

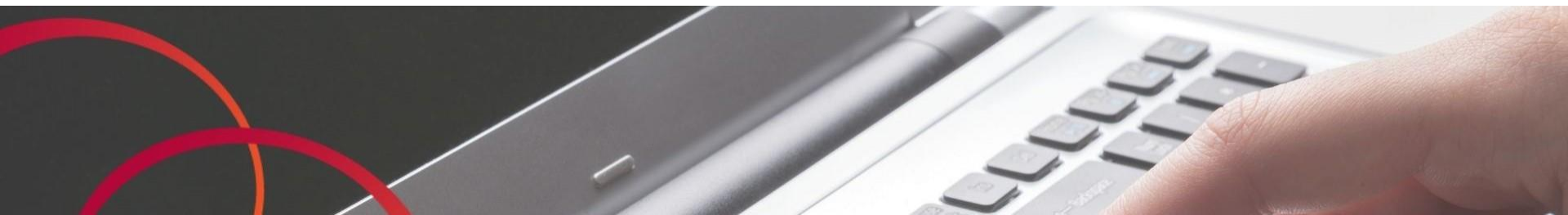


**TXCPA-San Antonio
Member Appreciation Day
August 27, 2021**

Managing Texas Sales Tax Audits and Appeals

Multistate Update Unclaimed Property

www.claruspartners.com

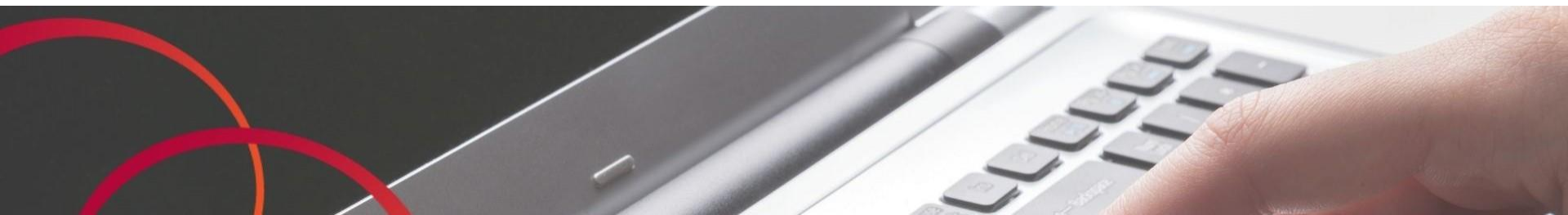


Managing Texas Sales Tax Audits and Appeals



Prior to fieldwork beginning

- Complete the audit questionnaire





AUDIT QUESTIONNAIRE

You have certain rights under Ch. 559, Government Code, to review, request, and correct information we have on file about you.

Taxpayer name and address	Taxpayer number(s)	

Legal name and address, if different from above (Attach additional sheets, if necessary.)	FEI #	_____
	SS #	_____
Website address, if applicable		

Disclosure of your social security number is required and authorized under law, for the purpose of tax administration and identification of any individual affected by applicable law. 42 U.S.C. sec 405(c)(2)(C)(i); Tex. Gov't Code secs 403.011 and 403.078. Release of information on this form in response to a public information request will be governed by the Public Information Act, Chapter 552, Government Code, and applicable federal law.

The following information will allow us to become familiar with you and your business operations.

Type of business (If "B" is checked, attach a list of LLC's which are members of the Limited Liability Company)

- A. Corporation B. Limited Liability Company C. Sole Proprietorship D. Partnership E. Other _____

Has the corporation been involved in a reorganization, e.g. a purchase or merger, or had a name change within the last seven years? YES NO If "YES," attach a detailed explanation.

Provide Corporation Charter or Certificate of Authority number and date issued, if applicable.

Who is the person to contact to start our examination?			
Name <input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.		Title	
Physical address		E-mail address (if available)	
_____		_____	
_____		Phone number	FAX number
_____		_____	_____
Who, on behalf of your business, is authorized to enter into a written agreement extending the period of limitation during which the tax may be assessed, accept a notification of the 60 day requirement to obtain resale or exemption certificates, sign a power of attorney, and accept a notification of sampling procedures? This would normally be an officer of a corporation, a partner, or owner.			
Name <input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.		Title	
Physical address		E-mail address (if available)	
_____		_____	
_____		Phone number	FAX number
_____		_____	_____

Have you received a refund of any taxes administered by the Comptroller within the last four (4) years? YES NO

Type of business _____

Records such as journals, ledgers, sales and purchase invoices, copies of Texas tax reports, and resale or exemption certificates may be requested and should be made available for examination.

Where are the sales tax records located? CITY _____ STATE _____

Where are the franchise tax records located? CITY _____ STATE _____

Where are the other tax records located? CITY _____ STATE _____

NOTE: If your business makes sales that are subject to state and/or local sales taxes, you should have on file completed resale or exemption certificates for all tax-free sales.

