

Kaplin Stewart

Attorneys at Law

- WE HANDLE -

EVERY ANGLE | EVERY FACET | EVERY SIDE | EVERY ASPECT

OF DAILY BUSINESS OPERATIONS

TAX ISSUE 2019

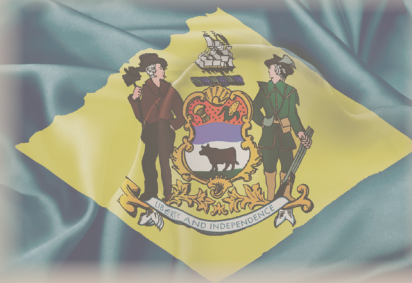
Calling All Delaware Corporations – Are you complying with Delaware Unclaimed Property Reporting?

The Delaware Escheator's chief enforcement tool for companies that don't comply with Delaware's Unclaimed Property reporting requirements are "invitation letters." These letters invite a non-filing company to participate in the Unclaimed Property Voluntary Disclosure Program.

Despite the name, these letters are not an invitation at all. Rather, the letter is sent to a company that has been identified by the Escheator as a non-filer. Do not ignore this letter. If it's ignored after 60 days, the company is immediately selected for an unclaimed property examination. The examination is conducted by one of Delaware's third-party vendors (paid on commission). These examinations can last 2-3 years and can be very burdensome. And as the vendors are paid on commission, they are incentivized to find liability.

Notably, at a recent conference in Philadelphia, the Escheator stressed that the automatic examination policy will be strictly enforced if the invitation letter is ignored.

As the invitation letters are going to continue rolling out three times a year for years to come, it's seemingly only a matter of time before a non-filing company receives one. So whether you've received an invitation letter or not, we can help you come forward and participate in the program to get compliant now.



Below is a bullet point outline of some general Delaware Unclaimed Property facts and a summary of the VDA/invitation program:

- Less than 1% of the \$1.3M Delaware companies are complying with the State's Unclaimed Property reporting requirements;
- Unclaimed Property is 10% of Delaware's yearly revenue (third-largest single revenue source);
- 60 days to respond to invitation letter or company is immediately referred to the Delaware Escheator for an unclaimed property "examination";
- Middle-market companies to Fortune 100 companies—both privately and publicly held are slated to receive this round of letters;
- Letters are sent to corporate officers and the Delaware registered agents, or others that may not be aware of what they are or the potential consequences of ignoring them;
- Letters are sent out three times a year, but not on a specific schedule—so a company organized under Delaware law must be vigilant all year;
- The benefits of the VDA program include:
 - Waiver of penalties and interest charges;
 - Extended "aging" criteria for canceled checks (90-days for voided disbursement checks vs. normal 30 days for regular audit);
 - Control over the process via a "self-review" of its own records to identify and remediate areas of exposure (instead of a 3-year examination conducted by a commission-compensated third-party vendor).


The Delaware Escheator's chief enforcement tool for companies that don't comply with Delaware's Unclaimed Property reporting requirements are "invitation letters."




Daniel M. Dixon is a principal and member of the Commercial Litigation and Tax Law departments. Dan can be reached at 610-941-2484 or by email at ddixon@kaplaw.com.




KS Welcomes

 **Daniel Dixon, Esquire**, has joined Kaplin Stewart as a Principal and a member of the Commercial Litigation and Tax Law departments. Before joining the firm, Dan was Of Counsel at Morgan, Lewis & Bockius in Philadelphia, PA. Dan's practice focuses on providing the highest quality Tax counsel and advocacy to fortune 500 companies and beyond. He has resolved, both through litigation and settlement, complicated state tax matters before administrative appeal boards, tax tribunals, and courts in more than 25 states (with a particular focus on PA, NJ, and CA). When Dan is not working, he likes spending time with his family, his dog Elvis, and watching the Philadelphia Phillies, 76ers and Saint Joe's Hawks. Dan may be reached at ddixon@kaplaw.com or 610-941-2484.



