
Abandoned & Unclaimed Property Alert

Tracking the dramatic changes in the way states enforce abandoned and unclaimed property laws

May 22, 2012

New Jersey gift cards - still a developing issue

The New Jersey data collection provisions for the sale of stored value cards is an issue that will not go away quietly, as proven by the developments over the past few weeks on the legislative, administrative and business fronts. As gift card companies are leaving the state and the Department of the Treasury is advising people to know "the Real Story on Gift Cards," the Legislature is pushing through repeal legislation in an attempt to go back to the way things were. This is very interesting since New Jersey is one of the only states that have not only repealed their gift card exemption but it also has the shortest dormancy period for gift cards among the states.

The background

In 2010, New Jersey enacted changes to the unclaimed property laws under Chapter 25, A.B. 3002, Laws 2010 (Chapter 25). New provisions enacted under Chapter 25 include that:

- Issuers of stored value cards (SVC) must collect zip code information with every sale of an SVC;
- New Jersey may collect the balance of any unused SVC purchased in New Jersey if any balance remains after two years of inactivity;



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- Application of provisions are retroactive to SVCs issued before the July 1, 2010 enactment date of the new law; and
 - If the issuer does not have the location of an SVC purchaser, the location is presumed to be that of the issuer.

Since its proposal and enactment, Chapter 25's provisions have continuously been the focus of significant resistance from individual businesses and associations alike.

In response to Chapter 25, and subsequent Treasury announcements, lawsuits were filed in the U.S. District Court seeking declaratory and injunctive relief from the enforcement of Chapter 25. The District Court granted a preliminary injunction with respect to the place of purchase presumption and to the retroactive application of Chapter 25. However, the court declined to enjoin the data collection provision and also ruled that the two-year abandonment period under Chapter 25 was not pre-empted by federal law. An appeal and cross-appeal were filed in response to these rulings in the U.S. Court of Appeals, Third Circuit.

In January 2012, the Appeals Court affirmed the District Court's grant of a preliminary injunction with respect to the retroactive application of Chapter 25 and the place of purchase presumption. In addition, the Appeals Court upheld the District Court's denial of a preliminary injunction for the data collection provision. The Appeals Court also determined that the challengers failed to demonstrate a reasonable likelihood of success on the merits that Chapter 25's two year abandonment period violated the federal Credit CARD Act of 2009.

The business community takes action

As it was with its judicial challenge, American Express Co. is one of the first companies to take steps to remove itself from the reach of New Jersey's new law by announcing that it has stopped selling its gift cards through third parties located in New Jersey, such as drug stores, supermarkets and convenience stores. American Express announced that the only way people can now purchase these cards in New Jersey is directly from the company. American Express stated that they removed the cards because there was no way they could ensure that third-party retailers were compliant with the new reporting requirements.

Similarly, on April 5, 2012 both InComm and BlackHawk Network announced that they will no longer sell prepaid cards in New Jersey starting June 30th and June 1st, respectively. Similar to American Express Co., both companies indicated that this move is in response to Chapter 25 and their inability to ensure compliance with the law. BlackHawk specifically indicated that it is unable to comply with the law without significantly increasing costs, jeopardizing consumer privacy, or potentially slowing down the customer check out process.

On April 11th the Retail Gift Card Association released an analysis concluding that a \$64 - \$94 million drop in sales tax revenue will occur if the credit card companies continue to pull out of New Jersey.

The Department of Treasury and Governor Christie respond

On April 4th, the Department of Treasury released a note titled: "The Real Story on Gift Cards," and refuted the assertions made by "the large card companies" on how the new law will impact consumers. Of note, the Department stated that "[t]he large card companies would have you believe that the State is "grabbing" or "taxing" gift cards. That is a total fabrication and nothing more than part of a mis-information campaign designed to protect giant card issuers' anti-consumer business practices and unjustifiable profit-grabs from abandoned or forgotten gift cards."

On April 11th, while speaking at a press conference, New Jersey Governor Chris Christie was asked about the impact of the new law and, specifically, about the decision of American Express Co. to leave New Jersey. Gov. Christie did not waive from his support of the legislative changes and indicated that "if they want to move out, move out. It's their call."

The legislature proposes a repeal of the 2010 law

On March 15, 2012, the Assembly passed [A 1871](#), which would repeal the 2010 changes to the abandonment periods for State escheatment of travelers checks, and money orders. Additionally, the bill would remove SVCs issued after the date of the enactment from the ranks of escheatable property. On May 3, 2012, A 1871 was received by the Senate and referred to the Budget and Appropriations Committee. As of the date of this alert, the Senate has not voted on A 1871.

On May 17, 2012, [S 1962](#), which is nearly identical to A 1871, was introduced in the Senate and referred to the Budget and Appropriation Committee. As of the date of this alert, S 1962 remains in the committee.

On May 14, 2012, [S 1928](#) was introduced in the Senate and referred to the Budget and Appropriation Committee, which voted in favor of the bill on May 17, 2012. S1928 takes a much more limited approach to amending Chapter 25 and would exempt from escheatment SVCs issued on or after the date S 1928 is enacted, and exclude them from the data collection requirements. The bill also generally maintains the prohibition on SVC: (1) dormancy fees; (2) inactivity penalties; and (3) expiration dates. The bill does not, however, address the other amendments found in Chapter 25, such as the abandonment periods of travelers' checks or money orders. As of the date of this alert, the Senate has not voted on S 1928.

What will the future bring?

There are a lot of moving pieces to this issue and it isn't clear where it will all end up. How will the New Jersey Legislature reconcile the two bills detailed above? Will Governor Christie acknowledge the possible sales tax impact of the departing companies' SVC sales and concede on the issue and sign whatever bill may be approved by the legislature? Will more gift card companies determine that either they are incapable of ensuring compliance or that the costs are too significant and follow American Express's lead and leave the state?

This has become a very heated topic among retailers, many of which are waiting for further administrative guidance on how the proposed legislation in its current form

will need to be implemented. As with much that is occurring in New Jersey...stay tuned...

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