1301:10-3-04 **Examination of accounts.**

(A) The director may, at reasonable times and upon reasonable notice, examine or cause to be examined by auditors of supervisory departments or examiners of the divisions of the state, the records of any holder or person which could be the holder of unclaimed funds, to determine compliance with Chapter 169. of the Revised Code. The director may enter into contracts, pursuant to procedures prescribed by the director, with persons for the sole purpose of examining the records of holders, determining compliance with Chapter 169. of the Revised Code, and collecting, taking possession of, and remitting to the department's division of unclaimed funds, in a timely manner, the amounts found and defined as unclaimed. Said amounts due to the state shall be remitted directly to the state by the holders subject to an involuntary examination initiated by the state. Said persons, hereinafter referred to as contract auditors, shall certify that they are knowledgeable of Chapter 169. of the Revised Code, relevant United States and Ohio supreme court rulings, generally accepted accounting principles (GAAP), generally accepted auditing standards (GAAS), and any relevant examination/auditing procedures promulgated pursuant to section 169.09 of the Revised Code, as they relate to the identification and collection of unclaimed funds from holders. Except as provided herein, a contract auditor conducting a state-initiated involuntary examination within the borders of the state of Ohio shall not be compensated by state on a contingency fee basis, but shall be compensated pursuant only to a fixed fee arrangement. State may compensate a contract auditor on a contingency fee basis when the state of Ohio has joined in an involuntary audit initiated by another state, regardless of whether the holder is incorporated in Ohio, or has its principal place of business or records within Ohio.

(B) The confidentiality of records and a confidentiality agreement

(1) Records audited pursuant to division (F) of section 169.03 of the Revised Code are confidential, and shall not be disclosed except as required by section 169.06 of the Revised Code or as the director considers necessary in the proper administration of Chapter 169. of the Revised Code. The identity of a holder approved for an involuntary examination is public record pursuant to Chapter 149. of the Revised Code.

(2) The contract auditor and division auditor shall agree that they are prohibited from disclosing information obtained during the involuntary examination to anyone other than a participating state, unless pursuant to or required by law.

(3) The contract auditor, upon the written request of the holder, shall sign a confidentiality agreement to which the holder is a signator. The confidentiality agreement shall be entered into in the manner specified in paragraph (H) of this rule.

(C) Working papers and related documentation

(1) All working papers and other documentation prepared by division auditors or contract auditors during the performance of the involuntary examination shall meet professional auditing standards. The division auditor and contract auditor shall observe rule 202 of the AICPA's (American institute of certified public accountants) code of professional ethics which requires adherence to generally accepted auditing standards and the statements on auditing standards issued by the auditing standards board, as both relate to the identification and collection of unclaimed funds from holders. These standards include, but are not limited to, general standards, standards for field work, and standards for reporting.

(2) The documentation of such funds owing to the state shall contain such information as may be needed by the state to collect the amount discovered by the involuntary examination. Such information shall not include trade secrets or proprietary data having no relevancy to the unclaimed funds involuntary examination.

(D) Holders of funds of such a nature as may potentially become unclaimed funds, shall maintain these accounts on the records of the holder in such an identifiable manner that, if they become unclaimed, they may be identified and reported as required.

(1) The contract auditor and division auditor are authorized to review records in the course of an involuntary examination covering the records review period as defined in paragraph (J) of rule 1301:10-1-01 of the Administrative Code. The records review period may be extended to include any year subsequent to the years initially included if the involuntary examination is completed after additional reporting years have elapsed.

(2) If the holder consolidates check issuances for sums payable to suppliers, or for services rendered, with other dormant accounts in the same demand deposit or ledger account, the holder is required to maintain controls to identify each type of dormant account.