Check the items you have located in Texas:

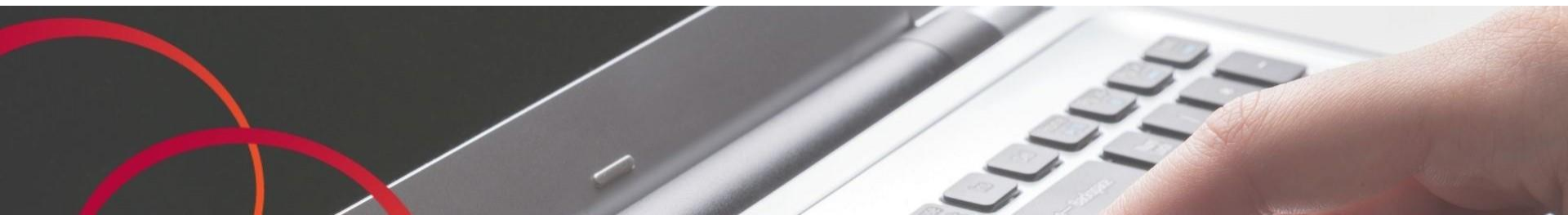
<input type="checkbox"/> A. MANUFACTURING PLANT	<input type="checkbox"/> E. REAL PROPERTY	<input type="checkbox"/> I. SPACE IN DEPT. OR CHAIN STORE
<input type="checkbox"/> B. OFFICE (e.g., district)	<input type="checkbox"/> F. PERSONAL PROPERTY	<input type="checkbox"/> J. TERMINAL FACILITY
<input type="checkbox"/> C. WAREHOUSE (owned or leased)	<input type="checkbox"/> G. STOCK OF GOODS, INVENTORY	<input type="checkbox"/> K. EMPLOYEES
<input type="checkbox"/> D. RETAIL OUTLET	<input type="checkbox"/> H. LEASED PROPERTY	<input type="checkbox"/> L. INDEPENDENT REPRESENTATIVES

Does your business maintain records or file tax returns for any related company, subsidiary, or affiliated firm? YES NO
 Please attach a listing of all company names and FEI numbers.

Name (Type or print)	Title
_____	_____
Authorized signature (Owner, corporate officer, or director)	Date
_____	_____

Prior to fieldwork beginning

- Provide documents auditor requests
 - Federal tax returns
 - Sales tax payable account detail
 - ~~Bank statements~~
 - Fixed asset detail (~~Depreciation schedules~~)
 - Chart of accounts
 - Resale/exemption certificates



ABC Co.

Fixed Asset Purchase

07/13/2019

#1 Equipment	\$16,583
#1 Equipment Shipping	\$1,875
#1 Equipment Installation	\$4,762
#2 Equipment	\$101,483
#2 Equipment Shipping	\$2,873
#2 Equipment Installation	\$5,791
Inspection Fees	\$750
Reroute. Electrical	<u>\$8,233</u>
Total	\$202,350

Prior to fieldwork beginning

- Control what the auditor sees
- Determine where the bulk of the fieldwork will take place
 - Taxpayer's site
 - CPA's office
 - Auditor's office/remote



Prior to fieldwork beginning

- Get resale/exemption certificates in order!!!
 - Elements requires for exemption certificates
 - Name and address of the purchaser
 - Name and address of the seller
 - Date and signature of the purchaser
 - A description of the item to be purchased
 - The reason the purchase is exempt from tax (exemption only)
 - Sales tax permit number for purchaser (resale only)



TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION

Name of purchaser, firm or agency My Manufacturing Co.	
Address (Street & number, P.O. Box or Route number) PO Box 456	Phone (Area code and number) 972-422-4530
City, State, ZIP code Fort Worth, TX 76112	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: **Your Equipment Co.**

Street address: **456 Industrial** City, State, ZIP code: **Dallas, TX 75213**

Description of items to be purchased or on the attached order or invoice:
Miscellaneous manufacturing equipment

Purchaser claims this exemption for the following reason:

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

Purchaser sign here <i>Johnny B. Good</i>	Title Plant Foreman	Date <i>5/9/2008</i>
---	------------------------	-------------------------

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.
 THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.
 Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

TEXAS SALES AND USE TAX RESALE CERTIFICATE

Name of purchaser, firm or agency as shown on permit My Retail Company, Inc.	Phone (Area code and number) 972-422-4530
Address (Street & number, P.O. Box or Route number) PO Box 123	
City, State, ZIP code Dallas, TX 75213	
Texas Sales and Use Tax Permit Number (must contain 11 digits) <div style="border: 1px solid black; height: 15px; width: 100%;"></div>	
Out-of-state retailer's registration number or Federal Taxpayers Registry (RFC) number for retailers based in Mexico <div style="border: 1px solid black; height: 15px; width: 100%;"></div> (Retailers based in Mexico must also provide a copy of their Mexico registration form to the seller.)	

I, the purchaser named above, claim the right to make a non-taxable purchase (for resale of the taxable items described below or on the attached order or invoice) from:

Seller: **Your Wholesaler, Inc.**

Street address: **123 Anywhere Place**

City, State, ZIP code: **Fort Worth, TX 76112**

Description of items to be purchased on the attached order or invoice:
Widgets

Description of the type of business activity generally engaged in or type of items normally sold by the purchaser:
Widget retailer

The taxable items described above, or on the attached order or invoice, will be resold, rented or leased by me within the geographical limits of the United States of America, its territories and possessions or within the geographical limits of the United Mexican States, in their present form or attached to other taxable items to be sold.

