

Unclaimed Property Task Force

**Tuesday, December 2, 2014
1:00p.m. – 3:00p.m.
Buck Library, Buena Vista, New Castle, DE**

Meeting Attendance

Task Force Members:

Present:

Senator Bryan Townsend	Bryan.Townsend@state.de.us	302-744-4165
Representative Bryon Short	Bryon.Short@state.de.us	302-744-4297
Senator Greg Lavelle	Greg.Lavelle@state.de.us	302-744-4197
Representative Jeff Spiegelman	Jeff.Spiegelman@state.de.us	302-744-4179
Secretary Jeffrey Bullock (Via phone)	Jeff.Bullock@state.de.us	302-739-4111
Secretary Thomas Cook	Tom.Cook@state.de.us	302-577-8984
Thomas Collins	Tom.Collins@debankers.com	302-678-8600
Michael Houghton	mhoughton@mnat.com	302-351-9215
Edward Ratledge	ratledge@udel.edu	302-831-1684
Jordon Rosen	jrosen@belfint.com	302-225-0600
Stan Stevenson	sstevenson@rlf.com	302-651-7707
Leonard Togman	ltogman@potteranderson.com	302-984-6005
Robert Tuinstra, Jr.	Robert.J.Tuinstra@usa.dupont.com	302-774-0485
Michael Barlow	Michael.Barlow@state.de.us	302-577-8154

E-mail:

Phone:

Absent:

Controller General Michael Morton	Michael.Morton@state.de.us	302-744-4211
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Staff:

Michelle Zdeb	Michelle.Zdeb@state.de.us	302-744-4059
Kiki Evinger	Kathryn.Evinger@state.de.us	302-744-4297

Attendees:

Organization:

Phone:

Arsene Aka	DOF	302-577-8964
Jamie Johnstone	DOF	302-577-8965
David Gregor	DOF	302-577-8684
Courtney Stewart (Via Phone)	CGO	302-744-4200
Caroline Cross	DOJ representing DOF	302-577-8814
Bob Byrd	Byrd Group, LLC.	302-757-8300
Ferdinand Hogroian	COST	202-484-5228
Sara Lima	Reed Smith	215-851-8872
Rick Geisenberger	DOS	
Alison Iavana	DOS	
Michelle Whitaker	DOF	

The Task Force Meeting was brought to order at 1:09 p.m.

CONSIDERATION OF MEETING MINUTES, SEPTEMBER 10, 2014

Senator Bryan Townsend, co-chair, thanked the members of the Task Force and the public for attending the meeting. He addressed the first item on the agenda: consideration of the Meeting Minutes.

Representative Jeff Spiegelman motioned to approve the Minutes.

Jordon Rosen, Delaware State Chamber of Commerce (DSCC), seconded the motion.

The Meeting Minutes were approved, with all members in favor.

CONSIDERATION OF MEETING MINUTES, OCTOBER 2, 2014

Senator Townsend said he had received some requests for edits via email. He will recirculate these minutes and the minutes from today at a later point for Task Force members to approve.

CONSIDERATION OF DRAFT REPORT

Senator Townsend said that before the Task Force discusses the Draft Report, Deputy Secretary Gregor would like to clarify some data that Department of Finance presented at the previous meeting.

Deputy Secretary David Gregor, Department of Finance (DOF), referred to the “Task Force Findings” section of the Draft Report, bullet point number nine, referring to estimation of companies’ liability. This point states, “Estimation of companies liability for past years’ unclaimed property accounts for approximately 10% of Delaware’s total annual unclaimed property revenues.” Deputy Secretary Gregor stated that the percentage should be 20% instead of 10%. At the previous meeting when he said that 40% of audits were due to estimation, that number also included securities audits as well. The period of time that was examined was FY 08 to FY 13.

Senator Townsend asked if this number was the average over those six years.

Deputy Secretary Gregor said yes. Some years were lower, some were higher.

Senator Townsend said that he had asked at the last meeting whether there was any identifiable trend over that period of time. Is there a trend evident now.

Deputy Secretary Gregor said that he did not see any particular trends during those years. FY 13 was a peak in terms of general ledger audits. FY 14 was far below that. They are expecting some sort of a rebound for FY 15. He does not think the peak of FY 13 will be repeated anytime in the near future.

Mr. Rosen asked what the value was for FY 13 and what it dropped to in FY 14.

Deputy Secretary Gregor said that in FY 13 the value was approximately \$218 million. In FY 14 it was approximately \$65 million.

Edward Ratledge, public, University of Delaware Director of the Center for Applied Demography & Survey Research (CADSR), asked if estimated abandoned property counted for 20% of \$600 million.

Deputy Secretary Gregor said yes. The numbers bounce around depending on the year. Some years there was a larger amount of revenue from securities audits. Other years were low; revenues were down last year.

Michael Houghton, Uniform Law Commission (ULC), asked if the figure Deputy Secretary Gregor mentioned was a combination of general ledger and securities audits.

Deputy Secretary Gregor said no. Originally, that was where the mistake occurred, when he gave the wrong percentage at the previous meeting. Of the general ledger audits, roughly 80-85% is due to estimation. That number changes a lot over time. Over the six year period that he sampled, the percentage averaged out to 20%.

Senator Townsend clarified that 20% of total revenues from FY 08 - FY 13 would be due to estimation.

Deputy Secretary Gregor said that was correct.

Robert Tuinstra, Jr., Delaware Business Roundtable (DBR), asked if the 80-85% of general ledger audits that use estimation was consistent.

Deputy Secretary Gregor said yes.

Mr. Rosen asked if it was 20% of all audits.

Deputy Secretary Gregor said that it was 20% of all revenue. In a year where there are very few securities audits, the percentage may be higher.

Mr. Rosen said in FY 13 there was roughly \$670 million, but there was approximately \$200 million from compliance, not audits. He asked for clarification on Deputy Secretary Gregor's figures.

Deputy Secretary Gregor said that was only one year. In FY 13 there was \$220 million in annual filings from cash. There was \$220 million in general ledger audits. There were Voluntary Disclosure Audits (VDAs) of \$42 million and \$192 million as a result of an audit of transfer agents.

Mr. Rosen said that Deputy Secretary Gregor said that 20% of all revenue was from estimation; however there would be no estimation in a company that files a report and escheats to the State. The universe of what can come from estimation should only be those that are under audit or in the VDA program. What is the percentage of the estimation from those revenues. Revenues from companies that are filing and escheating property cannot be counted in that percentage.

Senator Townsend said that he understands Mr. Rosen's point, however they have looked at this data in a few different ways. One way was to ask what percentage of the overall revenue was related to estimation, to put the percentage into context. The average was 20%. To Mr. Rosen's point, 80% of general ledger audits relate to estimation. They have looked at this data in a few

different ways for different reasons and there is not going to be one definitive answer. There are valid reasons for looking at this in different ways.

Representative Speigelman asked what the range the percentage was over the six year period that Deputy Secretary Gregor was talking about.

Deputy Secretary Gregor said that the percentage was as low as 13% and as high as 33-35%.

Senator Townsend asked if Deputy Secretary Gregor thought that the 80-85% was pretty consistent.

Deputy Secretary Gregor said that in terms of the general ledger audits that closed, it was.

Senator Townsend asked if the changes over the years were more related to the amount of funds coming in from other sources. He clarified that the actual percentage of general ledger audits that relate to estimation does not actually change that much.

Deputy Secretary Gregor said that is correct.

Senator Townsend asked, in terms of equity, if FY 13 is an outlier and that they should not expect to see those levels again anytime soon.

Deputy Secretary Gregor said that it was an outlier in terms of equity and general ledger. It was more of an industry-wide clean-up of the books. They received a lot of money in transfer agents that year. In a typical year this will not be the case.

Mr. Ratledge said there are direct effects of changing various rules, and there can be an induced number that is either positive or negative. It is not as simple as looking at the numbers that have occurred historically, since it also depends on the rules that are in place at the time.

Deputy Secretary Gregor said that he made that point earlier when he talked about the increase that occurred after their enforcement program was implemented.

Stan Stevenson, Delaware State Bar Association (DSBA), clarified that 80-85% of general ledger audit collections result from estimation. That is pretty consistent over the six year period. 20% of total Delaware unclaimed property collections comes from estimation. That percentage fluctuates from year to year based on the amounts of other funds received.

Deputy Secretary Gregor said that is correct.

