

UNCLAIMED PROPERTY AUDIT PROCEDURES

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House Bill 4289

Sponsor: Rep. Aric Nesbitt

Committee: Tax Policy

Complete to 5-7-13

A SUMMARY OF HOUSE BILLS 4289 AS INTRODUCED 2-20-13

House Bill 4289 would amend the Uniform Unclaimed Property Act to require unclaimed property audits to be performed using the *Generally Accepted Government Auditing Standards* published by the U.S. Government Accountability Office (GAO)¹. The Department of Treasury (or its authorized agents) could determine any liability based on the facts contained in the unclaimed property report that is the subject of the audit or other information in the department's possession.

Additionally, the department (or its authorized agents) could determine liability based on a "reasonable" statistical sample or other sampling techniques consistent with the GAO standards in examining the reports and records of the reporting entity only when the entity does not have complete records of transactions or, if the reporting entity has adequate records, upon the entity's written approval. The bill provides that if the reporting entity has preserved and maintained adequate records, any unclaimed property audit must contain the following elements:

1. A review of the reporting entity's books and records.
2. Not be based on a determination of any indirect audit procedure.
3. Not extrapolate a determination based on any indirect audit procedure.

If an indirect audit procedure is used by the department during the course of an "examination" (audit), the department would have to evaluate the credibility of the evidence and the reasonableness of the conclusion before the determination of tax liability was made. The use of an indirect audit procedure² during an unclaimed property audit would have to contain the following five elements:

¹ <http://www.gao.gov/yellowbook>. The request for proposals (RFPs) issue by the Department of Technology, Management, and Budget (DTMB) for unclaimed property audit services notes that unclaimed property audits must be done in accordance with *Generally Accepted Audit Standards*.

² In an April 2010 report published by the International Monetary Fund, "indirect" audit methods were described as methods that "involve the determination of tax liabilities through an analysis of a taxpayer's financial affairs utilizing information from a range of sources beyond the taxpayer's declaration and formal books and records. Assessments are often based on circumstantial evidence indicating a reasonable estimate of the taxpayer's correct liability." See, Edmund Biber, *Revenue Administration: Taxpayer Audit – Use of Indirect Methods*, International Monetary Fund, Fiscal Affairs Department, April 2010, <http://www.imf.org/external/pubs/ft/tnm/2010/tnm1005.pdf>.

1. The department (or agents) could use any method to establish the audit determination.
2. The department (or agents) could not be arbitrary in the use of authority.
3. An indirect method could be used to test the accuracy of the reporting entity's books and records.
4. The department (or agents) would have to investigate all reasonable evidence presented by the taxpayer refuting the computation.
5. The department (or agents) could use third-party records.

The reporting entity subject to the indirect audit procedure could challenge the accuracy of any method by providing clear and convincing evidence that the method or test is erroneous, lacks a rational basis, or produces a different result when complete records are considered.

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.