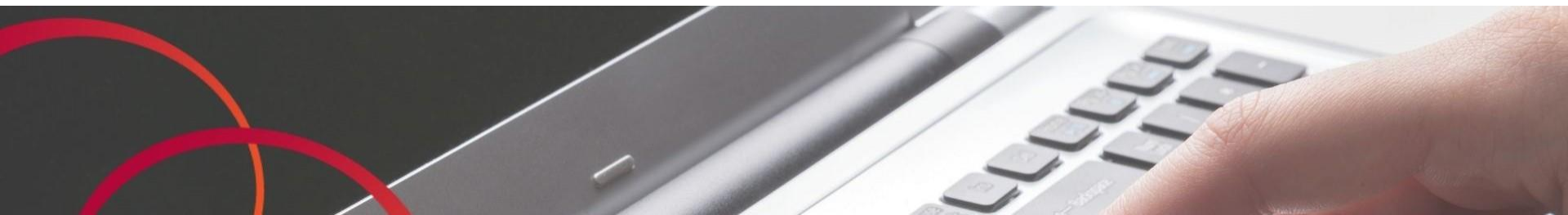
I understand that if I make any use of the items other than retention, demonstration or display while holding them for sale, lease or rental, I must pay sales tax on the items at the time of use based upon either the purchase price or the fair market rental value for the period of time used.

I understand that it is a criminal offense to give a resale certificate to the seller for taxable items that I know, at the time of purchase, are purchased for use rather than for the purpose of resale, lease or rental, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

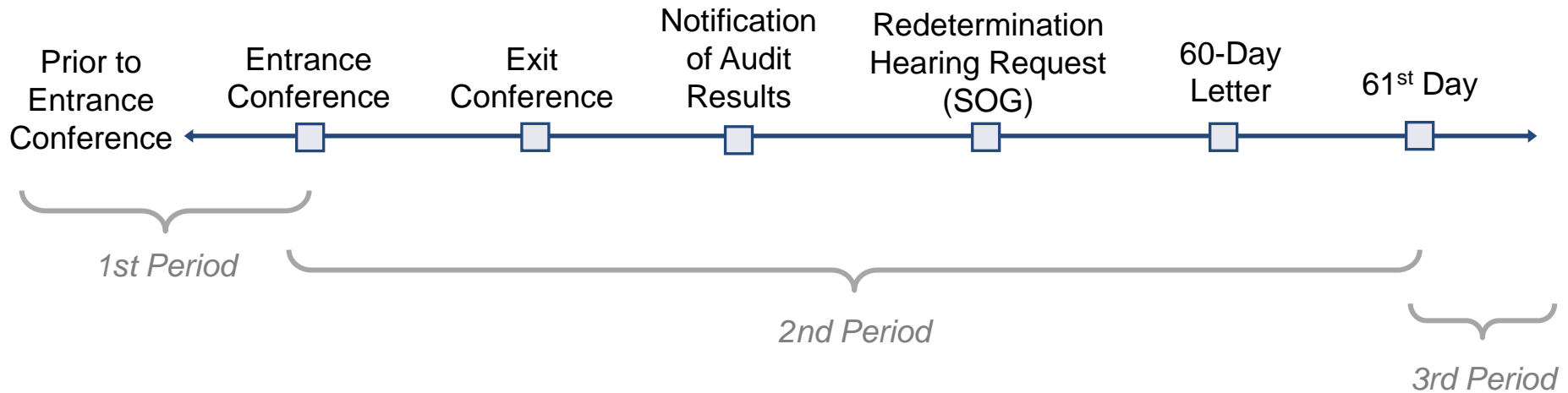
Purchaser sign here	Title Director of Purchasing	Date 5/9/2008
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Prior to fieldwork beginning

- Timeline for exemption/resale certificates
 - Prior to entrance conference
 - From entrance conference through 60-day period after notification granting Redetermination Hearing
 - After 60-day period

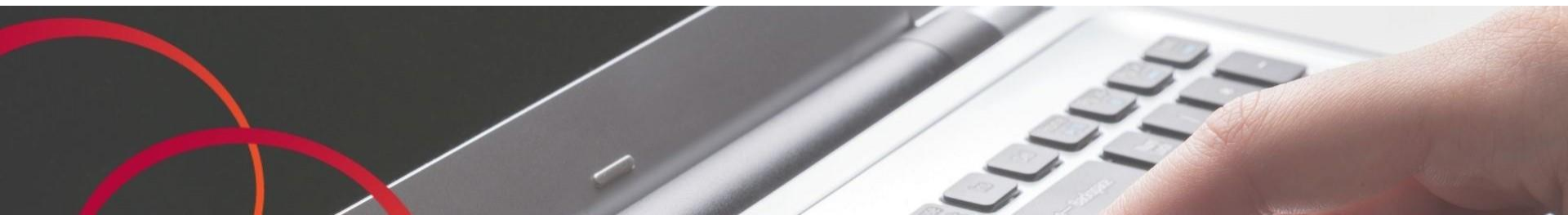


Timeline For Resale/Exemption Certificates



During the Audit

- Get a POA
- Treat the auditor with respect in a non-confrontational manner
- Document communications with the auditor
 - Email
- Tick and Tie – review the auditor's work