Senator Gregory Lavelle said that he realized that the Task Force has extended past the dates originally set in SCR 59. He asked if the letter Senator Townsend sent to Speaker Schwartzkopf and President Pro Tempore Blevins requesting an extension for the Task Force kept them in good stead.

Senator Townsend said that it did. He is still committed to producing a report for General Assembly Leadership on the findings of the Task Force and to producing legislation for the General Assembly to act on in 2015.

Senator Townsend then asked for comments and edits from the Task Force members on the Draft Report, beginning with the "Task Force Findings" section.

Minutes prepared by Kiki Evinger, Legislative Aide & reviewed by Michelle Zdeb, Legislative Assistant

Mr. Tuinstra, Jr. addressed bullet point number six, “For the auditing process, the Delaware Department of Finance recently has developed a focus on the largest Delaware corporations that regularly fail to file unclaimed property reports.” He objects to the phrasing “large Delaware corporations.” Mr. Tuinstra, Jr. suggested using the phrase “some of the largest Delaware incorporated entities” instead.

Senator Townsend said he would use “entities” instead of “corporations.”

Secretary Thomas Cook, DOF, said that he was not sure this was a recent development on the part of DOF.

Senator Townsend said that he works in corporate litigation, and in that field when the phrase “Delaware corporation” is used it typically refers to companies incorporated in Delaware as opposed to companies with operations in Delaware.

Mr. Tuinstra, Jr. said that in the general public that may have a different connotation.

Senator Townsend said that he concurred with changing the phrasing to “companies incorporated in Delaware.”

Representative Speigelman asked if the word “largest” should also be added to the phrase.

Secretary Cook said that DOF has been focused on compliance. DOF is not going to audit the mom and pop sub shops, but they have been focused on making sure that companies are complying with regulations.

Senator Townsend asked Secretary Cook if he objected to the word “recently” being used in this point. Previous meeting minutes indicate that DOF has, in the past couple of years, increased its compliance efforts with regard to larger companies incorporated in Delaware.

Secretary Cook said that through Secretary Bullock’s VDA program and increased outreach to companies, the State has increased some efforts to target companies who did not respond to outreach efforts and did not enroll in the VDA program. He concurs with the use of the word “recently.”

Mr. Ratledge asked if DOF tries to focus its efforts on sectors that may have greater amounts of abandoned property than others, such as the securities industry, as opposed to a random sampling.

Secretary Cook said DOF does try to focus on certain industries.

Mr. Tuinstra, Jr. said that when Kelmar presented, they mentioned that some of their audits are not necessarily non-filers but are filers. They look for companies that have under filed as well. Mr. Tuinstra, Jr. suggested adding this to the Task Force Findings. He believes this is an important distinction to make.

Senator Townsend said there are ongoing audits currently that are related to the accuracy of the company's filing. However, because audits take multiple years, a recent focus could have been forged to focus primarily on non-filers and yet there still are ongoing audits relating to filers.

Mr. Tuinstra, Jr. addressed bullet point number nine. Obviously Deputy Secretary Gregor's updated percentage will be included, but Mr. Tuinstra, Jr. said that it would also be good to clarify that percentage by also including that 80-85% is the average percentage of general ledger audits that use estimation.

Senator Townsend said that he has no objections to adding that.

Mr. Ratledge referred to bullet point number five that states, "In terms of expressing concerns about the auditing process, companies that are aware of their legal obligations yet still fail to file annual unclaimed property reports are in a less sympathetic position than those companies that file reports annually." A report could be filed that deliberately underreports. There is no measure for the accuracy of those filings. Something else needs to be inserted into this statement that specifies that the report filed by a company must be correct.

Senator Townsend said that the sentiment that companies who are not filing are not deserving of sympathy was expressed by nearly all Task Force members in previous meetings. He is happy to make a change to this bullet point if members feel that identifying another step in this process is necessary. The initial steps can be either explained or the statement can be reworded so that there are no additional implications.

Mr. Stevenson said he would like the word "required" to be inserted before "annual unclaimed property report" because some companies do not have any unclaimed property and are therefore not required by the Delaware Code to file.

Senator Townsend asked if it would be worthwhile to ask companies who do not have any unclaimed property to remit to still file a \$0 return. He asked if there were any objections to that idea.

Representative Spiegelman said that this idea is currently a "best practice" for companies.

Mr. Stevenson said that he does not have any problem adding that requirement. It would make companies more cognizant of their filing obligations.

Representative Spiegelman said he would support this as long as it is not a burdensome requirement for the company.

Mr. Rosen said that at one of the first Task Force meetings he had suggested that one way to make this requirement easier for companies was to include it on their franchise or income tax return.

Secretary Cook said that he would not support adding this to a current tax form, but he said there is an online filing system for gross receipts. An online system for filing this type of return could be built as well. That would cut down on paperwork and processing.

Rick Geisenberger, Chief Deputy Secretary of State, said that there are more than 1.1 million legal entities in Delaware. That would be a lot of filings.

Senator Townsend said he would consider pursuing this issue in legislation in 2015. He asked Mr. Ratledge if he was suggesting that the word “accurately” be inserted in bullet point five.

Mr. Ratledge said that could be one solution. Something needs to be added to make sure that companies are required to file correctly.

Senator Townsend asked Mr. Ratledge to clarify if he meant that the “sympathy” would only be extended to those companies that file accurately.

Mr. Ratledge said no, that you could go after people who have already filed. Even if a \$0 return is filed it is not a safe harbor in the context that was mentioned.

Senator Townsend said that this is not an item that necessarily requires direct action. It is more expressing the findings of the Task Force. He is pleased that there is so much agreement on this point, that there should only be sympathy to companies that have filed accurately.

Mr. Stevenson said that “in good faith” should be used instead of “accurately.”

Mr. Rosen said that he disagrees. The term “accurate” is ambiguous and it is difficult to define “accuracy.” If a return is off by \$1, then it is not accurate.

Senator Townsend asked if the words “in good faith” instead of “accurately” would be more palatable.

Mr. Rosen said he would leave this out altogether. There is already no statute of limitations if there is fraud. Nothing further is necessary.

Mr. Ratledge said that the phrase “less sympathetic” is also very imprecise. It is just as imprecise as “accurately.” Why take one out and not the other. This is not a precise statement any way you look at it.

Mr. Rosen suggested using “non-fraudulent” instead of “accurate.”

Mr. Ratledge said that the definition of “fraud” is a legal definition.

Mr. Rosen said that “accurate” means a return would have to be exact. “Non-fraudulent” would require fraud to be proven.

Mr. Tuinstra, Jr. reminded the Task Force that this is not an operative section; this is the Task Force's ideas. He believes that "in good faith" would be a good addition to this bullet point. "Accurate" is too technical a term, but "in good faith" would be a good substitute.

Mr. Rosen said that "in good faith" probably meant the same thing as "non-fraudulent".

Secretary Cook said PIT returns can be checked against other filed forms, but there is nothing to check unclaimed property returns against. He supports using the term "in good faith."

Representative Spiegelman suggested including something in the Draft Report that would relate to the pending court cases about unclaimed property.

Mr. Stevenson referred to bullet number ten, "A Task Force member who is a professional statistician found nothing methodologically incorrect about the estimation methodology used by Delaware's largest contract auditor." He said that it was interesting in that it referred to the findings of a Task Force member, rather than the findings of the Task Force as a group. He said he was not sure he was willing to agree with the statement that there was nothing methodologically incorrect with the estimation methodology.

Senator Townsend agreed with Mr. Stevenson that he also would not say that he personally had knowledge of the soundness of the methodology. That is why it was specifically worded to be the view of one Task Force member.

Mr. Ratledge said he would like to correct this bullet point; he is an economist, not a statistician.

Mr. Houghton said the issue of the accuracy of the estimation and extrapolation methodology is very much at the core of at least one pending piece of litigation in federal court. He recommends deleting this point because only one Task Force member was able to have this interaction with Kelmar and he does not think this should be at the core of the Task Force's deliberations. Mr. Houghton does not think there is a consensus among Task Force members on this issue.

Senator Townsend said he did not see any reason to delete the statement. The Task Force heard time and time again over the past several months criticisms of Kelmar with no specificity whatsoever. There was a sense that they performed simple, 'back of the napkin' calculations in audits. According to Mr. Ratledge, this is not the case. One of the most technically skilled members of the Task Force went out independently and spoke with Kelmar statisticians directly about these exact issues for a significant length of time. He believes that it is unbalanced to not have any mention of this in the report when the minutes are replete with mentions of unsupported criticisms of Kelmar's methodology.

