrect interpretation or application of law and errors of fact or auditing procedures having a substantial effect on the audit findings or assessments. The panel shall have the power to decrease, increase or reaffirm the amount assessed in the billing notice.

Consistency/Compatibility with Existing State Regulations

The Controller has determined that the Proposed Regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Controller has concluded that these are the only regulations that concern the review of audit findings and interest assessments in California. The informal process of audit reviews that has been in place until now is serving as a basis for the audit review process set forth in the Proposed Regulations. Adoption of the Proposed Regulations will establish procedures and deadlines for the audit review process.

Documents Incorporated by Reference: Unclaimed Property Informal Audit Review Request: Form IAR-1 as of January 2011

Documents Relied Upon in Preparing the Regulations: None

FISCAL IMPACT ESTIMATES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: No.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None.

Adverse Business Impact: The review process being proposed is voluntary. The Controller has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Proposed Regulations will formalize an unclaimed property audit review process, replacing an existing informal audit review process.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability to Compete: The review process being proposed is voluntary. The Controller has made an initial determination that this regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Proposed Regulations will formalize an unclaimed property audit review process, replacing an existing informal audit review process.

Cost Impact on Representative Private Person or Business: The review process being proposed is voluntary. The Controller is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

Effect on Small Business: The Controller has made an initial determination that the proposed regulatory action will have no effect on small business. The Proposed Regulations will formalize an audit review process and replace an existing informal audit review process.

Result of Economic Impact Assessment/Analysis Summary Comments: The full Economic Impact Statement is presented in the Initial Statement of Reasons. These regulations are not anticipated to create or eliminate jobs within the State of California, create or eliminate existing businesses within the State of California, or expand or eliminate existing businesses within the State of California. These regulations are not anticipated to affect the health and welfare of California residents, worker safety, or the state's environment. The Proposed Regulations will formalize an audit review process and replace an existing informal audit review process.

CONSIDERATION OF ALTERNATIVES

The agency must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments with respect to alternatives to the proposed regulatory action.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The Controller has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the Controller's website.

Copies of the express language of the Proposed Regulations, any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the Controller contact or on the website listed below.

The documents and other information are available for public inspection during the dates of the public comment period, described below, excluding weekends and holidays, from 8:00 a.m. through 5:00 p.m. The rulemaking file is maintained at the following address:

California State Controller's Office
Contact: Arica Presinal | Staff Counsel
State Controller's Office - Legal Division
300 Capitol Mall, Suite 1850, Sacramento, CA 95814
Phone: (916) 322-5369
Fax: (916) 322-1220

Due to restrictions related to COVID-19, the Controller's public counter is not open to the public. Please contact the contact persons below to arrange for public inspection of the rulemaking documents. Options for public inspection during COVID-19 may include having the rulemaking documents emailed to you or scheduling an in-person review.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

A Final Statement of Reasons will be created after the closing of the public comment period. A copy of the final statement of reasons can be obtained once it has been prepared from the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

California State Controller's Office
Contact: Arica Presinal | Staff Counsel
State Controller's Office - Legal Division
300 Capitol Mall, Suite 1850, Sacramento, CA 95814
Phone: (916) 322-5369
Fax: (916) 322-1220
Email: abryantpresinal@sco.ca.gov

The backup contact shall be:

California State Controller's Office
Backup Contact: Richard J. Chivaro | Special Counsel

State Controller's Office - Legal Division
300 Capitol Mall, Suite 1850, Sacramento, CA 95814
Phone: (916) 445-6854
Fax: (916) 322-1220
Email: rchivaro@sco.ca.gov

Website Access: Materials regarding this proposal can be found at:

<https://www.sco.ca.gov/>

California State Controller's Office
Proposed Regulatory Action: Regulations Governing Procedure for Administrative
Review of Unclaimed Property Audit Findings and Interest Assessments
Initial Statement of Reasons

PUBLIC HEARING AND COMMENT

Hearing Date: No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 15 days prior to the close of the written comment period.

Written Public Comment Period: February 11, 2022 through March 28, 2022.

Subject Matter of Proposed Regulations: The procedure for review of unclaimed property audit findings and interest assessments.