10/39
[REDACTED] METALS INC
[REDACTED], TX

Mail Report by Exem/Name/Date

AM 100 DISALLOWED DEDUCTIONS-AUSTIN

ID	Name	Location	Ref	Description	Comment	Taxable Amount	Tax	Date	City	MTA	County	SPD	FN
19-51	[REDACTED]		154275	METALS		13,830.00	1,149.23	04/11/2005	Y AUSTIN	MTAAUS	NONE	NONE	0
19-52	[REDACTED]		126190	METALS		215.01	17.74	11/11/2003	Y AUSTIN	MTAAUS	NONE	NONE	0
19-53	[REDACTED]		177830	METALS		16.88	1.39	05/13/2006	Y AUSTIN	MTAAUS	NONE	NONE	0
19-54	[REDACTED]		*26455	METALS		134.22	11.07	11/17/2003	Y AUSTIN	MTAAUS	NONE	NONE	0
19-57	[REDACTED]		126619	METALS		359.13	29.83	11/03/2003	Y AUSTIN	MTAAUS	NONE	NONE	0
19-56	[REDACTED]		153988	METALS		57.37	4.73	04/06/2005	Y AUSTIN	MTAAUS	NONE	NONE	0
19-55	[REDACTED]		177818	METALS		17.89	1.48	08/13/2006	Y AUSTIN	MTAAUS	NONE	NONE	0
19-58	[REDACTED]		178305	METALS		546.75	45.11	08/21/2008	Y AUSTIN	MTAAUS	NONE	NONE	0
19-61	[REDACTED]		126135	METALS	NEED CERT FOR THIS INVOICE	84.00	6.93	11/11/2003	Y AUSTIN	MTAAUS	NONE	NONE	0
19-66	[REDACTED]		130821	METALS	EXEMP CERT ISSUED ON 08/23/02 F	423.44	34.93	02/11/2004	Y AUSTIN	MTAAUS	NONE	NONE	0
19-62	[REDACTED]		131592	METALS	EXEMP CERT ISSUED ON 08/23/02 F	122.50	10.11	02/24/2004	Y AUSTIN	MTAAUS	NONE	NONE	0
19-64	[REDACTED]		131811	METALS	EXEMP CERT ISSUED ON 08/23/02 F	352.56	28.09	02/25/2004	Y AUSTIN	MTAAUS	NONE	NONE	0
19-63	[REDACTED]		131714	METALS	EXEMP CERT ISSUED ON 08/23/02 F	188.81	15.58	02/28/2004	Y AUSTIN	MTAAUS	NONE	NONE	0
9-59	[REDACTED]		131767	METALS	NEED CERT FOR THIS INVOICE	10.39	3.86	02/27/2004	Y AUSTIN	MTAAUS	NONE	NONE	0
9-60	[REDACTED]		147311	METALS	NEED CERT FOR THIS INVOICE	41.99	3.46	12/02/2004	Y AUSTIN	MTAAUS	NONE	NONE	0
9-67	[REDACTED]		147725	METALS	EXEMP CERT ISSUED ON 08/23/02 F	1,716.70	141.63	12/09/2004	Y AUSTIN	MTAAUS	NONE	NONE	0
9-65	[REDACTED]		147880	METALS	EXEMP CERT ISSUED ON 08/23/02 F	372.00	30.69	12/14/2004	Y AUSTIN	MTAAUS	NONE	NONE	0
9-297	[REDACTED]		148073	METALS	INVOICE DATE AFTER OOB DATE 04/	41.81	3.46	12/16/2004	Y AUSTIN	MTAAUS	NONE	NONE	0
9-268	[REDACTED]		164051	METALS	INVOICE DATE AFTER OOB DATE 04/	40.70	3.38	04/11/2007	Y AUSTIN	MTAAUS	NONE	NONE	0
9-289	[REDACTED]		131565	METALS	INVOICE DATE AFTER OOB	131.52	10.85	02/24/2004	Y AUSTIN	MTAAUS	NONE	NONE	0

PAGE 10/39

CORPORATE OFFICE

5122759485

01/24/2008 02:36

SALES ORDER PG# 1
SALESPERSON:
[REDACTED]

ORDER DATE: SHIP DATE:
04/11/2005 04/11/2005

#154275

SHIP VIA:
WILL CALL
CUST P.O. #:

CUST ID:
C

SOLD TO:
[REDACTED]

SHIP TO:
WILL CALL

LINE	QTY	ITEM ID/NAME	WIDTH	LENGTH	CUTTING	UNITS	PRICE	TOTAL
1	5.00 PCS	BRT375032 .375 X .032 BRASS ROUND TUBE CUT ALL TO 24 INCH PCS		12'		5.000 EA	12.6600/EA	63.30
2	1.00 PCS	MISC CUTTING CHARGE				1.000 EA	10.0000/EA	10.00
3	1.00 PCS	BSH010 .012" (305A) BRASS SHEET	12.00000"	200.00000"		16.657 SQ FT	3.9500/SQ FT	66.00

PHONE #:

FAX #:

[END ORDER]

AX ID: TAXABLE

TOTAL:

15.37 LBS

ITEM TOTAL

139.30

CUTTING

0.00

SUBTOTAL

139.30

SALES TAX

0.00

TOTAL

139.30

TERMS: CASH

\$139.30 PAID

REC'D BY: _____

[REDACTED]
 [REDACTED]
 [REDACTED]

FAXED

Invoice

DATE	INVOICE #
10/8/2004	4146 ✓

BILL TO

[REDACTED]

OCT 19 2004

SHIP TO

[REDACTED]