Senator Lavelle said that economists have different points of view. Other economists may arrive at different conclusions. He is not sure how binding that sentence is.

Senator Townsend said that it is interesting how highly paid specialists frequently reach conclusions that happen to align with their client's interests. This Report is not binding in any way. He believes that this is an important point that should be kept in the Report, but it is not solely up to him to decide.

Mr. Houghton said that he does not question Mr. Ratledge's inquiry into this aspect of the issue, but this could lead to the inference that the Task Force as a group believes that the Kelmar or SAS methodology in the broadest sense is an appropriate method of extrapolation and estimation. It all depends on how that methodology is applied to a particular case. If this statement was to be included in the Final Report, Mr. Houghton would like a phrase included after it that mentions that there are a number of members of the Task Force that do not necessarily subscribe to the estimation methodology being appropriate and that it all depends on how it is applied on a case-by-case basis.

Mr. Tuinstra, Jr. said that he appreciates the work that Mr. Ratledge did, but the Task Force did hear from holders (although anonymously) and they said that they consider the auditors' methodology to be aggressive. He asked if that view could also be included. Both sides could be presented equally.

Senator Townsend said that he is not opposed to that, but the work Mr. Ratledge did go far beyond the anonymous comments that were received.

Mr. Tuinstra, Jr. said that the Task Force heard different things from different people and that both viewpoints should be represented.

Senator Townsend said that nothing concrete was ever presented to the Task Force that refuted the information that Mr. Ratledge presented, much to the Senator's frustration. There were plenty of opportunities for other companies to speak about their experiences and they chose not to.

Mr. Tuinstra, Jr. said that was exactly his point. Differing points of view were presented anonymously to Task Force members. They were not as pointed as having issues with the methodology, but companies did say that they found auditors to be "aggressive," too much information is required, and the audits take too long to conduct. The statement about Mr. Ratledge's findings should not be removed, but the other perspective (of the holders) should be added.

Representative Bryon Short said that Mr. Ratledge's findings and the anonymous comments from holders were two completely different types of statements. One describes the structure of the practice and the other describes the feeling of an audit.

Thomas Collins, Delaware Bankers Association (DBA), questioned whether this should even be referred to as a finding by the Task Force.

Senator Townsend said that it could be a note about the feelings of the holders about the auditing process.

Mr. Collins suggested that it could be included as a footnote. The findings should include things that the Task Force has come to a consensus on. It is clear from this conversation that there is no consensus on this issue.

Representative Spiegelman said that the current wording says “a Task Force member.” While he respects Mr. Ratledge’s expertise, another Task Force member has clearly had a different finding. He said he does not think it is appropriate to talk about the individual findings of Task Force members in a group report.

Senator Townsend said that he agrees with Representative Spiegelman to a point, but that he still believes that not including Mr. Ratledge’s findings is an insult to him and his expertise. This is not just about Mr. Ratledge, however. A lot of people spend a lot of time making anonymous and nonspecific statements. He believes that Mr. Ratledge’s investigation supersedes these anonymous statements.

Senator Townsend said he respects Representative Spiegelman’s comment that the report should not be too individualized with each Task Member having to contribute their specific point of view. It is possible to insert a sentence with the point of view of the holders. He pointed out that Mr. Ratledge was not at all involved in the writing of the Draft Report; the views in the Draft Report are Senator Townsend’s.

Senator Lavelle said that he does not think that this is an attack on Mr. Ratledge. He believes that the statements from COST from the holders’ perspective are specific and are not vague at all. He understands why these companies are uncomfortable with openly criticizing the audit system and why they prefer to remain anonymous. He believes that an extra sentence is needed for the perspective of the holder but that the Task Force should move on to the recommendations section.

Senator Townsend asked if the Task Force members had strong feelings about whether the holders’ perspective should be added to the same bullet point as Mr. Ratledge’s findings or whether they should be kept separate.

Leonard Togman, public, retired attorney at Potter Anderson, suggested stating that “despite the view of this Task Force member, other Task Force members disagreed,” or that “it did not reflect the views of all members.”

Senator Townsend said that he disagrees with Senator Lavelle that the statements made by holders are specific; he found the anonymous comments to be extremely vague with no details about specific instances and circumstances given. He asked if Task Force members would prefer

he add another sentence to the current bullet point to reflect this additional viewpoint or add a sentence to indicate that some members did not agree with Mr. Ratledge's findings.

Representative Short said that he thinks that the two statements should be disconnected because they are two very different statements.

Senator Lavelle said that he has talked to state tax directors of very large companies in Delaware and they are frustrated with the Delaware unclaimed property program. There can be a sound methodology that is aggressive and a sound methodology that is not aggressive. No one is questioning the methodology, but they are questioning the aggressiveness of the auditing companies.

Secretary Cook said that the problem is no one had every defined what "aggressive" is. It is DOF's job to collect the unclaimed property due to the State.

Senator Lavelle asked if someone requested DOF's records from 1985, could they be found.

Secretary Cook said that DOF has an archive.

Senator Townsend still finds that situation ironic. He said that Mr. Ratledge investigated methodology, not the actions of the auditing companies. No one has ever approached Senator Townsend to say that the methodology in particular of these companies is questionable. Whether or not the auditors are aggressive is another issue. Senator Townsend said that if this particular point is going to continue to cause so much rancor he would be happy to rewrite it.

Senator Lavelle said he would like to thank Senator Townsend for the fantastic work he has done on this Task Force, which was above and beyond the call of duty. This is not an attack on Senator Townsend or Mr. Ratledge. The other members would simply like an acknowledgement in the findings that there is frustration on the part of the holders (as articulated by COST).

Representative Short asked if this discussion should really be focused on bullet point number three, "Although changes have been made in recent years that have helped to address the concerns of Delaware corporations with various aspects of the unclaimed property auditing process, several concerns remain. These include, among others, the length of the "look-back" period in the auditing process, the dominance of one audit firm in Delaware's audit portfolio, and the lack of a 'best-practices' manual for Delaware contract auditors."

Senator Townsend said that he did not mean to indicate that he is taking this personally. There is currently nothing in the Draft Report that indicates that the unclaimed property program is doing anything right, and he thinks that is a disservice to them. Part of the spirit of bullet point number 5 was to provide some of that balance, to show that there is sound methodology being used, as determined by a professional econometrician's preliminary review.

Mr. Houghton said that it would be helpful that if any Task Force members have suggestions for changes to the Draft Report that they also offer sample language for that change. He has known Mr. Ratledge for a long time and has a lot of respect for him and what he has accomplished. If this language is going to stay in the report, Mr. Houghton believes that Mr. Ratledge's name and title at the University of Delaware should also be used to give credence to the statement.

Senator Townsend asked Mr. Ratledge if he has any objections to his name being used in the Final Report.

Mr. Ratledge said he has no objections. The lack of specificity in the presentations was what drove him to contact Kelmar and do his own research into their methodology. Even the COST presentation had no direct information; it was all third-party stories. Real people need to come in with specifics.

Mr. Tuinstra, Jr. referenced the packet COST distributed after their presentation. In one section, there is a list of specific issues that COST members stated that they found to be "aggressive."

Mr. Ratledge said that most of the things listed in that packet were issues of law, not methodology.

Senator Townsend said that he wanted to confirm that Mr. Ratledge did not mind being named in the Final Report and that no one on the Task Force minded him being named, that the points on the opposing viewpoints should be in two separate paragraphs, and the second bullet point would state that the Task Force has heard from Delaware incorporated entities that have concern about the estimation process.

Secretary Cook suggested inserting that these are COST-represented Delaware incorporated entities.

The Task Force members agreed on all counts.

Michael Barlow, Chief of Staff, Office of the Governor, has two recommendations. He first referred to bullet point eleven, "Notwithstanding active outreach by the Delaware Department of State, relatively few corporations accepted the opportunity to enter the Department of State's Voluntary disclosure Agreement program. The deadline for entry into that program has passed, and there is an open question whether another similar program should be developed." Mr. Barlow suggested clarification: relatively few as compared to what. If few companies joined then why would the Task Force consider extending the program. "Relatively few" should be quantified. The Administration considers it a success, with several hundred companies joining.

Secretary Jeff Bullock, Department of State (DOS), suggested emphasizing the large number who did not join. It begs the question of why 2/3 of the other corporations did not join.