(E) The factors considered by the director in determining whether reasonable cause exists to believe that a holder has failed to comply with Chapter 169. of the Revised Code and, therefore, may be subject to an involuntary examination, include, but are not limited to the following:

(1) The asset size and/or the annual sales volume of the holder;

(2) The types and amounts of accounts reported by the holder to the director in the last five years;

(3) The past reporting history of the holder, relative to other entities of the same size or industry;

(4) Mergers, take-overs, and stock splits which the holder has incurred;

(5) Evidence or complaints of failure by holder to conduct due diligence pursuant to division (D) of section 169.03 of the Revised Code;

(6) Evidence of failure by the holder to report complete owner information pursuant to division (A) of section 169.03 of the Revised Code;

(7) Filing by holder of "none" reports in consecutive reporting years;

(8) The holder has never been subject to an involuntary examination by the state of Ohio or its contract auditors.

Holders shall be selected for a state-initiated involuntary examination, conducted by a contract auditor or a division auditor, on a random basis and subsequent application of the above listed factors~~,~~. Said random selection process shall be based on generally accepted auditing standards (GAAS). Holders may be subject to a state-initiated involuntary examination on a non-random basis solely if they are part of an ~~except for examinations~~ examination initiated by another state in which the state of Ohio joins~~.~~; the director initiates an investigation of a holder after receiving a complaint of its non-compliance with Chapter 169 of the Revised Code; or a holder has records that are subject to the records review period, as defined in this chapter, and located outside the physical borders of the state of Ohio. ~~Said random selection process shall be based on generally accepted auditing standards (GAAS). The contract auditor~~

An auditor shall be assigned a state-initiated involuntary examination of a holder selected by the above process. ~~Although, should~~ Should the auditor be a contract auditor that ~~believe~~ believes that it ~~can not~~ cannot conduct an assigned state-initiated involuntary examination due to a conflict of interest or other such reason, the contract auditor shall notify the state of such. The state shall then determine whether recusal of the contract auditor from the assignment is appropriate or necessary. If the contract auditor is recused from conducting the state-initiated involuntary examination of holder, another contract auditor shall be assigned. If the subsequently assigned contract auditor is also recused, a division auditor may conduct the state-initiated involuntary examination. ~~The above-described random selection process is not applicable to holders whose records that are subject to the records review period, as defined in this chapter, are located outside the physical borders of the state of Ohio.~~

(F) After selection of a holder for an involuntary examination, an examination entrance letter signed by the state administrator or the administrator's representative shall be sent to the holder. The letter shall contain the following:

(1) Notification that an involuntary examination has been authorized;

(2) Identification of the division auditor or contract auditor authorized to conduct the involuntary examination;

(3) Identification of the scope of the involuntary examination including the examination period;

(4) The identity of all participating states pursuant to division (F)(6) of section 169.03 of the Revised Code;

(5) Disclosure that involuntary examination findings may be appealed in accordance with paragraph (K) of this rule;

(6) The name and telephone number of the compliance supervisor who is available to answer questions and address concerns of holders under an involuntary examination;

(7) Notification that a copy of the contract between the state and the contract auditor is available upon request.

(G) The initial records request

(1) Following the notification referenced in paragraph (F) of this rule, the division auditor or contract auditor shall supply the holder with an examination records request prior to, or at, the examination entrance conference for a state-initiated involuntary examination.

(2) The initial request should identify records that the division auditor or contract auditor needs to review to determine compliance with Chapter 169. of the Revised Code.

(3) The requested records shall be made available for review by the division auditor or contract auditor within sixty calendar days of the date of the request. If the holder is unable to compile and make available for review the requested records within the sixty calendar day period, the holder shall contact the division auditor or contract auditor prior to the expiration of the sixty calendar day period to schedule a mutually agreeable time in which to make available the requested records. Said extension of time is not to exceed an additional thirty calendar days except at the discretion of the director. Holders that fail to provide the

requested records within sixty calendar days of the date requested, or within the agreed upon extension, may be subject to penalties and interest as provided for in Chapter 169. of the Revised Code on any unclaimed funds identified as reportable during the examination. The penalties and interest shall be applied from the date of expiration of the sixty calendar day period or extension until the records are received by the division auditor or contract auditor.