P.O. NUMBER	TERMS	SHIP	VIA	F.O.B.	PROJECT
VERBAL	SEE BELOW	10/18/2004	BEST WAY	MCKINNEY	4208

QUANTITY	DESCRIPTION	PRICE EACH	AMOUNT
1	<p>TOP RUNNING DOUBLE GIRDER 5 TON BRIDGE CRANE INCLUDING RUNWAY PER OUR PROPOSAL DATED 05-21-04. PRICE: \$46,900.00.</p> <p>DEPOSIT OF \$14,949.38 (INCLUDING TAX) RECEIVED 06-26-04</p> <p>TERMS: BALANCE DUE PRIOR TO SHIPMENT.</p>	32,830.00	32,830.00T

SUBMITTED FOR PAYMENT

10/22/04

VENDOR#		19125	
BR	ACCT	AMOUNT	PROJECT
202	1795	34,881.88	04703
TOTAL		34,881.88	
OK TO PAY			

WE APPRECIATE YOUR BUSINESS!

Subtotal

\$32,830.00

████████████████████
 0502/04
 MARSHALL, TX 75160
 972.563.8333/972.563.8445 (FAX)

FAXED

Invoice

DATE	INVOICE #
10/8/2004	4146 ✓

BILL TO

████████████████████
 ████████████████████
 WINNIEY TX 75069

OCT 19 2004

SHIP TO

P.O. NUMBER	TERMS	SHIP	VIA	F.O.B.	PROJECT
VERBAL	SEE BELOW	10/18/2004	BEST WAY	MCKINNEY	4208

QUANTITY	DESCRIPTION	PRICE EACH	AMOUNT
1	<p>TOP RUNNING DOUBLE GIRDER 5 TON BRIDGE CRANE INCLUDING RUNWAY PER OUR PROPOSAL DATED 05-21-04. PRICE: \$46,900.00.</p> <p>DEPOSIT OF \$14,949.38 (INCLUDING TAX) RECEIVED 06-26-04</p> <p>TERMS: BALANCE DUE PRIOR TO SHIPMENT.</p>	32,830.00	32,830.00T

SUBMITTED FOR PAYMENT
 10/22/04

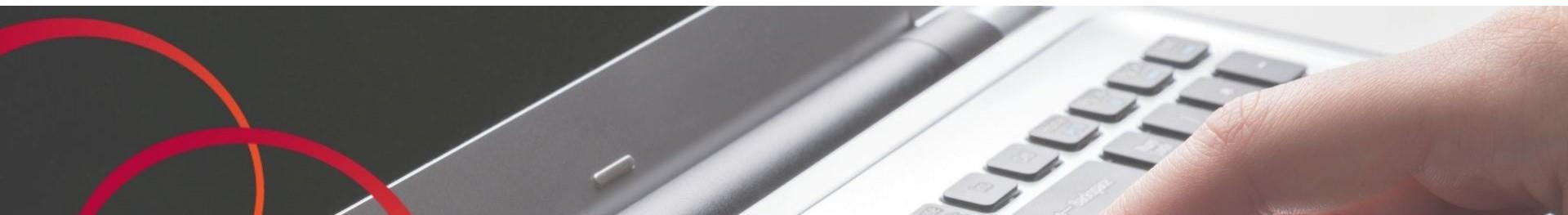
VENDOR# 19125			
BR	ACCT	AMOUNT	PROJECT
202	1795	34,881.88	19125
TOTAL		34,881.88	
OK TO PAY			

WE APPRECIATE YOUR BUSINESS!

Subtotal	\$32,830.00
Sales Tax (6.25%)	\$2,051.88
Total	\$34,881.88
Payments/Credits	\$0.00
Balance Due	\$34,881.88

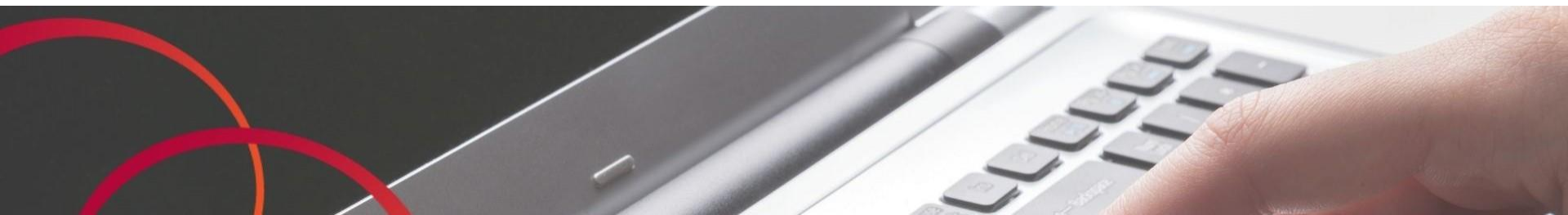
During the Audit

- Waiver of statute – request interest waiver
- Research sources
 - STAR
 - Tax help
 - Audit manual



Post-fieldwork

- Talk to the auditor's manager/supervisor
(Reconciliation Conference)
- IARC (Independent Audit Review Conference)
schedule prior to Exit Conference
- Exit Conference