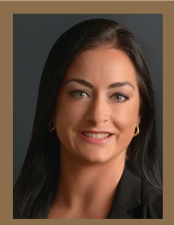
 **Devin S. Fox, Esquire**, has joined Kaplin Stewart as an Associate and is a member of the firm's Estate and Trust department. Devin focuses her practice on estate and gift tax planning, wealth preservation, business planning and succession, and estate and trust administration. Devin began her legal career with a reputable estate and business law firm in Annapolis before relocating to the Philadelphia area to join a firm in Chester County in 2016. She lives with her husband and son in Wayne. When possible, she enjoys spending time with her family and friends, traveling, and gardening. Devin may be reached at dfox@kaplaw.com or 610-941-2529.



 **DBrian M. Jeffers, Esquire**, has joined Kaplin Stewart as an Associate and member of the Commercial and Construction Litigation departments. He is an experienced civil litigation attorney. Brian has tried multiple cases to verdict in state court and resolved cases in alternative dispute resolution forums. Having litigated numerous cases from the initial evaluation to the final resolution, he recognizes the importance of providing an all-inclusive and practical strategy for each case. Before Kaplin Stewart, Brian was a trial attorney in Philadelphia. While in law school, Brian was a judicial extern to the Honorable Christopher S. Sontchi, United States Bankruptcy Court (D. Delaware) and worked as a law clerk at two Philadelphia law firms. Brian can be reached at bjeffers@kaplaw.com or (610) 941-2509.



 **Ashley Peacock, Esquire**, has joined Kaplin Stewart as an Associate and is a member of the firm's Real Estate Transactional and Business and Corporate Law Departments. Ashley concentrates her practice in the areas of real estate and business transactions, including the acquisition and disposition of commercial and residential real property, commercial and retail leasing, commercial financing and refinancing, and drafting and negotiating commercial contracts and corporate governance documents. Ashley can be reached at apeacock@kaplaw.com or (610) 941-2544.



Kaplin Stewart was a sponsor and host of the Robert E. Slota, Jr. Summer IL Diversity Program for 2019.

We recognize the importance of fostering greater diversity and inclusion in Montgomery County's legal community. The 13 impressive interns were offered a vast array of valuable opportunities, including courtroom observations, informational panels, social events, meetings with judges and other leaders, and more. This year, the summer interns worked closely with the MBA Leadership Academy participants, through combined events, workshops, mentorship opportunities, and a significant pro bono project.

Ivana M. Alexander, was the impressive intern that worked under Pamela M. Tobin, Esquire. Ivana just completed her first year at Temple University Beasley School of Law. She has a B.A. in Politics and a B.A. in Middle Eastern Studies from New York University.

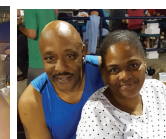
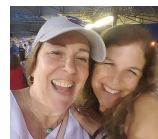
Prior to starting law school, Ivana worked as a Program Director with The Salvation Army Pioneer Corps for several years. When not working or attending school, Ivana enjoys competitive weightlifting.



Ivana attended hearings, depositions, township meetings to observe our attorneys. In addition, she assisted with legal research and writing projects.

A Night at the Reading Fightin Phils!

Kaplin Stewart weathered the storm at the Reading Phils vs. Hartford Yard Goats game on August 7, 2019. The rain cleared up, and all had a wonderful time cheering on the home team.



We not only enjoyed the barbeque and each other's company, they WON!

We made the book

Kaplin Stewart made the 2019 South Jersey Biz Book of List for Law Firms, a definitive guide for South Jersey.



Philadelphia Amends Realty Transfer Tax Law... AGAIN!

On May 15 Philadelphia amended its Realty Transfer Tax ("Tax") law to expand the definition of "value" to which the 3.278% Tax rate is applied. Now, when a real estate company is acquired, the value upon which Tax is paid includes liens or other encumbrances on the real estate existing before the transfer and not removed by the transfer. Philadelphia Ordinance follows.

This change seemingly increases the Tax base when a purchaser assumes a mortgage on the real estate of an acquired company. This new change comes just two years after Philadelphia already expanded the pool of "acquired real estate companies" subject to Tax. In 2017 the City replaced taxable "89-11" transactions with Taxable "74-26" transactions. Meaning that pre-July-2017 Tax was triggered upon a 90% or more change of ownership of a real estate company within a three-year period. Post-July-2017 Tax is triggered upon only a 75% or more change of ownership in the real estate company within a six-year period. Phila. Code 19-1407(1)(b).