Mr. Barlow suggests using the facts and including the number of companies who did and did not join the program.

Representative Spiegelman suggested writing “enough companies responded that the Task Force considered it a success, indicating that the program should be continued.”

Mr. Ratledge thinks that using the exact numbers would be more helpful.

Alison Iavana, DOS, said that over 700 companies are enrolled in the program. One-third of the companies that received letters inviting them to join the VDA program did join. Other companies that did not get letters did enroll in the program.

Senator Townsend said that the fact that one-third of the companies that were invited joined the VDA program and two-thirds did not is a separate idea from the overall success of the program.

Mr. Houghton agreed that the numbers should be included and that the two ideas should be stated separately.

Senator Townsend agreed with Mr. Houghton. With regard to Representative Spiegelman’s point, the Task Force should consider the effects that this report will have on any possible renewal of the VDA program. Sen. Townsend is looking for guidance on where this statement should be included.

Representative Spiegelman suggested adding something to the bullet point that focuses on the success of getting one-third of the companies contacted to participate. It shows that there is interest in continuing the program.

Mr. Barlow referenced bullet point number eight, “Pursuant to current Delaware law, the Delaware Secretary of Finance makes the final determination of a party’s administrative appeal from the Department’s audit findings.” He said that mention should be made of the hearing officer who makes a determination before it is sent to the Secretary of Finance for final determination.

Representative Spiegelman asked if the hearing officer is employed under the Secretary of Finance.

Mr. Barlow said the hearing officer is independent, but is contracted by DOF.

Senator Townsend said he understands the concerns about this issue and would be open to clarifying the appeals process in the report. The appeal can be taken to the Court of Chancery after the Secretary of Finance makes a determination. Clearly people are concerned about the in-house nature of the appeals process, although this is not a unique situation.

Mr. Barlow said that he was concerned about the lack of specificity on this issue currently in the draft report.

Mr. Houghton said that the wording could be fixed by adding “although there is an independent reviewer who determines appeals in the first instance” before talking about the Secretary of Finance’s role.

Senator Townsend suggested writing that the Secretary of Finance’s determination follows a hearing process and can then be followed by an appeal to the Court of Chancery.

Secretary Cook referred to bullet point number twelve, “There may be opportunities to bring more of the auditing process in-house in order to achieve cost-savings for Delaware taxpayers, most specifically with the development of a VDA program.” He reminded the Task Force that DOF has always had a VDA program, and that DOS has only recently begun to run its own VDA program. This should probably be clarified.

Senator Townsend agreed with Secretary Cook. He then directed the Task Force to begin discussing the next section of the Draft Report, the “Task Force Recommendations.”

Mr. Tuinstra, Jr. addressed bullet point number one, “The Delaware Department of Finance should develop a ‘best practices’ manual, and update its regulations accordingly, to ensure greater transparency and predictability as to what should be expected by holders during a Delaware unclaimed property audit. The Department should also ensure its contract auditors comply with this manual, and should publish this manual prominently on the Department of Finance’s webpages related to unclaimed property.” Mr. Tuinstra, Jr. asked for clarification on the audit manual name.

Senator Townsend said that he called it a “best practices” manual just based on the discussions from previous meetings. The title of it is open for discussion.

Mr. Tuinstra, Jr. said that “best practices” manual has the connotation that the manual is a nice idea but that auditors are not required to follow it. Calling it an audit manual or audit regulations would indicate more strongly to auditors that they should follow it.

Senator Townsend said that he was not sure “regulations” was the best term. It had seemed in previous discussions that holders had wanted more transparency about the audit process. This would be a manual that companies should have access to so that they know what to expect during the audit and that auditors would have to follow.

Mr. Tuinstra, Jr. said that it is a spectrum. An audit manual would just list the obligations of auditors. The Task Force could also require the creation of something that would include regulations where the rules for an audit are laid out. He feels that “best practices” is less effective than “audit manual.”

Senator Townsend said it would be difficult to get a consensus on regulations from the Task Force during the last meeting, but asked what the wording should be.

Mr. Rosen suggested that “best practices” be put in quotations and that “policy and procedures manual” also be added.

Senator Townsend reminded the Task Force members that this is an ongoing, organic process. No matter how tightly these recommendations are written, there will be follow-up.

Mr. Tuinstra, Jr. asked if the Task Force should be recommending how the manual should come about and what DOF should do to create it. Perhaps the recommendation should be more specific.

Senator Townsend said that there is a fair expectation that these recommendations will be addressed fairly quickly, within 2015 calendar year.

Mr. Tuinstra, Jr. said that should be added to the recommendation. He then asked how the process of creating the manual would work, whether it would be a closed process or if outside input from stakeholders would be welcomed.

Mr. Togman asked if there would be a period for comments on the manual.

Senator Townsend said that for regulations there would be. In theory, this manual would not be a part of that. He would recommend that this manual be treated as if it was a regulatory document, but that it would not be subject to the entire regulatory framework.

Mr. Houghton said that this manual should be more than just an internally developed set of recommendations and proposals that are then published for comments. The best way to do this would be to try to have a collaborative process, where reasonable requests coming from the holders could be integrated into the new audit processes and procedures. If the holder community overreaches, this initiative will not work. There needs to be a balance between the two sides. The Division of Revenue may also want certain areas strengthened to help them perform audits. The gold standard is statute, but he does not think they have a place in audit guidelines. A working group put together by the Division of Revenue that includes appropriate stakeholders from the holder community would be ideal.

Senator Townsend said that he has some concerns about the term “working group” because those types of groups would be subject to various kinds of regulations. He is a full advocate for transparency in government, but he is not sure that the Task Force is looking, for example, for the level of formality that comes along with having a “working group” that is subject to FOIA and open-meeting notices and timetables. He noted that Michelle and Kiki are excellent at making sure that this Task Force complies with FOIA rules. Ultimately, this document would be publically available. The more formality that is involved in this endeavor, the less flexibility and time there is, and the more administrative requirements there are. It is a trade-off.

Secretary Cook said that DOF is committed to working on this. It benefits DOF as well as the holder community to have the audit guidelines clearly stated. This process could get dragged

down with too many formalities, which could keep them from creating the document they really would like to. Secretary Cook also questioned whether the companies who are being audited should be allowed to set the rules for the audit process. That is certainly not done in the personal income tax business. He would like their input, but he does not think that regulations need to be involved. He has no problem making this process as transparent as possible so that holder input is included.

Senator Townsend said that is an important point.

Mr. Ratledge said that many audit companies work in multiple states. If Delaware changes its regulations and processes too much, that will require them to change their internal structure. It may be very difficult to bid on a state that is too individualized.

Senator Townsend said that the Task Force as a whole has been interested in seeing more variety in auditing companies. Perhaps one way to achieve that would be to work with companies who do specialize in Delaware regulations. He is not sure if the regulations in this manual would be so significantly different than other states that it would require a change in audit company structure.

Mr. Ratledge said that some of the procedures from some of the companies are different and they have different business lines. If the procedures become much more rigid and only applicable to Delaware, this could be a problem.

Senator Townsend asked how this bullet point should be worded to balance the appropriate level of specificity and formality.

Mr. Houghton said there needs to be something included in this point that says that DOF must work with input from the holder community. Some states, like Michigan, have adopted very detailed policies regarding audit policies. There does need to be recognition in text that there will be an openness and access for the holder community to comment and give suggestions. It does not mean that all suggestions will be taken by DOF. It should also be stated that there is an expectation that this manual will be completed by the end of calendar year 2015 and that the process will be consultative and receive input from the appropriate stakeholders.

Senator Townsend asked if it would be possible for this manual to be completed by the end of the second quarter of 2015. He asked Secretary Cook how long it would take to create this manual.

Secretary Cook responded that DOF will start working on this manual immediately. It will be completed as quickly as possible. He thinks that the end of calendar year 2015 is an appropriate deadline.

Senator Townsend reminded the Task Force that these recommendations have no force of law.

Secretary Bullock suggested including in this bullet point people who do not have a financial interest in this area.

Representative Spiegelman said that finding people who do not have a vested interest but are still knowledgeable about the subject would be very difficult.

Secretary Bullock said that there are people currently on the Task Force who were not initially knowledgeable about the subject, and they seem to have picked it up very quickly.