(4) Attorney and law firm holders are permitted to redact, and should redact, from all records provided to auditors for review, the client name, address, tax identification numbers and other information that would identify the attorney's client in order to protect attorney-client confidentiality.

(H) The division auditor or contract auditor shall conduct an examination entrance conference with the holder prior to the commencement of a state-initiated involuntary examination at which the division auditor or contract auditor shall identify the examination period and describe the general examination methods, including estimation techniques that may be utilized during the state-initiated involuntary examination. The selection of the estimation technique to be utilized shall be made prior to the closing review.

The contract auditor also shall inform the holder that, pursuant to paragraph (B) (3) of this rule and at the option of, and upon the written request of, the holder, the contract auditor will enter into an additional confidentiality agreement for a state-initiated involuntary examination. The contract auditor and holder shall be given thirty calendar days from the date of the examination entrance conference to reach and enter into a mutually agreeable confidentiality agreement, a copy of which shall be provided to state. However, if the contract auditor and holder fail to reach and enter into a mutually agreeable confidentiality agreement within the allotted time, and holder still wishes the contract auditor to enter into an additional confidentiality agreement, the contract auditor and holder shall enter into the confidentiality agreement prepared by the state and to which the state will also be a signator. Said confidentiality agreement shall be entered into within ten calendar days of expiration of the original thirty calendar days given for the contract auditor and holder to reach a mutually agreeable confidentiality agreement. Upon written request, the contract auditor shall provide the holder with the state-prepared confidentiality agreement which shall first be signed by the contract auditor. If the holder intends to enter into the confidentiality agreement, it shall be the responsibility of the holder to sign the confidentiality agreement and forward the original to the state administrator within ten calendar days of expiration of the original thirty calendar day period. The state administrator shall then sign the confidentiality agreement and distribute copies of the confidentiality agreement to the signators. The aforementioned thirty calendar day period for submission of a mutually agreeable confidentiality agreement and ten calendar day period for submission of the state-prepared confidentiality agreement

shall run concurrently with the sixty calendar day requirement, or extension thereof, for production of records as specified in paragraph (G)(3) of this rule.

(I) After the compilation of the preliminary findings from the state-initiated involuntary examination, the division auditor or contract auditor shall conduct a presentation of, and provide a copy of, said findings with the holder at which the division auditor or contract auditor shall do the following:

(1) Obtain the holder's signature on the receipt for the delivery of working papers to holder identifying the preliminary findings of dormant accounts. The holder's signature shall not constitute agreement with the findings and if the holder refuses to sign, said refusal shall be noted;

(2) Explain the due diligence requirement as set forth in division (D) of section 169.03 of the Revised Code;

(3) Advise how the current annual holder report of unclaimed funds and accompanying forms, instructions, and information can be obtained;

(4) Notify the holder that preliminary findings of dormant accounts may be eliminated from actual annual reportable unclaimed funds by providing documentation at the closing review that shall include one or more of the following:

(a) Documentation of accounting error;

(b) Documentation that the last known owner address is in a non-participating state or that the owner address is unknown and the holder is not incorporated or formed in Ohio;

(c) Signed returned notice of unclaimed funds form;

(d) Other signed correspondence from the owner indicating knowledge of the dormant account and/or that the funds are not owed to the owner;

(e) Documentation of owner transaction on the account;

Said documentation shall be provided to the state auditor or contract auditor conducting the state-initiated involuntary examination within one hundred twenty calendar days of the presentation of the preliminary findings of dormant accounts;

(5) Inform the holder that within thirty calendar days of the expiration of the one hundred twenty calendar day period referred to above in this paragraph, a closing review shall be held between the division auditor or contract auditor and

the holder at which time the total unclaimed funds reporting liability resulting from the state-initiated involuntary examination shall be calculated;

(6) Inform the holder of the right to appeal the findings of the examination pursuant to division (F)(7) of section 169.03 of the Revised Code after the closing review ~~and supply the holder with the notice of appeal form prescribed by the state~~.