Section(s) Affected: The Proposed Regulations will add a new Article 6, § 1200 et seq., to Title 2 – Administration; Division 2 - Financial Operations; Chapter 2 - State Controller; Subchapter 8 - Unclaimed Property Law; of the California Code of Regulations.

PURPOSE AND NECESSITY

In the Guidelines for Requesting an Informal Review of an Unclaimed Property Examination, the California State Controller adopted informal guidelines by which a holder may request a review of audit findings and/or interest assessments. These informal policies and procedures were adopted in 2003.

In order to ensure uniformity and efficiency and to resolve any questions about their validity, the Controller proposes to adopt Regulations governing the voluntary administrative review process by which holders can seek review of unclaimed property audit findings and interest assessments underlying a billing notice received at the conclusion of an audit (the “Proposed Regulations”).

FACTUAL BASIS / RATIONALE

The factual basis and rationale for each section of the proposed regulations are as follows:

§ 1250. Audit Review Process Overview

This section provides an overview of the Audit Review Process.

§ 1251. Audit Review Panel

This section sets forth the composition of the Audit Review Panel.

§ 1252. Initiation of Audit Review Process

This section describes how a holder may initiate the Audit Review Process.

§ 1253. Timeline of Audit Review Process

This section provides a timeline for the Audit Review Process.

§ 1254. Notice of the Audit Review Conference

This section sets out the contents of the notice of the Audit Review Conference.

§ 1255. Audit Review Conference

This section describes the procedures for the Audit Review Conference.

§ 1256. Interest

This section describes the calculation of interest during the Audit Review Process.

§ 1257. Court Action

This section provides that the Controller shall seek collection of all amounts found due.

§ 1258. Refunds

This section describes the timing of refunds found due in the Audit Review Process.

§ 1259. Complaints

This section provides the procedure for a holder to submit a complaint concerning a violation of law, regulation or unethical conduct that occurs during an unclaimed property audit.

ECONOMIC IMPACT STATEMENT

Creation or Elimination of Jobs within the State of California

It is not anticipated that these regulations will create or eliminate jobs within the State of California.

Creation of New or Elimination of Existing Businesses within the State of California

It is not anticipated that these regulations will create or eliminate existing businesses within the State of California.

Expansion of Businesses or Elimination of Existing Businesses within the State of California

It is not anticipated that these regulations will expand businesses or eliminate existing businesses within the State of California.

Benefits of the Regulations

Holders of property have been able to challenge the audit findings through an informal review process that is not incorporated in regulations adopted pursuant to the Administrative Procedure Act.

A formal Administrative Review Process for disputing audit billing notices adopted pursuant to the Administrative Procedure Act will provide holders with greater specificity as to the procedures to be followed and certainty as to the legal status of the process.

REASONABLE ALTERNATIVES

The only alternative considered was to leave existing informal regulations in place. However, questions about the clarity and enforceability of the existing informal regulation led to the proposal of the Audit Review Process reflected in the Proposed Regulations pursuant to the Administrative Procedure Act.

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Proposed Regulation Text

Title 2. Administration
Division 2 - Financial Operations
Chapter 2 - State Controller
Subchapter 8 - Unclaimed Property Law

The California Controller is proposing to add a new Article 6 to the above-referenced portion of the California Code of Regulations

Article 6: Reviewing the Results of an Audit

§ 1250. Audit Review Process Overview

- (a) The holder shall be advised of its right to seek review of the final audit results, during the opening conference, during the exit conference, and in the examination billing notice.
- (b) The holder's participation in the Audit Review Process is voluntary and is not a condition precedent to litigation.
- (c) The holder shall have the right to seek review of a final audit billing notice by an Audit Review Panel. Review shall be sought by written request.
- (d) The Audit Review Panel shall have the power to correct findings and assessments made in the audit. The Audit Review Panel shall have the power to decrease or increase the amount found due in the billing notice, as well as determine that the amount due in the billing notice is correct. The Audit Review Panel shall provide the holder an opportunity to present its position at an Audit Review Conference to be held either in person or by remote communication.

§ 1251. Audit Review Panel

- (a) The Audit Review Panel shall consist of, but is not limited to: the Chief Deputy Controller, Finance; a representative from the Controller's Legal Office; and a third person to be designated by the State Controller.
- (b) A representative from the State Controller's Division of Audits, and the holder and its agent shall be the parties before the Audit Review Panel.

