



Gift Card Update — New Florida Gift Card Law; Maine Treasurer Reminds Retailers to Report Unused Gift Card Balances; California Temporarily Halts Receipt of Unclaimed Property

Florida enacted Senate Bill 1638, creating a new gift card law that became effective on June 28, 2007. The law prohibits expiration dates, expiration periods, and any post-sale charges or fees (including but not limited to service charges, dormancy fees, account maintenance fees or cash-out fees) on gift certificates or credit memos that are sold or issued for consideration in the state.

The law lists the following exceptions:

- Gift certificates provided as a charitable contribution when no consideration is given to the issuer by the consumer may have an expiration date of not less than three years.
- Gift certificates provided as part of a consumer loyalty or promotional program, or provided as a benefit pursuant to an employee-incentive program, may have an expiration date not less than one year if no consideration is given to the issuer by the consumer and the expiration date is prominently disclosed in writing to the consumer at the time it is provided.
- A gift certificate that is provided as part of a larger package related to a convention, conference, vacation or sporting or fine arts event having a limited duration may have an expiration date as long as the majority of the value paid by the recipient is attributable to the convention, conference, vacation, or event.

The expiration date, expiration period and post-sale fee restrictions do not apply to gift certificates or credit memos sold or issued by a financial institution or by a money trans-

mitter if the gift certificate or credit memo is redeemable by multiple unaffiliated merchants.

Ambiguity in the Florida Law

It is unclear whether consumer loyalty and promotional gift cards that are issued without an exchange of consideration can have an expiration date of less than one year. The law defines gift certificate as "a certificate, gift card, stored value card, or similar instrument issued in exchange for monetary consideration when the certificate, card, or similar instrument is redeemable for merchandise, food, or services." This definition suggests that gift certificates provided without consideration would fall outside the definition of gift certificate and thus not be subject to the expiration date and post-sale fee restrictions. However, the law goes on to say that consumer loyalty and promotional gift certificates can have an expiration date but only if it is not less than one year and if it is prominently disclosed to the consumer in writing. (These gift certificates would also presumably be subject to the post-sale fee prohibition.) A telephone conversation with a legislative assistant in the bill sponsor's office did not shed any light on this issue.

Escheatment of Unused Gift Card Balances

The Florida law also addresses several escheatment issues. Unredeemed gift certificates (except those issued by financial institutions) are exempt from reporting requirements of the Florida Unclaimed Property Act. Unredeemed gift certificates sold or issued by financial institutions or

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money transmitters and redeemable by multiple unaffiliated merchants are to be reported as unclaimed property.

The law also attempts to clarify that other state unclaimed property offices do not have jurisdiction over unredeemed gift certificates sold in Florida by stating that "an unredeemed gift certificate or credit memo is subject only to any rights of a purchaser or owner thereof and is not subject to a claim made by any state acting on behalf of a purchaser or owner." It is unclear how this provision correlates with the traditional second priority rule whereby the state where a company is incorporated can require the company to report unclaimed property in that state if the company cannot report under the first priority rule because the company does not have owner information or because the first priority state considers the property exempt from reporting requirements.

Maine Treasurer Sends Letters to Major Retailers

On May 11, the Maine state Treasurer sent letters to about 50 major retailers who do business in Maine and reminded them that dormant balances on certain gift cards should be reported as unclaimed property and turned over to the state. In the letter the Treasurer stated that these balances "must be delivered to the Maine State Treasurer whenever the transaction out of which the property arose occurred in Maine and the holder did not obtain and maintain the address of the owner, see, 33 M.R.S.A. §1958(B-1), or the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, see, 33 M.R.S.A. §1955(6)." This change also appears to signal an attempt to undercut the second priority rule.

A telephone conversation with a representative in Maine's unclaimed property office confirmed that the Treasurer is not pursuing litigation against any of the retailers at this time and acknowledged that there is some uncertainty about whether Maine can enforce its amended law against gift card issuers that are domiciled in other states. However, the Maine Treasurer's letter and the change in

Florida law mentioned above signal that states are becoming more aggressive in enforcing unclaimed property laws to capture unused gift card balances and may also signal states' interest in using a third priority rule, whereby a company would be required to report in the state where the transaction took place. Whether this rule comports with earlier Supreme Court rulings regarding priority rules will probably have to be resolved by the courts.

California Moratorium on Delivering Unclaimed Property to the State

The California state Controller announced that a federal district court in California has enjoined it from accepting, taking title to, or selling unclaimed property while the California legislature amends the state's law to provide more protection to California residents whose unclaimed property is transferred to the state. Information about reporting requirements during this period is on the state controller web site. Under California law, gift certificates with expiration dates given in exchange for money or other value must be reported after 3 years of inactivity.

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