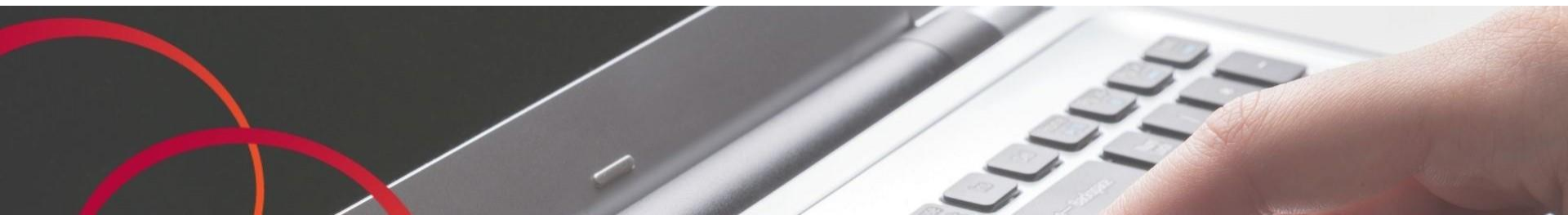
Post-fieldwork

- Notification of Audit Results letter will be sent
 - 60 days to respond
 - Request Redetermination Hearing
 - Provide Statement of Grounds



Post-fieldwork

- Redetermination Hearing
- District Court



Benefits/Ancillary Issues

- Refunds!
- No downside
- Interest – consider paying prior to appeals



Multistate Update – *Wayfair* Decision

- Economic nexus vs. physical nexus
- Threshold for nexus
 - Transactions
 - Gross receipts
 - Total receipts (including wholesale)
 - Taxable receipts
 - Retail receipts



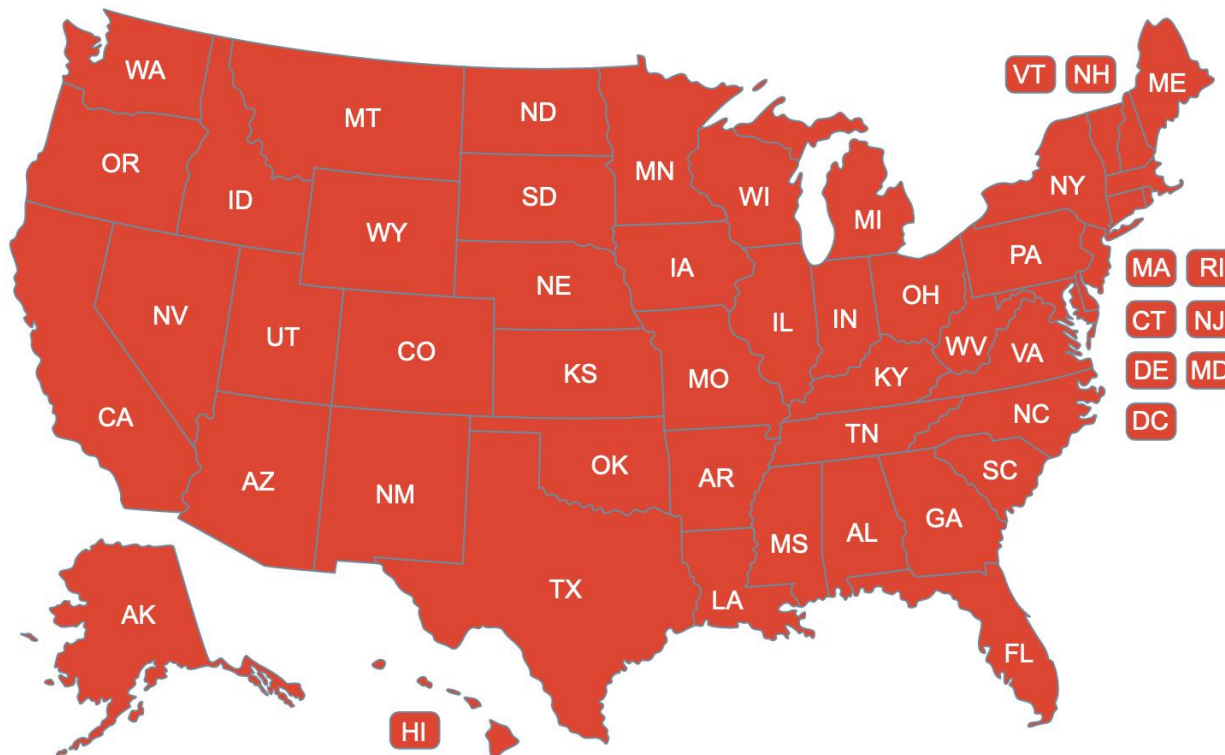
Multistate Update – *Wayfair* Decision

- Measurement dates
 - Calendar year
 - Previous 12 months
 - Previous four quarters
- Different effective dates



US Economic Nexus Laws

(Click on the states to get the Nexus Information)



SERVICES

- Sales Tax Compliance
- Sales Tax Consulting

SOFTWARE

- SmartCert
- SmartLicense

ABOUT US

- Our Team
- Locations

Unclaimed Property



Are Your Clients at Risk for Unclaimed Property?

- Risk Factors:
 - Failure to file annual unclaimed property reports
 - Failure to maintain historical records
 - Practice (historic or current) of writing liabilities off to income or voiding checks to take them off the books
 - Mergers or acquisitions:
 - Lack of due diligence for unclaimed property
 - Stock transaction – historical liability for acquired company back to date of formation
 - Asset transaction – contractual assumption of liability
 - State of incorporation – where is your company incorporated?
(Delaware, New York, Texas or New Jersey?)
 - Use of third-party administrators (TPAs)

What is Unclaimed Property?