§ 1252. Initiation of Audit Review Process

- (a) In order to initiate the Audit Review Process, the holder shall submit the Unclaimed Property Audit Review Request, consisting of Form AR-1, to the Office of the State Controller (see Appendix A-1).

(b) The Unclaimed Property Audit Review Request shall consist of at least of the following information:

- (1) The name and address of the holder;
- (2) The name and title of the holder or its agent that will be participating in the Audit Review Process;
- (3) The audit billing notice and audit findings that were the subject of review;
- (4) A statement of the relief being sought;
- (5) A statement of the reasons and basis for review; and
- (6) The applicant's signature and date.

(c) The holder may submit with the Unclaimed Property Audit Review Request supporting documentation.

§ 1253. Timeline of Audit Review Process

- (a) An Unclaimed Property Audit Review Request must be filed (postmarked) within 60 days of the mailing of the audit billing notice (see Appendix A-1).
- (b) A written decision on the Review Request shall be rendered not more than 90 days after the conclusion of the Audit Review Conference.
- (c) The holder shall pay all amounts found to be due by the Audit Review Panel within 30 days after issuance of the Audit Review Panel's decision.

§ 1254. Notice of Audit Review Conference

- (a) Following receipt of the Unclaimed Property Audit Review Request form, the Office of the State Controller shall set a date and time for the Audit Review Conference. If the Conference is held in person, the Conference shall be held in the Sacramento office of the State Controller.
- (b) The holder shall be notified in writing of the date and time of the Conference.

§ 1255. Audit Review Conference

- (a) During the Audit Review Conference, both the Office of the State Controller and the holder will have an opportunity to explain their respective positions. There shall be no examination and/or cross examination of witnesses at the Conference. The members of the Audit Review Panel may ask questions to clarify their understanding of the issues.
- (b) The Conference shall not be transcribed or recorded. The Audit Review Panel shall set a deadline in advance of the Conference by which time the parties may submit further documentation in support of their respective positions.

§ 1256. Interest

- (a) During the Audit Review Process, the holder may stop the accrual of interest, pursuant to CCP Section 1577, by paying the amount determined to be due in the audit billing notice.
- (b) If the Review Panel's written decision determines that additional unclaimed property is due:
 - (1) Additional interest, pursuant to CCP Section 1577, shall be calculated on the additional cash amounts from the date the property should have been remitted to the postmark date on the holder's remittance or date of electronic funds transfer posting.
 - (2) Additional interest shall be calculated on any additional securities from the date the securities should have been remitted to either the postmark date on the remittance or the date the State Controller takes title to the securities, whichever is earlier. Refer to the California Administrative Code, Title 2, Subchapter 8, Article 4.5, for detailed information.
 - (3) If the amount to be remitted is \$20,000 or more, the holder is required to remit by Electronic Funds Transfer pursuant to CCP Section 1532(a).
 - i. Any person required to pay cash by electronic funds transfer who makes the payment by means other than an authorized electronic funds transfer shall be liable for a civil penalty of two percent (2%) of the amount of the payment that is due pursuant to this section, in addition to any other penalty provided by law.
 - ii. Penalties are due at the time of payment, pursuant to CCP Section 1532(c).

§ 1257. Court Action

If a holder fails to timely pay any amount determined to be due by the Audit Review Panel, the State Controller shall seek collection through an action brought by the Attorney General against the holder of all amounts found due plus interest and penalties.

§ 1258. Refunds

If the Audit Review Panel amends or revises the audit billing notice to a lesser amount, any overpayment shall be refunded to the holder within 30 days after issuance of the Audit Review Panel's written decision. No interest shall be payable on any refund. (CCP Section 1540(c)).

§ 1259. Complaints

- (a) During the examination opening conference, the holder shall be provided with the name of a contact person, which is the State Controller's Audit Representative.

- (b) If, during the examination, the holder believes there has been a violation of law, regulation, or unethical behavior, the holder may submit a complaint to the Audit Representative. If the holder's complaint has not been resolved satisfactorily by the Audit Representative, the holder may submit a written request for a meeting with the supervising bureau chief to further consider the complaint.
- (c) Upon request, the holder may obtain relevant copies of working papers supporting any calculation made of the unclaimed property escheatable to the State of California upon payment by the holder of the costs incurred by the Controller for duplication of the documents.