What does this mean for you and your company?

The City believes the most recent amendment is a clarification. Thus, 2017-2019 transactions may still be scrutinized closely on audit for value (i.e., did you exclude mortgages, liens, etc. in the Taxable value) *and* change in ownership percentage (i.e., "89-11" vs. "74-26" analysis). Conversely, we believe this is a change, not a clarification. So, if you *included* "any encumbrances in the taxable value of real estate not removed by the transfer, you may have paid too much Tax and could be entitled to a refund.

City of Philadelphia (Bill No. 190135) AN ORDINANCE

Amending Chapter 19-1400 of The Philadelphia Code, entitled "Realty Transfer Tax," to clarify the definition of "Value," under certain terms and conditions.

WHEREAS, in Bill No. 160810 (approved Dec. 20, 2016), Council closed a loophole to provide that transfer tax would be paid on the actual value of the real estate held by an acquired real estate company;

WHEREAS, certain taxpayers have contended that Council intended, instead, to expand such loophole and to allow transfer tax to be paid on a fraction of the actual value of the real estate, in cases where the real estate is acquired subject to a lien;

WHEREAS, the clear intent of the acquired real estate company provisions of the transfer tax law, as well as of Bill No. 160810, is to put taxpayers who sell real estate by means of an acquired real estate company on the same footing as ordinary citizens who sell real estate without such devices; and not to provide such taxpayers a tax advantage that is not available to ordinary citizens;

WHEREAS, Council now wishes to eliminate any manufactured disputes and to clarify its intent; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 19-1400 of The Philadelphia Code is amended to read as follows:

CHAPTER 19-1400. REALTY TRANSFER TAX

* * *

§ 19-1402. Definitions.

* * *

(14) Value.

(a) In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefor, paid or to be [paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate:] paid; Provided, that where such documents to be recorded shall set forth a nominal consideration, the "value" thereof shall be determined from the price set forth in or actual consideration for the contract of sale;

* * *

(d) The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principal of the grantor or a related corporation, association or partnership and the grantee existing before or effective with the transfer.

(e) In the case of the real estate of an acquired real estate company other than a family farm corporation, the monetary value of the real estate directly or indirectly held by the company. Where the change in ownership is part of a bona fide arm's length sale, there shall be a rebuttable presumption that the monetary value is the actual consideration paid for the company, provided that the taxpayer may rebut that presumption by alternative proof of the actual value of the included real estate.

(f) As used in this subsection (14) ("Value"), the term "actual consideration" shall include any liens or other encumbrances on the real estate existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate.

SECTION 2. This Ordinance shall be effective immediately.

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on May 2, 2019. The Bill was Signed by the Mayor on May 15, 2019.

Michael A. Decker

Chief Clerk of the City Council

Daniel M. Dixon, Esquire's practice focuses on providing the highest quality tax counsel and advocacy to fortune 500 companies and beyond. Often this counsel and advocacy results in significant tax savings. He has resolved, both through litigation and settlement, difficult state tax matters before administrative appeal boards, tax tribunals, and courts in more than 25 states (with a particular focus on Pennsylvania, New Jersey, and California). Managing single-state and multi-state audits, planning advice, and interfacing with government officials is also a significant component of Dan's 14+ year legal career.

Dan has also focused on "the business of law" as a primary tenet to a successful career. This frequently includes managing a team of associates and leveraging other professionals to deliver advice in an efficient and timely manner.

As far as "niche" practices, Dan has developed a particular focus on the taxation of software and emerging technologies and also has extensive experience in State Unemployment Insurance law. Dan's experience in the Oil and Gas industry has also led to the development of a specialty practice related to the taxation of natural gas drilling and extraction in the Marcellus Shale region of Pennsylvania.

Recently Dan has been gaining experience in Pennsylvania Right to Know laws, electronic document collection and retention, and document destruction laws.