Senator Townsend said there are other avenues to find people. He doubts that the conclusion of the Task Force will be the end of the communication between stakeholders in this industry. He does not think that each bullet point requires this type of specificity. He trusts that DOF will comply in good faith with the intentions of this report without so much formality in the report. All legislators on the Task Force will always be available to consult if the community does not think this process is going well.

Mr. Houghton said he thinks that if “appropriate stakeholders and interested parties” is included that Secretary Bullock’s concerns would be addressed. If there are other constituencies who want to comment, they will surely surface. He is not sure who they are, but if there are people who want to play in the arcane sandbox that is this business they will most likely make themselves known.

Senator Townsend confirmed that he would add that the manual should be completed by the end of calendar year 2015 and that it should be called an “auditing procedural guidelines” manual.

There were no objections from the Task Force members.

Secretary Cook addressed bullet point number two, “The Delaware General Assembly should modify the appeals process outlined in the Delaware Code so as to provide a more central role for third-party review, including replacing the Secretary of Finance as the final decision-maker in the administrative appeals process.” He said that DOF does an RFP to find a contractor. There are two companies that have responded, and one company had to disqualify itself because of a conflict. Secretary Cook chooses an arbitrator who reviews the case. Secretary Cook accepts, rejects, or modifies their recommendation. He has no problem being taken out of the accepting, rejecting, or modifying aspect of the situation. He believes that DOF should still be responsible for the selection of the arbiter.

Mr. Houghton asked if Secretary Cook would be open to not being the party that selects the reviewer. There could be a standing panel that Secretary Cook appoints who selects the reviewer. Each person on the panel can select who the reviewer should be. If there is deadlock, then someone like the President Judge of Superior Court can choose the arbiter. They could have statutory authority. The appellate process would include the Court of Chancery and the Delaware

Supreme Court. He asked if there were any objections from the Task Force members to a process that would run like he described.

Mr. Ratledge said the problem that he has with the system is that the Findings section states that the Secretary of Finance and DOF would be responsible overall for this entire program. If people who are not affiliated with DOF are included then who would be responsible for the overall findings.

Mr. Houghton said the independent reviewer would issue findings just like they currently do. That would be the record of the case that gets presented if there are further appeals. The only thing the Secretary of Finance currently does is set up the process of selecting an arbiter and accepts, rejects, or modifies the arbiter's report. The Division of Revenue does everything else.

Mr. Ratledge asked who would be an independent reviewer/arbiter in this circumstance.

Mr. Houghton said this is currently in the statute.

Mr. Barlow said that they are attorneys. Bill Quillen was originally supposed to be an arbiter but he ended up not being able to do it because of a conflict.

Mr. Houghton said that there are not very many people who would step up to do this job. He asked Secretary Cook if he got a lot of responses to his RFP.

Secretary Cook answered that he had not gotten a lot of responses.

Mr. Houghton said that the Task Force should consider whether they should change the necessary qualifications for an independent reviewer. Lots of members of the judiciary rule on matters that they are not expressly experts in. Since there have not been a lot of responses to Secretary Cook's RFP it might make sense to develop a panel to select an arbiter. Retired lawyers could be a good source of these arbiters.

Mr. Barlow said that arbitration panels are typical in lieu of litigation. He asked if Mr. Houghton was recommending an arbitration panel in addition to litigation.

Mr. Houghton said yes. The only addition would be the panel, which would change who selects the arbiter.

Secretary Cook said that there have been four RFPs and one person has disqualified himself. DOF has tried to find more arbiters. He asked what the real concern was about this issue and if the concern was that there would be favoritism on the part of the Secretary of Finance.

Senator Townsend said that in the minutes of previous meetings when this was discussed, the concern was that entities would not even try to pursue an appeal because they feel that the deck is already stacked against them since the Secretary of Finance is the final decision-maker. The Task Force had suggested removing the Secretary of Finance as the final decision-maker. He is

not sure if this would cause litigation to be avoided, but it could make the process more palatable for everyone.

Secretary Cook said he has no problem being removed out of the end of the process. However, this process is done all the time in state government.

Mr. Barlow said that when this was discussed at a previous meeting it was about the concept of an administrative law judge. They are typically hired by the department to which they report. Mr. Houghton's suggestion is a different approach, which would be that the two parties agree to a proceeding before an arbiter and would only pursue the case at a higher court if the arbiter oversteps their bounds. It seems as though everyone is comfortable with the Court of Chancery and its handling of these types of cases. It strikes him that creating an additional bureaucratic structure that is usually in lieu of litigation as a precedent of getting to the Court of Chancery is duplicative.

Senator Townsend said there could also be a system where an arbiter is used and the Secretary of Finance is removed from making the final decision; the case would go directly to the Court of Chancery. This would address the concern of entities that the deck is stacked against them from the get-go, but would not solve the issue of the difficulty in finding someone to act as an arbiter. He would suggest that the Task Force recommend that there is a change to the program that could be followed up with legislation in 2015.

Mr. Togman said that Judge Cooch has just put out a request for a panel of commissioners or hearing officers for condemnation cases. He was solicited for this panel. In the past there has always been a bench of people available for these cases, but there is not anymore. This was sent out for retired lawyers for volunteers. Each side in a case will get the list of available volunteers and be able to pick who they would like on the panel. This could be adapted to fit Mr. Houghton's suggestion of a panel.

Senator Townsend said that this is an important point. This should be something that is followed up on in 2015.

Senator Townsend addressed bullet point number four, "The Delaware General Assembly should revisit the issue of instituting a 'cooling off' period before State employees involved with the State's unclaimed property program are permitted to accept employment with one of the State's contract auditors." He asked if there were any edits from the members.

Secretary Cook asked if this referred to all State employees, not just Department of Finance employees and includes people who do not work directly with contract auditors.

Senator Townsend emphasized that this Report is not a statute. He said 'yes' to Secretary Cook's question. An adverb could be added to the statement to qualify the extent of the person's involvement. This bullet point does state that the General Assembly should "revisit" the issue.

Mr. Togman said that it is not unusual for contracts with independent contractors to say that they will not hire former State employees for a particular amount of time.

Mr. Houghton said he was not sure exactly what “revisit” meant in this context. He was not aware that the General Assembly had discussed the issue.

Senator Townsend said that legislation had been filed prior to this Task Force but that was not pursued.

Mr. Houghton said that there had been two senior staff members who had worked for the Division of Revenue who left to work for Kelmar. He does not know if having secretarial staff leave to work for Kelmar should fall under this category or if maybe a materiality standard should be put into legislation.

Senator Townsend suggested writing “State employees involving senior positions.”

Mr. Houghton said he thought that would work.

Mr. Barlow said that it has been difficult to find people who do not have a vested interest and who are knowledgeable about this situation. For people who do this work for a living, there are few places to go. Another thing that was discussed during the task force was having the State do some auditing work in-house. A too strict cooling-off period would handicap that effort. Having the legislature revisit the issue would be a good way to handle this. The State could have to pay people a lot more money to make it worth their while to step out of the industry during this cooling-off period.

Senator Lavelle asked if there are already regulations in place that prohibit Cabinet Secretaries from leaving their positions and immediately becoming lobbyists. He asked if that could simply be extended.

Mr. Barlow said there is currently a two-year limitation for working on something that a person had a material role in while in State employ.

Mr. Houghton said the former Audit Manager for the State left the Division of Revenue to work for Kelmar immediately after. He is not working on Delaware-related work. Don’t people think that is a problem.

Senator Townsend said that it could be a problem and as such the Task Force would like the General Assembly to revisit the issue, potentially only having a cooling-off period for senior staff members.

Senator Townsend referred to bullet point number five, “The Delaware General Assembly should amend the statute of limitations relating to unclaimed property audits so as to avoid the outcome in which annually-filing holders are audited only after the passage of time beyond reasonable record retention requirements. The General Assembly should make additional

modifications to the statute of limitations so as to confirm that, for annually-filing holders, investigations of fraud prior to commencement of a fraud-based audit should be limited to the past 6 years of filed reports.” He is not sure the language in this bullet point says what the Task Force meant on this issue.

Mr. Stevenson said that he believes that the look-back causes more stress in the holder community than the statute of limitations does. People are being audited for filed returns after the three- or six-year period has expired on the theory that there is a chance that fraud exists.

Senator Townsend asked how you could possibly get away from that. If there is fraud then no statute of limitations applies. In order to find fraud, you have to look at the past filings.

Mr. Stevenson said that no one opens up an audit hoping to find fraud. Fraud is found during the course of an audit. If fraud is found, then the period of review is extended backwards.

