

California State Controller's Office
Proposed Regulatory Action: Regulations Governing Procedure for Administrative
Review of Unclaimed Property Audit Findings and Interest Assessments
Amended 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. The following amendments to the regulations will be published for a 15-day notice period. Added language will be underlined, while removed language is struck through. All changes to the language of the regulations will be presented in red text.

Article 6: Reviewing the Results of an Audit

§ ~~1250~~ 1180.49 **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 (the "Audit Review Process"), during the exit conference, and in the ~~examination billing notice~~ final audit 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.

Authority: Code of Civil Procedure Section 1571 ~~(a), Code of Civil Procedure Section 1571(e)~~
Reference: Code of Civil Procedure Section 1571

§ ~~1251~~ 1180.50 **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 shall be the parties before the Audit Review Panel. A holder's agent may also attend meetings

with the Audit Review Panel.

Authority: Code of Civil Procedure Section 1571~~(a)~~, ~~Code of Civil Procedure Section 1571(e)~~
Reference: Code of Civil Procedure Section 1571

§ ~~1252~~ 1180.51 **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 ~~(01/2011)~~ (may be found at https://www.sco.ca.gov/upd_reporting_forms.html), to the Office of the State Controller. ~~The Unclaimed Property Audit Review Request (Form AR-1) is incorporated herein by reference.~~
- (b) The Unclaimed Property Informal Audit Review Conference 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~~must submit with the Unclaimed Property Informal Audit Review Conference Request supporting documentation.

Authority: Code of Civil Procedure Section 1571~~(a)~~, ~~Code of Civil Procedure Section 1571(e)~~
Reference: Code of Civil Procedure Section 1571

§ ~~1253~~ 1180.52 **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.
- (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.

Authority: Code of Civil Procedure Section 1571~~(a)~~, ~~Code of Civil Procedure Section 1571(e)~~
Reference: Code of Civil Procedure Section 1571

§ ~~1254~~ 1180.53 **Notice of Audit Review Conference**

- (a) Following receipt of the Unclaimed Property Informal Audit Review Conference Request form, as provided in section 1180.39 of this Article, the Office of the State Controller shall set a date and time for the Audit Review Conference. The State Controller shall determine whether a Conference shall take place in person, or whether it may be conducted remotely. If the Conference is held in person, the Conference shall be held in the Sacramento office of the State Controller.

The holder shall be notified in writing of the date and time of the Conference.

Authority: Code of Civil Procedure Section 1571 ~~(a), Code of Civil Procedure Section 1571(e)~~
Reference: Code of Civil Procedure Section 1571

§ ~~1255~~ 1180.54 **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.
- (c) Within ninety (90) days after the conclusion of the Audit Review Conference, the Audit Appeal Panel shall issue a written decision stating the amount determined to be due and a short response to the contentions presented by the auditee.

Authority: Code of Civil Procedure Section 1571 ~~(a), Code of Civil Procedure Section 1571(e)~~
Reference: Code of Civil Procedure Section 1571

§ ~~1256~~ 1180.55 **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 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. *See* California Administrative Code, Title 2, Subchapter 8, Article 4.5 (explaining the methodology for calculating interest on past-due securities).

- (3) If the amount to be remitted is \$2,000 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(g).

Authority: Code of Civil Procedure Section 1571(a), ~~Code of Civil Procedure Section 1571(e)~~
Reference: Code of Civil Procedure Section 1571, Code of Civil Procedure Section 1577

§ ~~1257~~ 1180.56 Court Action

If a holder fails to pay any amount determined to be due by the Audit Review Panel within the time specified 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.

Authority: Code of Civil Procedure Section 1571(a), ~~Code of Civil Procedure Section 1571(e)~~
Reference: Code of Civil Procedure Section 1571

§ ~~1258~~ 1180.57 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)).

Authority: Code of Civil Procedure Section 1571(a), ~~Code of Civil Procedure Section 1571(e)~~
Reference: Code of Civil Procedure Section 1571

§ ~~1259~~ 1180.58 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 to be selected by the Controller's Office.
- (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.

Authority: Code of Civil Procedure Section 1571 ~~(a)~~, ~~Code of Civil Procedure Section 1571(e)~~

Reference: Code of Civil Procedure Section 1571