Are the New Markets Tax Credits Right for You?

SUMMARY AND BACKGROUND

The New Markets Tax Credit ("NMTC") Program allows individual and corporate taxpayers to "purchase" a non-refundable dollar-for-dollar federal income tax credit by making an equity investment in a state community development entity ("CDE"). On May 31st, Governor Wolf announced that the U.S. Treasury awarded to the CDE Commonwealth Cornerstone Group ("CCG") \$55 million in credit allocations.

A CDE uses the funds from the sale of its NMTCs to provide equity infusions and low-interest financing to qualified active low-income community businesses ("QALICBs"). These QALICBs often can't secure full project financing for these projects through traditional avenues because the projects are in economically distressed areas.

In Pennsylvania, CCG is a CDE that provides funding to QALICBs via loans and equity investments for, among other things, business expansion projects, mixed-use development projects, and community facilities in Pennsylvania's economically distressed areas.

INVESTOR SIDE

Equity investors provide funding to the CDE. The investor then receives non-refundable federal income tax credits worth 39% of its investment. The credits are used by the investor over the course of seven years to offset federal income tax liability.

The credit benefits to the investor(s) can increase exponentially when the investor partners with a leverage lender. In that case, an investor forms an LLC and makes an equity investment of \$2.5M in the LLC. Then the LLC secures financing from a leveraged lender of \$7.5M. The LLC provides the \$10M to the CDE, and the CDE uses the entire \$10M to fund a qualified project. The credit is computed based on the \$10M in funding but still flows directly to the investor. Thus, the investor pays only \$0.64 per \$1.00 of credit (\$2.5M investment for \$3.9M in credits instead of \$2.64 per credit if the investor had provided all \$10M in capital directly to the CDE).

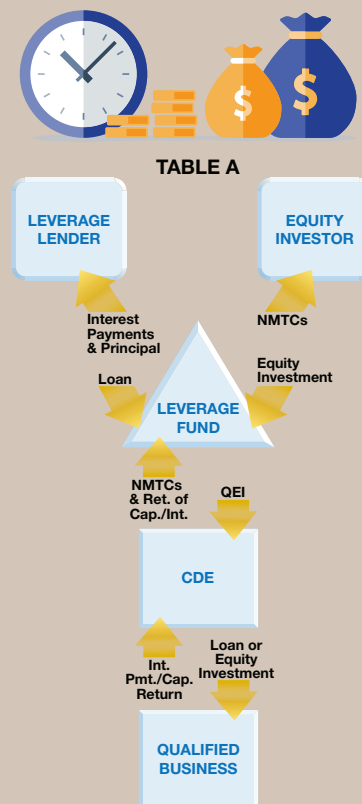
Table A, to the right, illustrates the flow of funds and credits works in the "leverage" model.

PROJECT SIDE

CDEs like CCG are encouraged to make deals and offer preferential loan rates and terms to QALICBs. Thus, QALICBs (the developers, businesses, etc.) can benefit from low-interest loans for projects that otherwise would have died-on-the-vine for lack of funding (again, traditional lenders may be hesitant to provide 100% of the financing required via traditional loans because these projects are in economically distressed areas).

In Pennsylvania, CCG specifically targets mixed-use properties in distressed communities and community facilities that provide services for low-income Pennsylvanians in traditionally underserved areas.

The benefits of securing financing through an NMTC-based loan structure are substantial. This means that the application process is complicated and rigorous. Both sides of the NMTC program are complex but carry with them robust benefits for investors and developers alike. Our team at Kaplin Stewart can provide the support, guidance, and advocacy that you or your company needs as you navigate this complicated but rewarding process.



This "leverage" model pools equity investment from a tax credit investor with the leverage loan proceeds – increasing the amount of QEI and corresponding NMTCs generated. The leverage lender receives returns similar to those from its normal commercial lending activities, and the investor receives a more robust return on its equity investment in the form of NMTCs. The IRS has blessed this model through several rulings and has ruled that the loan to the Leverage Fund may be a recourse or non-recourse loan.

Please contact Daniel M. Dixon at 610-941-2484 or by email at ddixon@kaplaw.com.