Senator Townsend said that the law could be changed. The Secretary of Finance could be asked if this actually occurs in practice.

Mr. Tuinstra, Jr. said there is no point in having a statute of limitations if every audit is thought to have fraud and is extended back twenty years. The statute of limitations has to actually mean something.

Senator Townsend clarified that they were referring to companies that have filed reports. In theory, they are no longer the focus of audits anyway. He asked Mr. Tuinstra, Jr. to be more precise with his comments.

Mr. Tuinstra, Jr. said you can either start out with the assumption that fraud is present and do a look-back of twenty years to see if it is in fact present or the statute of limitations (three or six years) can be looked at first for fraud or underpayment and then if it is present then years further back can be looked at. They are hearing that Kelmar is going back and initially asking for twenty years.

Senator Townsend asked if he was referring to filers or non-filers.

Mr. Tuinstra, Jr. said that Kelmar was auditing filers and non-filers. The question becomes what happens to the statute of limitations.

Senator Townsend asked if these complaints were coming from companies that were non-filers. It is an important distinction. He asked if the Task Force thought that there should be different statutes of limitations for filers and non-filers. If there is fraud present, the statute of limitations does not apply. It sounds like members are hoping that auditors go first to the years that were filed and identifying the accuracy of those reports before they randomly pick a year to see if it is also accurate. Has there actually been actual evidence that this has occurred. This could be something that is included in the manual.

Mr. Tuinstra, Jr. said that the testimony from companies that COST provided showed that 100% of the companies who responded to their survey and were under audit were filers and there was a look-back to 1986. He does not believe these are hypothetical cases.

Secretary Cook reiterated that he has said repeatedly that for the last few years, DOF has been focusing their audits on companies that have not responded to Secretary Bullock's invitation to join the DOS VDA program. It will take DOF many years to get through that population of companies.

Mr. Tuinstra, Jr. said that has only been a development in the last couple of years. The way that the statute of limitations should be applied should be very clear.

Senator Townsend said that this bullet point could be separated into two, since the first sentence is really a separate issue. He said Mr. Tuinstra, Jr.'s concerns relate more to the second sentence of the bullet point. He does not think the Task Force heard about any specific problems with the application of the statute of limitations; the concerns being expressed now are more about hypothetical issues with the statute of limitations, of fishing expeditions. He is not sure how to address this hypothetical issue. He suggested adding to the report, "statutorily prohibiting DOF from doing an examination of earlier years until the first six years are found to have indicia of fraud."

The Task Force members agreed.

Secretary Bullock asked that before the Task Force adopts this recommendation if someone could bring up a real example of this type of situation occurring.

Senator Lavelle said there might not be an example. You're not supposed to commence an audit on years that are closed if no fraud is found in the most recent 3 – 6 years. If this is already prohibited, what is the harm of adopting this recommendation. No harm, no foul.

Michelle Whitaker, DOF Audit Manager, said that the examination look-back is not based on the statute of limitations. The statute of limitations is not the limit of review. The statute of limitations limits DOF's ability to collect based off of filing history. They can review historical information. Her concern would be if the period of review is limited by the statute of limitations that holders will file for three or six years, stop filing, and then they are off the radar. She is concerned about inconsistent filers. The statute of limitations limits DOF's ability to collect, not their ability to review.

Mr. Tuinstra, Jr. said that non-filers have no statute of limitations.

Senator Townsend said that the holder community is asking the Task Force to put somewhat of a lockdown on DOF. They do not want to go through audits that go 15 – 20 years back when there are no indicia of fraud. He can understand that. Senator Townsend also understands DOF's point. He is considering changing the language to "The General Assembly should consider the

possibility of” and then cleaning up the language in the recommendations based on the conversations in this meeting.

The Task Force did not object to this.

Senator Townsend referred to the first sentence of the bullet point. He said that Delaware does not actually have a statutory time period beyond which books and records can be disposed of. There’s no statutory requirement or prohibition. It sounds like there is no way to solve this issue that companies destroy their records and then are later audited and have no proof of unclaimed property. He proposes the first sentence of the paragraph is deleted since it cannot be solved.

The Task Force did not object to this.

Senator Townsend referred to bullet point number six, “The Delaware Department of Finance should undertake efforts to renegotiate downward the length of its current contracts with unclaimed property auditors so that no contract with said auditors is for a longer time period than [XX] years per initial or renewed term.”

Secretary Cook said that the assumption is that DOF is not going to renegotiate with contract auditors and it is going to cost the State more money. DOF has lengthy contracts with contract auditors in order to lock the price in at a lower level. If the contracts are shorter in length, there is a possibility that the price will be higher when the contract is renegotiated.

Representative Spiegelman said there is also a possibility that a market will be created by which increased competition will drive prices lower.

Senator Townsend said he did not recall hearing at previous meetings that the longer contracts could help keep the prices lower and save taxpayers money. These contracts do not guarantee any level of income for the contract auditors. They guarantee a relationship with the State. There are multiple agreements with various auditors; the State is not required to assign any particular auditor a certain percentage of the work. This is now becoming like four-dimensional Vulcan chess. The maximum number of years for contracts was deliberately left blank in the Draft Report.

Senator Lavelle said that he thinks that with increased competition and developments in technology that there should be better prices available.

Secretary Cook said that this is a limited universe. DOF has reached out to try to bring in qualified auditors, but there are not that many available. He does not think that the Task Force wants DOF to renegotiate contracts so that the State is paying more.

Senator Lavelle said of course not. If the contract auditor is in the middle of an audit there is no point in pulling it from them and starting over with another contract auditor.

Senator Townsend said that the current contract with Kelmar expires in 2019 and was a nine-year contract with a five-year extension. He asked if Kelmar had said when the contract was being negotiated that if Delaware did this 9 + 5 year contract with them that they would give them a better rate.

Ms. Whitaker said that was not necessarily a part of the negotiation, but that is the reality. If the State negotiates more frequently, their costs could go up.

Mr. Houghton said that the State's costs could also go down. He understands that the State does not want to be in the position that Kelmar threatens to raise their rates if the State does not enter into a certain length of contract. However, Kelmar has made \$200 million from Delaware. Delaware does have a significant amount of leverage in this situation. He said there is no other precedent in Delaware for the State having such a lengthy contract with a contractor.

Ms. Whitaker said there are not many contractors available that can provide the quality level of work that the State's current contract auditors do. It is a limited pool. DOF would welcome new contractors.

Mr. Houghton asked if DOF would give them the opportunity to work for the State if they would only sign a short contract.

Deputy Secretary Gregor said that it has nothing to do with the length of the contract. DOF is currently adding new contractors.

Senator Townsend said that he heard at previous meetings that there is a sense that there are contract auditors who are not staffing up because they are not sure if they are going to get Delaware business. DOF is not going to take a chance on disrupting the unclaimed property revenue stream for the State by shifting their work to a small company who has not proved that it can handle the same amount of work that Kelmar can.

Mr. Rosen said that it looks better if it is a five-year contract; it is partly perception. If Kelmar is so good and so capable then it is likely that the contract is going to get renewed anyway. The State could want to renegotiate or terminate the contract for some reason.

Senator Townsend said that the contracts do not lock the State into a particular distribution of labor; the State can divvy up the work however it thinks best among different auditors. He agrees with Mr. Rosen's point.

Secretary Cook said he would be fine with the contract limit being five years. He is still going to try to get the best deal for the State.

Senator Townsend said that there could be any number of renewals after the initial period. This would be structured to give the State more flexibility, however he reminded the Task Force that

this Report constitutes recommendations, not a binding statute. The Task Force agreed to a five-year limit for contracts.

Mr. Barlow said that the current language of this recommendation applies to the current contracts DOF has with contract auditors.

Senator Townsend suggested adding another sentence to say that the same recommendation would also apply to future contracts.

Mr. Houghton said that the State should be able to renegotiate the fees before the end of their contract. This is not an uncommon practice for a client that has provided a significant amount of business for a contractor.

Mr. Stevenson agreed with Mr. Houghton. The State is in a good negotiating position.

Senator Townsend said that is possible, but this is a delicate dance since Kelmar is a very highly qualified contract auditor.

Senator Townsend referred to bullet point number seven, “The Delaware Department of Finance should undertake efforts to achieve more balance among the contract auditors who provide services to its unclaimed property program. The Department should provide an annual update of this balance to members of the Delaware General Assembly.” He asked if the Task Force had any comments to make about this bullet point.