(7) Notify attorney and law firm holders that they are not required to identify their clients or to provide documentation that would identify their clients to eliminate or rebut the preliminary findings of dormant accounts. To enable attorneys and law firms to maintain the confidentiality of their clients prior to the determination of total unclaimed funds liability and the filing of the unclaimed funds report pursuant to section 169.03 of the Revised Code, attorneys and law firms may eliminate or rebut the auditor's preliminary findings by providing documentation at the closing review that shall include one or more of the following:

(a) Documentation of accounting error;

(b) An original affidavit stating all relevant facts supporting the attorney's or law firm's request for elimination for each account included in the preliminary findings of unclaimed funds, signed by the sole practitioner attorney or managing partner of the law firm, and certifying that the attorney or law firm is in possession of one or more of the following:

(i) Documentation that the last known address of the client-owner is outside Ohio or that the address is unknown and the holder of the funds is not incorporated or formed in Ohio;

(ii) A notice of unclaimed funds form signed by the client-owner and dated after the applicable dormancy period specified in section 169.02 of the Revised Code;

(iii) Other correspondence signed by the client-owner indicating knowledge of the dormant account and/or that the funds are not owed to the client-owner, and dated after the applicable dormancy period specified in section 169.02 of the Revised Code;

(iv) Documentation of the client-owner's transaction on the account, dated after the applicable dormancy period specified in section 169.02 of the Revised Code.

The affidavit may be submitted by the attorney or law firm holder in lieu of providing records, with client identifiers redacted, and shall be

provided within the time limitations otherwise specified in this rule for the submission of documentation at the closing review.

(J) The closing review and calculation of unclaimed funds

(1) The division auditor or contract auditor shall ~~meet~~conduct with the holder ~~for~~ a closing review, at which time documentation provided by the holder, as outlined in paragraph (I)(4) of this rule, shall be reviewed to eliminate accounts from the preliminary findings of dormant accounts and to calculate the total unclaimed funds reporting liability of the holder resulting from the state-initiated involuntary examination.The closing review may be conducted face-to-face, by telephone, mail or delivery service, or by electronic means. At the completion of the closing review, the auditor shall inform the holder of its right to appeal the findings of the examination pursuant to division (F)(7) of section 169.03 of the Revised Code, and shall supply the holder with the notice of appeal form prescribed by the state. The holder may file an appeal of the audit findings only after completion of the closing review.

(2) The calculation of the holder's total unclaimed funds reporting liability may include the utilization of estimation techniques. Estimation techniques may be necessary if the examination of the records review period fails to identify dormant accounts reported or due in each year of the examination period and a review of the reporting history of the holder maintained by the state and the holder shows that the holder failed to report, or underreported, the type(s) of account(s) in question during the examination period. The selection of the estimation technique to be utilized shall be made prior to the closing review. The division auditor or contract auditor shall use one of the following methods to calculate the holder's estimated unclaimed funds reporting liability for those years requiring estimation:

(a) The asset method which utilizes the average of actual annual reportable unclaimed funds with Ohio addresses as a percentage of the total end of year assets of the company. The average of actual annual reportable unclaimed funds with Ohio addresses as a percentage of total end of year assets shall be calculated by adding the actual annual reportable unclaimed funds with Ohio addresses as a percentage of the total end of year assets for each year and dividing by the number of years for which actual reportable unclaimed funds were identified. The total assets at the end of the year(s) corresponding to the reporting cycle(s) subject to estimation techniques, are then multiplied by the average of actual annual reportable unclaimed funds with Ohio addresses as a percentage of the total end of year assets. The sum of the calculated amounts is the estimated unclaimed funds reporting liability for the examination period;

(b) The sales method which utilizes the average of actual annual reportable unclaimed funds with Ohio addresses as a percentage of the gross end of year sales of the company. The average of actual annual reportable unclaimed funds with Ohio addresses as a percentage of gross end of year sales shall be calculated by adding the actual annual reportable unclaimed funds with Ohio addresses as a percentage of gross end of year sales for each year and dividing by the number of years for which actual reportable unclaimed funds were identified. The gross sales at the end of the year(s) corresponding to the reporting cycle(s) subject to estimation techniques, are then multiplied by the average of actual annual reportable unclaimed funds with Ohio addresses as a percentage of gross end of year sales. The sum of the calculated amounts is the estimated unclaimed funds reporting liability for the examination period;

(c) Other estimation technique that is mutually agreeable to the holder, the state, and the contract auditor.

