

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

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:

§ 1180.49. Audit Review Process Overview

This section provides an overview of the Audit Review Process. This section is necessary to inform inexperienced holders of the process to commence an audit review. Section (a) is necessary because informing holders of the right to avail themselves of the audit review process helps prevent unnecessary litigation. Section (b) is necessary to inform holders that this is a voluntary option rather than a necessary step of a broader dispute strategy helping save the Controller time and resources. Section (c) is necessary to guarantee that holders will be given sufficient information to effectively advocate for their position. Section (d) is necessary to inform holders of the powers and responsibilities allotted to the Audit Review Panel, that they may better determine their best course of action.

§ 1180.50. Audit Review Panel

This section sets forth the composition of the Audit Review Panel. This section is necessary to inform inexperienced holders of the audit process. The parties selected for Section (a) of this regulation are the necessary parties to the Audit Review Panel because: the Deputy Controller Chief of Finance has the experience and knowledge to address any issues in the financial elements of the audit; a representative from the Controller's Legal Office will possess the knowledge to address any legal issues that arose from the audit process; and having a third party chosen by the Controller's Office will allow the audit panel to bring in an expert in any other field germane to the a specific audit. Section (b) is necessary to inform the holder of their right to representation by an agent, and to set the parties that may be present during an audit review. The Division of Audits is the necessary party to act as the opposition to the holder because it has the experts to meaningfully participate in this process.

§ 1180.51. Initiation of Audit Review Process

This section describes how a holder may initiate the Audit Review Process. This section is necessary to inform inexperienced holders of how to commence the audit review process. Section (a) is necessary to inform the holder of the form needed to commence the audit review process. Section (b) is necessary to inform the holder of the minimum information needed to complete the incorporated form to move forward on an Audit Appeal. Each of the informational elements in this section are necessary for the controller to accurately identify the holder, audit subject to the appeal, and the holder's rational for pursuing the appeal. Section (c) is necessary to grant additional evidentiary flexibility because holders will need fact specific types of evidence based on the underlying audit and finding.

§ 1180.52. Timeline of Audit Review Process

This section provides a timeline for the Audit Review Process. This section is necessary to inform holders what they may need to prepare can expect regarding the timing of the audit review process. Section (a) is necessary because the 60-day deadline is sufficiently long to allow a holder to prepare a response. Section (b) is necessary because a 90-day timeline for the Audit Committee to respond gives enough time to thoroughly consider all elements of an audit appeal, while promptly responding to all evidence presented. Section (c) is necessary because the thirty-day window to pay all amounts found due prevents the audit review process from becoming a delaying tactic for holders looking to abuse this system.

§ 1180.53. Notice of the Audit Review Conference

This section sets out the contents of the notice of the Audit Review Conference. This section is necessary to inform holders how they can expect to be contacted regarding the Audit review conference. Section (a) addresses the Controller's role in setting the date and time of an audit conference, if that conference is to be held in person, and the location of that conference. In order: (1) the Controller is responsible for coordinating with the relevant parties in these matters and needs the flexibility to set the date and time of the conference in order to effectively manage this process; (2) the Controller needs to have the flexibility of having the meeting in-person, or remotely based on the evidence received and the availability of the other parties; and (3) These conferences must be held in Sacramento in cases where they are in person because that is the location of the Controller's office, and where most of the relevant resources for these conferences are located.

Section (b) is necessary because written notice of a hearing guarantees all parties have a record of the timing of the conference.

§ 1180.54. Audit Review Conference

This section describes the procedures for the Audit Review Conference, including the contents to be included in a written decision to be issued by the Audit Appeal Panel. This section is necessary to inform holders of the nature and procedures they are to follow during the review

process. Section (a) is necessary to provide holders with the information regarding their opportunity to present evidence and the chance of the panel to pose questions. Similarly, this section outlines the lack of an opportunity for parties to cross-examine of evidence, which is necessary to keep these conferences timely. This forbearance of cross-examination is necessary because this setup provides sufficient opportunity to present evidence, while also completing this process in a timely manner. Section (b) is necessary to inform the parties of their deadlines, and to set the expectation of no transcript being offered at the close of this process. The Controller's Office will provide no transcript because doing so would incur unnecessary cost and add needless delay to the final decision process. Section (c) is necessary to inform holders of the expected time between a hearing and a decision, and the 90-day period is necessary because it is sufficiently long to review all matters subject to a hearing.

§ 1180.55. Interest

This section describes the calculation of interest during the Audit Review Process. This section is necessary to inform holders of the steps to take to avoid further accrual of interest, and how to pay certain funds to the Controller's Office. Section (a) is necessary to inform the holder of the means to prevent further accrual of California Code of Civil Procedure Section 1577 interest during the review process. Section (b) as well as subsections (1) and (2) are necessary to avoid confusion regarding the interest that will accrue pursuant to CCP Section 1577 in the case of a determination of additional unclaimed property due from the holder so that a holder can way the potential of further assessment against the belief that an audit resulted in an inaccurate assessment. Section (3) is necessary because the Controller already requires remittances of \$2000 or more to be paid via ACH. This section informs the remitter of that requirement in this specific instance.

§ 1180.56. Court Action

This section provides that the Controller shall seek collection of all amounts found due. This section is necessary to inform the holder the consequences of failing to timely pay an amount found to be due by the Audit Review Panel.

§ 1180.57. Refunds

This section describes the timing of refunds found due in the Audit Review Process. This section is necessary to outline the right to and timeline for a refund of overpayment in the case of a determination of overpayment by the Audit Review Panel. Similarly, this section precludes any claim to interest that a remitter may believe they are entitled to.

§ 1180.58. 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. This section is necessary to inform holder of the procedures through which they can pursue a complaint and obtain certain documentation during an Audit Review. Section (a) is necessary to provide the holder a form of contact through which the holder can provide and request documentation or raise concerns regarding the audit review process. Section (b) is necessary to inform holders of how to raise a concern or complaint with the audit review process and how to

escalate in the case of dissatisfaction with the process. This method is necessary because it allows for rapid responses to holder concerns without causing an overabundance of resources being allocated to address disputes in the audit review process. Section (c) is necessary to provide auditees with the opportunity to review relevant documentation without externalizing these costs onto the taxpaying public.

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. These regulations mirror existing policies for conducting an audit appeal, and will not change any party's rights, change any party's existing legal requirements, require new staff to be hired, or make any existing positions redundant.

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. These regulations mirror existing policies for conducting an audit appeal, and do not alter any party's rights or responsibilities. Furthermore, these regulations will neither change the competitiveness of any existing businesses such that it would need to close, nor cause the expansion of demand to incentivize the creation of new 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. These regulations mirror existing policies for conducting an audit appeal and will not alter any party's existing rights or responsibilities. These regulations will neither change the competitiveness of any existing businesses such that a business would be eliminated, nor cause increased demand in the state to incentivize the expansion of 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.

DOCUMENTS RELIED UPON:

Order Re Demurrer to Petition for Writ of Mandate and Cross-Complaint Case No. CGS-19-576314