Senator Lavelle asked how DOF currently does this.

Secretary Cook explained that as DOF starts to send out new audit letters, DOF tries to redistribute auditing work. Some contract auditors have specialties in certain areas. DOF is actively trying to bring in more contract auditors.

Senator Townsend said that diversifying the contract auditors’ portfolio comes at the expense of losing some very qualified contract auditing companies. In theory, diversifying seems like a good idea, but it is more complicated than that.

The Task Force had no specific changes to make to bullet point number seven.

Senator Townsend moved to bullet point number eight, “The Delaware Department of Finance should continue its efforts to enhance the reunification process for owners of unclaimed property, including the use of online options and more secure forms of reunification for higher-value property. The Department should provide an update regarding these efforts to members of the Delaware General Assembly.”

Secretary Cook said that this is something that DOF is in the process of doing.

Senator Townsend said that he and other members of the Task Force were struck by the dividends system.

Secretary Cook said that DOF has instituted a new system. They are concentrating specifically on the dividends issue and are making sure that claimants receive the dividends as well.

Senator Townsend said that he would like the dividends being returned without the person having to file a request for them to be included as part of the policies and procedures.

Deputy Secretary Gregor said that is the current plan. DOF is working on returning shares before the dividends.

Senator Townsend referred to bullet point number nine, “The Delaware Department of Finance and Department of State should enhance their efforts to bring audit and VDA processes in-house, so as to ensure efficient expenditures of Delaware taxpayer funds and minimize expenditures on higher-cost contractors. The Department should also increase staffing levels as needed to achieve any of the other recommendations included in this Report.” He asked if there were any questions or concerns. He said this bullet point would be dependent on what the future VDA program looks like.

The Task Force had no objections to this bullet point.

Senator Townsend referred to bullet point number three, “The Delaware General Assembly should amend the Delaware Code to adjust the ‘look-back’ period in Delaware unclaimed property audits, create a new VDA program in consultation with the Departments of Finance and State, and ensure the look-back periods in any ongoing VDA processes achieves an effective balance of incentives inherent in the two types of programs (audit and VDA).”

Secretary Cook said that any changes to the look-back period will have a financial implication for the State revenue. There is a balance that needs to be struck.

Mr. Togman asked if DOF has estimated figures for what the reduction in revenue would be if the look-back was moved to different years.

Deputy Secretary Gregor said that the data he has is in terms of general ledger audits. It does not account for the fact that there may be a reduction in compliance. Currently the look-back is at 1986. If the look-back was moved to 1991 there would be approximately a 15% loss in general ledger collections, which would amount to \$15 million. If the look-back was moved to 1996 there would be approximately a 40% reduction in revenue, and if it was moved to 2001 there would be about an 80% reduction. This is a policy issue that has to be considered.

Mr. Houghton said that this is an area where the Task Force needs to be specific and embed this in legislation. It needs to be done sooner rather than later. The current look-back is at 1986, but there are audits currently underway that may not be finished by the time that expires in June,

2015 who will then have a 1981 look-back. This is dramatically out of kilter with the Uniform Unclaimed Property Act, where the look-back is closer to ten years. He believes that the Delaware look-back needs to be moved significantly forward. He believes the length of the look-back is a flashpoint for future litigation. It is an incentive to sue. Pending litigation has shown that judges have some concern about the way Delaware extrapolates and estimates back to 1981/1986. There has not been a ruling yet, but the look-back should be moved forward.

Mr. Houghton recommends moving the look-back forward to at least 1993 for all pending audits. The VDA look-back should be moved to 1996. A process should be put in place that does not have a stagnant look-back. It should be a rolling look-back period depending on the year that the audit commences. For example, if the audit commences in 2015, it would be a 20 year look-back which would be 1995. If the audit begins in 2016, the look-back would be to 1996. He noted that if a court determined that the entire process is invalid and that there is a constitutional problem, there may be a request for refunds.

Senator Townsend asked what year the look-back was formally put into statute or regulations.

Bob Byrd, The Byrd Group, LLC, said it began in 2001.

Senator Townsend said that might be a date that a court would find to be of some importance. He referenced Mr. Houghton's statement that if the look-back is ruled to be unconstitutional that holders would ask for a refund. He asked why a holder, who had recently gone through an audit, would wait for a court case before deciding to sue for a refund if they see the changes this Task Force is making.

Mr. Houghton replied that it is one thing for a State to change its policies and procedures. That is done all the time. That does not give companies a basis to seek a refund. However, if a court were to rule a process to be unconstitutional that would be a different issue. He thinks that the Task Force should recommend to move the look-back forward. He is not sure what the position of the Division of Revenue is on this.

Secretary Cook said that over the past several meetings of this Task Force, it has heard many times that DOF is focusing on auditing non-filers. The Task Force is not sympathetic to them. Secretary Cook asked why they should move the look-back forward. That would be rewarding them. His job is to collect revenue for the State of Delaware tax payers. He does not believe that moving the look-back forward would be fair to them. This issue should be addressed, and DOF has been working on doing that. He thinks that they should wait to see the results of those efforts before deciding to move the look-back period.

Senator Townsend said in his opinion, there should be language in the Report that provides guidance. It seems unlikely that there will be agreement on the year at this meeting. The fiscal implications need to be more thoroughly examined. Senator Townsend asked if it would be possible to do a hybrid system, where the look-back would be changed so that filers and non-

filers have a different look-back. The statute of limitations does some of that already, but perhaps this would be a good addition.

Representative Spiegelman suggested having different systems for companies that have been audited already versus those that have not.

Senator Townsend said that companies who have already been audited are indemnified. The hope is that once a company is audited they will start complying and filing. Senator Townsend referenced Mr. Ratledge's comment from an earlier meeting, that Y2K had really changed the playing field. Companies are keeping much better records now that there is an increase in technology. A lot of the unclaimed property that is out there that is owed to the State is from the pre-Y2K period. That does seem to be reflected in the figures that Deputy Secretary Gregor presented. Senator Townsend can see companies waiting until the rolling look-back passes and then being willing to be audited because there will be much less money to collect.

Mr. Houghton said if the State has a concern about that they can start aggressively auditing companies who will age out of the look-back. Many companies do not know that they owe any of this. They believe it is all estimated mumbo jumbo liability which is estimated using more current information constructing liability for periods for which neither the company nor the State of Delaware have any records. Companies cannot disprove an inference that has been created that an item from 2004 has an extrapolated effect and creates a liability for 1981. There needs to be specificity in this language or Mr. Houghton is afraid that nothing will happen.

Senator Townsend said that he does not think nothing will happen. Because of the time constraints of the Task Force, it may just be difficult to create that sort of specificity today.

Mr. Houghton asked how this would then be addressed. Would it be draft legislation and would the Task Force members have to lobby in Dover. How should they communicate that they strongly believe that the look-back should be changed. Are they supposed to negotiate with the Division of Revenue.

Senator Townsend said that he can only speak for himself, but he is committed to this process. This Task Force will most likely result in multiple bills. There will probably be a bill early in Session and a bill later in Session.

Representative Spiegelman asked why Mr. Houghton cannot both draft legislation and lobby and also work with the Division of Revenue.

Mr. Houghton said that they could, but it sounds like there is a major difference of opinion between State officials and members of other groups.

Senator Townsend asked Mr. Houghton what he meant when he asked how to approach the situation. Did he mean on a policy or procedural basis.

Mr. Houghton said both. This is one of the most important issues to be discussed by the Task Force.

Senator Townsend said that the language in this bullet point, “The Delaware General Assembly should amend the Delaware Code to adjust the ‘look-back’ period in Delaware,” is pretty strong language relative to the history of this issue in Delaware. It would be irresponsible to try to come up with a definitive date for the look-back at this meeting. The fiscal implications need to be more closely considered.

Mr. Houghton said that he appreciates the goodwill and intentions of the members of the General Assembly sitting on this Task Force as well as the members of the Administration. He looks forward to future discussions on this issue.

Mr. Ratledge said that Mr. Houghton was representing the holders while Mr. Ratledge is representing the public. The money does not belong to the holders; someone else has property rights over the money. The Task Force needs to address this issue. He reminded the Task Force that the determination of the look-back is often a negotiation between the holder and the State, and the holders have a lot of input in the process. The rate is not recalculated. If the abandoned property amount is \$0 then the holder does not have to pay anything. Current bookkeeping is likely to be better than it was in the past, due to technology, and holders may actually prefer using more recent data. Holders have “the people’s” money, and the Supreme Court has been very clear that it should be returned to them.