(3) The total unclaimed funds reporting liability of the holder for the examination period shall be the sum of the actual annual reportable unclaimed funds involuntary examination findings plus the estimated unclaimed funds reporting liability using one of the methods described in this paragraph, if applicable.

(4) An annual holder report, reflecting the total unclaimed funds reporting liability or, if any amount thereof is disputed, the undisputed portion of the total unclaimed funds reporting liability, shall be filed and the amount remitted by the holder or contract auditor within thirty calendar days.

(K) Pursuant to division (F)(7) of section 169.03 of the Revised Code, a holder may appeal the disputed findings of an involuntary examination. The appeals process may only be utilized by the holder after completion of the closing review. The purpose of the appeals process is to give the state administrator and the holder the opportunity to reach mutually agreeable findings. The following process shall be used for appeals.

(1) The holder shall complete the notice of appeal provided by the state administrator and submit the form with all appropriate documentation to the state administrator; the notice of appeal must be postmarked or received within thirty calendar days of the closing review. Failure to file the notice of appeal within the specified time shall constitute an acceptance of the total unclaimed funds reporting liability;

(2) The state administrator shall contact the holder and the division auditor or contract auditor to schedule an appeal meeting at which the examination findings and holder's appeal will be reviewed. The appeal meeting shall be scheduled at a

mutually agreeable time within thirty calendar days of the receipt of the notice of appeal. The holder shall be prepared at the appeal meeting to discuss the position of the holder and provide documentation supporting the grounds for the appeal. The division auditor or contract auditor shall also be given the opportunity to support the examination findings. The state administrator may question both parties;

(3) The state administrator, within thirty calendar days of the appeal meeting or receipt of any additional documentation requested at the meeting, shall render a decision in writing to the holder and the division auditor or contract auditor;

(4) The holder may appeal the decision of the state administrator, within thirty calendar days of the decision, in the manner provided in Chapter 119. of the Revised Code;

(5) Within thirty calendar days of the decision of the state administrator, unless the holder files an appeal of said decision pursuant to Chapter 119. of the Revised Code, the holder shall file an annual holder report reflecting the unclaimed funds reporting liability as determined by the state administrator subsequent to the appeal meeting and remit said unclaimed funds;

(6) During the appeals process, the holder shall not be subject to interest on unclaimed funds found to be due and reportable, until expiration of the thirty calendar days referenced in this paragraph or thirty calendar days after a final decision has been rendered pursuant to Chapter 119. of the Revised Code, whichever is later.

(L) Holder's release from liability

(1) Upon completion of an examination and payment of the total unclaimed funds reporting liability to the director, the holder will be relieved of further responsibility for the safekeeping thereof and will be held harmless by the state from any and all liabilities for any claim arising out of the transfer of such funds to the state.

(2) The state releases the holder from further liability for reporting and payment of unclaimed funds of those types of property reviewed during the examination, through and including the most current reporting cycle. Further, the holder shall not be subject to an involuntary examination <u>of the same types of property</u> by the state for the reporting cycles covered in a prior involuntary examination.

(3) Upon receipt of the annual holder report and remittance of the unclaimed funds resulting from the involuntary examination, the state shall issue an examination closure letter informing the holder that the involuntary examination is closed.

(M) At any time before a holder is selected for an examination, a holder, at the administrator's discretion, may comply voluntarily with the reporting requirements of section 169.03 of the Revised Code. Holders participating in the voluntary compliance program are required to enter into an agreement with the state to report and remit all past and currently due unclaimed funds and comply with the reporting requirements of Chapter 169 of the Revised Code going forward. The administrator shall not unreasonably withhold permission for a holder not selected for examination to participate in the voluntary compliance program.

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