- Any liability held, due and owing by a company to a third party - customer (AR), vendor (AP), employee (PR or Benefit) or shareholder (Equity) in the ordinary course of business
- The obligation must be “fixed” and “certain”

(N.B. The use of third-party administrators generally does not negate the company’s obligations to file and comply with the unclaimed property reporting requirements.)

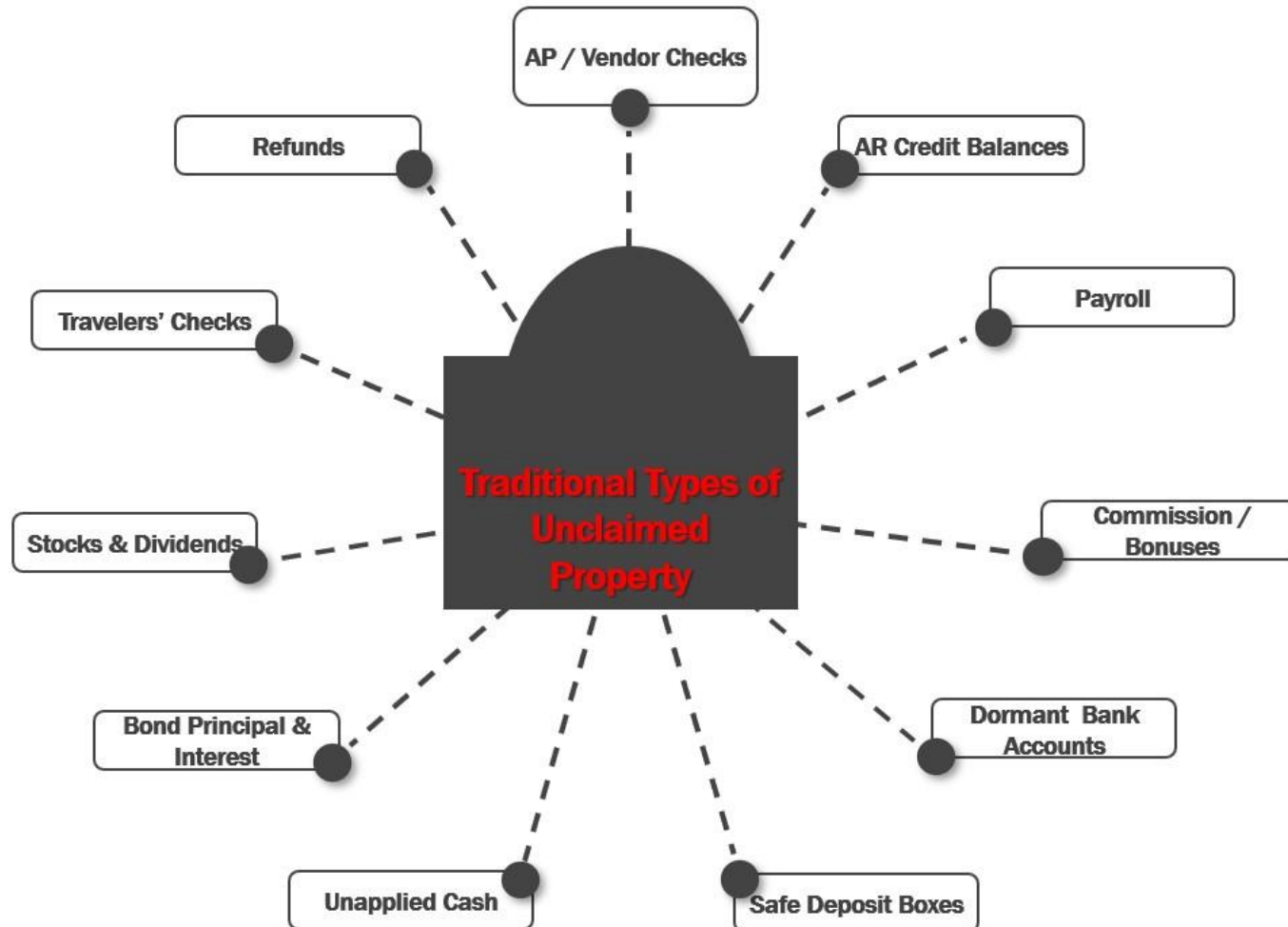
What Unclaimed Property is not?

- It is not a tax
- Nexus standards are not applicable
- With few exceptions there is generally no statute of limitations resulting in very extensive reach back periods
- Generally limited, if any, administrative remedies

