

Guidelines for Requesting an Informal Review of an Unclaimed Property Examination



Malia M. Cohen
California State Controller

September 2003

Contents

Authority to Conduct Unclaimed Property Examinations 1

Unclaimed Property Examination by State Controller’s Auditors and/or Third Party Auditors..... 2

 Examination Process..... 2

 Informal Complaint Process..... 2

 Informal Audit Review Process 3

Billing Process..... 3

Informal Audit Review Process..... 3

 Informal Audit Review Panel..... 4

 Initiating the Review Process..... 4

 Informal Audit Review Timeline 4

 Informal Conference Location 5

 Informal Audit Review Conference 5

Court Action 5

Refund of Unclaimed Property..... 5

Suspension of Interest During the Informal Hearing Process..... 6

Appendix

 Unclaimed Property Informal Audit Review Conference Request – Form IAR-1 A-1

Authority to Conduct Unclaimed Property Examinations

California Code of Civil Procedures (CCP) Section 1571(a) provides authority for the Office of the State Controller, at reasonable times and upon reasonable notice, to examine the records of any person if the State Controller has reason to believe the person is a holder who has failed to report property that should have been reported pursuant to CCP Section 1500 et seq.

CCP Section 1571(b) provides authority for the Office of the State Controller to request that the unclaimed property examination be conducted by third-party auditors.

Unclaimed Property Examination by State Controller's Auditors and/or Third Party Auditors

Examination Process

The examination process is summarized below:

Letter of Intent: The Holder is notified of the intent of the Office of the State Controller to examine its records to ensure compliance with California's Unclaimed Property Law (CCP Section 1500 et seq.).

Opening Conference: During this meeting with the Office of the State Controller and the holder, conducted at the holder's place of business, the holder is advised of the intent of the Office of the State Controller to conduct an examination of its records for the purpose of determining compliance with California's Unclaimed Property Law. The Office of the State Controller shall explain to the holder the State Controller's Office informal audit review process.

Examination: The holder's records are examined to determine compliance with the Unclaimed Property Law.

Exit Conference: A meeting is held with the Office of the State Controller and the holder to discuss the examination findings. Detail of the findings will be presented to the holder in writing in draft format.

Examination Billing: A billing notice is mailed to the holder via certified mail by the Unclaimed Property Division, for any unclaimed property and interest that is due as a result of the examination.

The Informal Audit Review Process: The holder may use this process to dispute the findings of the auditors. The process is not to be used for resolution of legal issues.

Remittance: The holder may remit unclaimed property any time during the examination, during the informal audit review process, or at the conclusion of the examination. Interest, if any, is calculated based on the dates of receipt of funds.

Informal Complaint Process

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. If, during the examination, the holder believes there has been misconduct, or unethical behavior, the state's audit representative should be

consulted. If relief is not satisfactory, the holder may request a meeting with the supervising bureau chief. If that is not satisfactory, the chief of the division of audits can be consulted for further resolution.

At the completion of the examination, the holder may discuss with the audit representative or the supervising bureau chief any concerns relative to the concluded examination. 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.

Informal Audit Review Process

Subsequent to the exit conference, the holder may dispute the audit findings first to the state's representative or, if that party was part of the exit conference, to the chief of the division of audits or his/her designee. If the concerns are not resolved, the holder has a right to a review of the findings by State Controller's Office management.

Each review panel has the ability to correct errors and modify the findings accordingly. These reviews may be conducted by teleconference.

Billing Process

After the review has been completed, the holder is billed for the examination results, plus CCP Section 1577 interest on any delinquent property. CCP Section 1577 states: *"In addition to any damages, penalties, or fines for which a person may be liable under the provisions of law, any person who fails to report or pay or deliver unclaimed property within the time prescribed by this chapter, shall pay to the State Controller interest at the rate of 12 percent per annum on such property or value thereof from the date such property should have been paid or delivered."* This section of the law is applicable to both cash and securities.

Informal Audit Review Process

The holder shall be advised of its right to dispute the examination results, during the opening conference, during the exit conference, and in the examination billing notice. The review process provides the holder with the opportunity to have its objections to the examination considered at a different management level within the Office of the State Controller. The holder's participation in the review process is voluntary and completion of this process is not a condition precedent to litigation.