Mr. Tuinstra, Jr. asked if something referring to a “rolling look-back” could be added to this bullet point.

Senator Townsend said that it could. He is not sure if the Task Force members all agree with that.

Mr. Houghton asked if the Task Force members could vote on the issue.

Senator Townsend said that given his understanding of the history of this issue, to have a public proceeding involved in this issue is pretty impressive. He intends to continue to have conversations about this issue to address this legislatively, but is concerned about the amount of specificity that some members are requesting for this Report.

Mr. Houghton asked Secretary Cook if the Administration opposes including a “rolling look-back” in the Report if the look-back date is not moved forward.

Secretary Cook answered that because this has such a huge fiscal impact on the State, he would have to see the details of the proposal before he could make a determination.

Senator Townsend asked the members of the holder community present if the idea of a hybrid structure, in which non-filers do not get much relief, was palatable to them.

Mr. Houghton said that he thinks there would be a problem with that. Many companies have only heard about unclaimed property in the past couple of years as the issue has received more attention. Some companies have only started filing 3 – 6 years ago.

Senator Townsend said that Secretary Bullock sent out thousands of letters to companies notifying them of the DOS VDA program. This was a much more beneficial VDA program and most companies still chose not to join. This is an issue of fairness, as Mr. Ratledge eloquently mentioned earlier.

Mr. Houghton questioned whether this is in fact Delaware's or the public's money since the amount of money is being estimated and extrapolated for older records that do not exist with very recent records. Many companies would argue that it is not Delaware's money, that it is fictitious. He is concerned about nothing being done about this issue because in the previous unclaimed property Task Force (2006) the same issues were brought up and there was no action.

Senator Townsend said that he would not want any lack of action to be attributed to the current Administration, since they were not in office at that time. He does not want to make any judgments about the previous Administration because he was not present to witness it. It was his understanding that the previous Task Force Chair lost his reelection campaign before the recommendations could be enacted. Senator Townsend is glad that he broke that streak. He is pledging to remain committed to these issues and understands the concerns of the Task Force members.

Mr. Togman said that any change will impact State revenue. All members are Delaware residents and are mindful of that fact. He wants Secretary Cook to know that they appreciate the work he has done, but the unfairness of the present law requires changes. He accepts Senator Townsend's pledge that there will be legislative action on this issue in 2015 and is willing to accept the language proposed. He appreciates Senator Townsend's action on this issue, as do the other Task Force members.

Mr. Stevenson said that he was originally concerned about a different process for filers and non-filers because non-filers could still be in compliance with the law. Companies are only required to file if they have something to remit. He would be more comfortable if the audits first look at the most recent six years to see if there are indicia of fraud before they can look farther back.

Senator Townsend said that if DOF is looking at records older than six years when there are no indicia of fraud, he would question their judgment. He does not think that is actually happening, but it might be. He is not sure how to craft a law that addresses this. If this is in fact happening, it should stop. This issue is, however, distinct from companies who have no statute of limitations because they have never filed. He is open to trying to draft a law that distinguishes between these two categories.

Secretary Cook said that audits are conducted until it becomes clear that there is no unclaimed property. The audit stops as soon as that determination is made. Secretary Bullock mentioned at an earlier meeting that the goal of the administration is to increase compliance. Secretary Cook is concerned that moving the date of the look-back will not increase compliance.

Mr. Barlow said that he agrees with Mr. Ratledge about the issue of fairness. There has been a huge amount of outreach to the corporate community over many years; ignorance at this point would be willful. Even if a company is actually ignorant of these laws, ignorance has never been an excuse for not obeying them. Compliance needs to be improved. This was mentioned in the resolution that created this Task Force. The rolling look-back does not do anything to increase compliance because it creates an incentive for companies who are sitting on abandoned property to continue to do so until the look-back period passes that date. That needs to be considered.

Secondly, the concept of a look-back date that is anything close to 1993 is fundamentally unjust. Companies joined the DOS VDA so that they could have a shorter look-back period. Making the look-back period shorter to everyone undermines that program and the companies that were trying to comply. That is a real unfairness.

Mr. Houghton said that there are at least two reasons why those discussions would not be as uncomfortable as one might think. He proposes that the look-back period for companies in the VDA, regardless of when they joined, be moved to 1996. The ability to process liability in the VDA is basically a managed audit. This is dramatically different than an audit done by a contract auditor. He believes this is defensible.

Secretary Bullock said that he is not sure that he has heard much talked about in the meeting today that will increase compliance. He does not have a problem with moderating the look-back period, but how it is done has to be done in a way that relates to the real world. This is a very complicated issue and this has to be dealt with in a way that does not cause other problems for the state.

Senator Townsend said that he is not convinced that the corporate community is even going to be pleased with the look-back changes they are proposing, but he could be wrong.

Mr. Tuinstra, Jr. said that there is not a lot of sympathy for non-filers. The issue is that the look-back has not been adjusted in a long time. Moving it forward would take some pressure off of the State. There is a lot of buzz in the corporate community about how they should attack this issue from a litigation perspective.

Senator Lavelle said there is a dispute over whether the money being collected in revenue by the State belongs to the holder or the State. He asked the Administration what their opinion was on the possibility of litigation and an adverse ruling.

Secretary Cook said that DOF is monitoring these legal proceedings.

Senator Lavelle said that he heard that DOF posts ads in the newspaper notifying owners of their unclaimed property. He asked why DOF does not just send them a letter to notify them.

Deputy Secretary Gregor said that in securities they do send a letter. Moving forward, they are looking at using things like LexisNexis to assist with finding current addresses so that they can send letters for more types of unclaimed property. The other question is why the holders are not doing their own due diligence. They are supposed to, but it is not law and they sometimes do not.

Senator Townsend said that there are several DOF initiatives that are ongoing that work to help reunite owners with their property. They can follow up in 2015 with legislation on this issue as well. He also does not think that a court ruling would gut the program forever. It might create a quick and harsh outcome that the State might ultimately get to over the course of time anyway. A district court will not change the Supreme Court's ruling that the holder should not be able to keep unclaimed property. The way in which the program is administered may be changed by a court ruling.

Mr. Houghton said that Delaware does not have any statutory pre-remittance due diligence. Other states do. If Delaware chose to put that into law, he doubts the corporate community would oppose that.

Senator Townsend asked if the corporate community would oppose it because of the administrative burden it placed on them.

Mr. Houghton said no, he did not think they would object.

There was disagreement from DOF representatives.

Mr. Houghton said that the thing that holders really object to is the estimated and extrapolated general ledger audit money. He agreed with Senator Townsend that a district court is not going to overturn the priority rule set by the Supreme Court. However, the estimation and extrapolation methodology may be overturned. The Task Force has heard today that makes up 80 – 85% of general ledger audits. That is what could be lost.

Senator Townsend said that one has to wonder if that would only be lost to the extent that companies were not on notice for those years, as opposed to them being on notice for a certain period of time. That can be a meaningful distinction.

Mr. Stevenson said that another important consideration is that companies may decide against being incorporated in Delaware and may move to another state with a more favorable look-back period. Companies voluntarily choose to incorporate in Delaware. How Delaware decides to handle these issues may make them change their minds.

Mr. Barlow said that Mr. Stevenson's point is very important. Companies do have a choice in where they incorporate. Delaware has been trying to improve the corporate experience with the

2010 law creating an appeals process and the 2012 law creating the DOS VDA program. They have to do this with consideration that they have to be fair to other corporations who have complied with the law.

Secretary Bullock said that the State's focus on that balance has resulted in fewer complaints from the corporate community. Some companies have voluntarily decided to not comply, and every member of the Task Force at one time has said that they should be shown no sympathy. Secretary Bullock thinks the Task Force should stick with that approach, which will help them avoid some of the chronic problems that have occurred in the past. Things are turning around now with recent initiatives from DOS and DOF.

PUBLIC COMMENT

There was no comment from the public.

Senator Townsend thanked the Task Force members for attending and for their comments. He will be circulating the Minutes from this meeting, the Minutes from the meeting on October 2, 2014, and the final Draft Report in the next couple of weeks. Senator Townsend looks forward to 2015 and continued conversations about this issue.

The meeting was adjourned at 3:59 p.m.