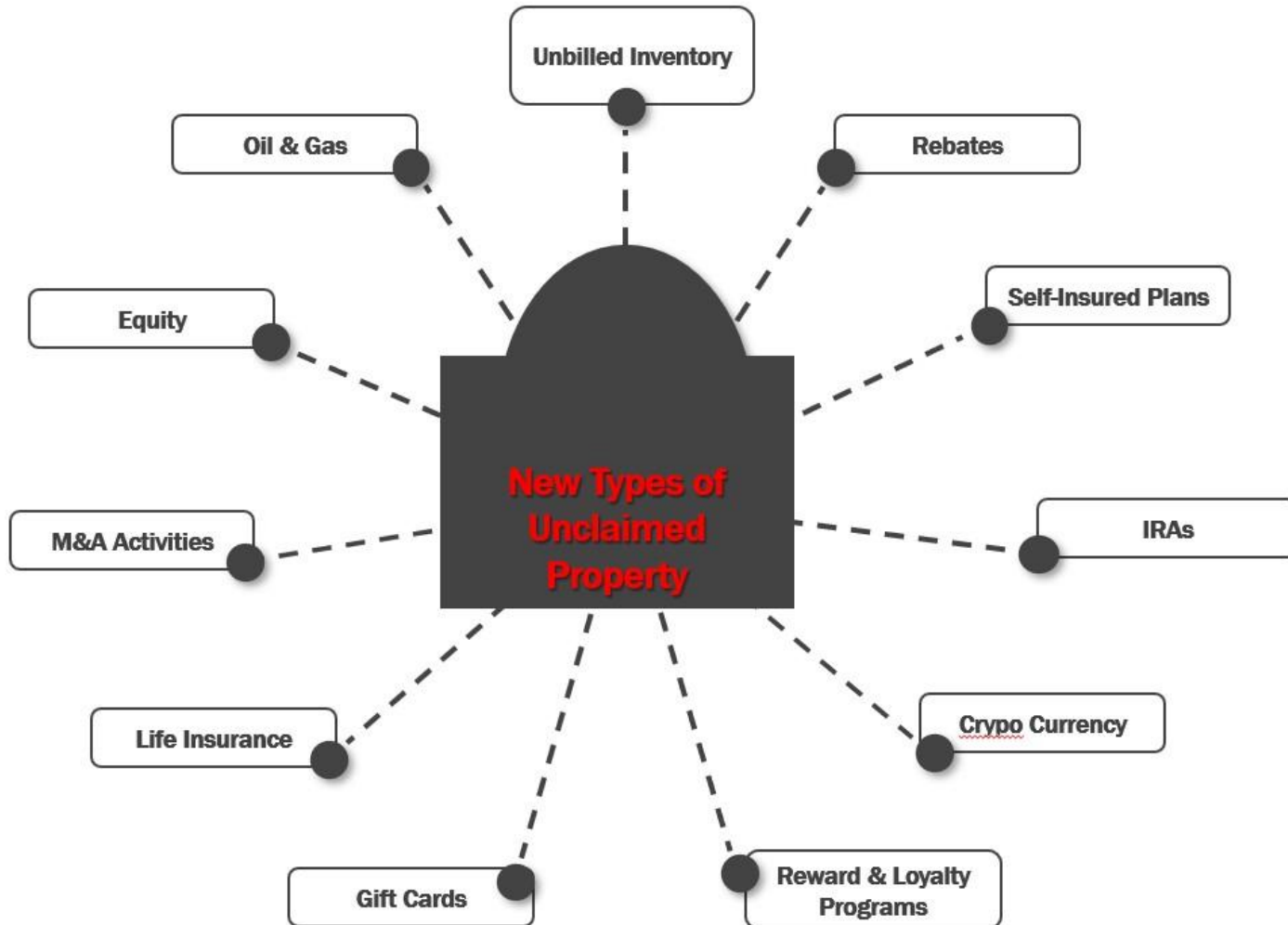
Note: All states have unclaimed property laws

- Currently 54 reporting jurisdictions

Traditional Types of Unclaimed Property



Newer Types of Unclaimed Property



Who Are The Players?

Company (Holder)

Owner

States



Which State Has Jurisdictional Rights To Property?

The United States Supreme Court held in Texas v. New Jersey, affirmed in Pennsylvania v. New York and re-affirmed in Delaware v. New York:

- State of property owner's last known address has **first** claim
- If no address or incomplete address is available, state of incorporation of the holder has **second** claim
- Burden of proof – presumption of abandonment if on the books for the dormancy period (1,3 or 5 years)
- Documentation to overcome presumption is critical

(Nexus is not applicable in determining the jurisdictional state for unclaimed property reporting)

Audit Triggers



- ❑ **Filing History**
 - No history or incomplete filings.
- ❑ **State of Incorporation**
 - Delaware represents the highest audit risk for companies incorporated there.
- ❑ **Mergers and Acquisitions**
 - Stock & Asset acquisitions
- ❑ **Industry**
 - While financial service companies were first targeted for Unclaimed Property audits, there is an increasing focus on manufacturing companies and foreign owned companies
- ❑ **Media and Public events**
- ❑ **Recovery of Property**
- ❑ **Whistle Blowers**

Responsibility for Unclaimed Property

- Tax Department
- Accounting Department
- Legal Department

Are Your Clients in Compliance?

- Is the Company compliant?
 - Does the company file unclaimed property reports?
 - Do the reports include all applicable property types?
 - Does the company have written policies and procedures?
 - Do the representatives know the availability/existence of records?
 - Does the company follow a record retention/destruction policy?
 - Do the representatives know the corporate history inclusive of all subsidiaries?
 - Do the representatives know what areas within the company have the potential to generate unclaimed property?
 - If publicly traded company? Who manages the reporting for stocks, dividends and unexchanged shares?
 - If acquisitive - - how many acquisitions were stock transactions (successor liability)

- Is the company prepared for an audit?

Questions?

Steve Hanebutt, CPA - Dallas Office

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Sonia Walwyn, J.D, CPA, LLM - Chicago Office

(630) 216-9954 - swalwyn@claruspartners.com