Informal Audit Review Panel

The Informal 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 appointed by the State Controller.

Representatives from the State Controller's Division of Audits, and the holder and/or its agent may participate in the review process.

Initiating the Review Process

In order to initiate the review process, the holder must complete the Unclaimed Property Informal Audit Review Request, form IAR-1, and return it to the Office of the State Controller (see Appendix A-1).

The request must contain the following information:

- The name and address of the holder;
- The name and official title of each party participating in the process;
- The amount in question and the unclaimed property report years covered by the administrative appeal;
- A reason or basis for the request;
- A request for tentative dates for the informal conference;
- The applicant's signature; and
- The date the form is completed.

Additional written material may be submitted in advance of the hearing if it will help the panel understand the requestor's position.

Informal Audit Review Timeline

The timeline for the informal audit review process is shown below:

- A request for an informal audit review must be filed (postmarked) within 60 days of the mailing of the billing notice (see Appendix A-1).
- The Office of the State Controller shall schedule an informal conference at a date convenient to all parties.
- A written decision shall be rendered not more than 90 days after the conclusion of the informal conference.

- Any refund of unclaimed property due the holder shall be remitted no later than 180 days after a decision on the audit findings is rendered.
- The Office of the State Controller shall recommend that the Attorney General commence legal action against the holder if unclaimed property due as a result of the determination has not been fully remitted.

Informal Conference Location

Upon receipt of the Unclaimed Property Informal Audit Review Request form, the Office of the State Controller shall arrange a time that is mutually convenient in the Sacramento office of the State Controller. The holder shall be notified in writing of the date, location, and time of the conference in advance of the hearing.

Informal Audit Review Conference

During the informal audit review conference, both the Office of the State Controller and the holder will have an opportunity to explain their respective positions. Because this is an informal process, there will be no examination and/or cross examination of any of the parties present at the conference. Members of the State Controller's Audit Review Panel may ask questions to clarify their understanding of the issues.

Hearings are not recorded by the State Controller. Any and all information pertinent to the issues being reviewed should be presented to the panel in advance of the conference.

Court Action

If the holder refuses to pay any amount determined to be due by the State Controller's Office, the State Controller shall recommend that the Attorney General commence legal action against the holder.

Refund of Unclaimed Property

If the holder is due a refund as a result of the panel's determination, the amount of the overpayment shall be refunded to the holder along with interest, pursuant to CCP Section 1540(c), No Interest will be included with this refund.

Suspension of Interest During the Informal Hearing Process

During the appeal process, the holder may stop the accrual of interest, pursuant to CCP Section 1577, by paying the amount that the audit examination determined was due.

Upon completion of the informal hearing process, if the Office of the State Controller amends or revises the examination results to a lesser amount, the overpayment shall be refunded to the holder within 180 days. No interest shall be payable on any claim. (CCP Section 1540(c)).

If the informal hearing process results in the identification of any additional unclaimed property, the holder shall be billed for the additional amounts. 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. 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 sooner. Refer to the California Administrative Code, Title 2, Subchapter 8, Article 4.5, for detailed information. The holder must remit all unpaid unclaimed property no later than 30 days after the decision is made at the informal hearing.

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). 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 2 percent of the amount of the payment that is due pursuant to this section, in addition to any other penalty provided by law. Penalties are due at the time of payment, pursuant to CCP Section 1532(c).

Appendix

Unclaimed Property Informal Audit Review Conference Request

Mail to:

OFFICE OF THE STATE CONTROLLER
Attention: Legal Office
P.O. Box 942850
Sacramento, CA 94250-5873

Holder Name: _____

Address: _____

Hearing Participant: _____ Title: _____

Appeal Amount: \$ _____ Years Covered: _____

Appeal Issue: _____

(continue on separate page if necessary)

Request Tentative Dates for Informal Conference:

Location: _____

Date: _____ Date: _____ Date: _____

Applicant: _____ Phone #: _____ Date: _____

*** Backup documents must be submitted with this Request ***

**State Controller's Office
Unclaimed Property Division
P.O. Box 942850
Sacramento, California 94250-5873
(916) 464-6284**

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