

GIFT CARDS & MERCHANDISE CREDITS
PROHIBITION OF EXPIRATION DATES AND SERVICE/DORMANCY FEES???

Over the last decade, electronic store value cards have enabled retailers to sell billions of dollars worth of gift cards and more efficiently manage merchandise credits and promotional store value cards. The use of expiration dates and dormancy/service fees on gift cards and certificates, and other store value cards have been common practice for many retailers. Some legal challenges have been made against the use of expiration dates and dormancy fees under the theories of “private escheat,” which are actions taken to avoid state unclaimed/abandoned property laws, unconscionability because the fees are considered excessive, or contract of adhesion.

Over the last several years, some state legislatures have proposed or enacted prohibitions and restrictions against the use of expiration dates and/or dormancy fees. Those states include Pennsylvania (H.B. 311), New Jersey (A-1079, S-2296 and S-2187), and New York (A.01643 and A.04391) all of which would prohibit or substantially restrict expiration dates and services fees. Pennsylvania HB216 (2003-2004) would have made the use of expiration dates a “summary offense.” Although, this criminal offense legislation has not moved out of committee, recently introduced in the Pennsylvania House was HB311 (2005-2006), which would prohibit the use of dormancy fees.

Any state action may be rendered moot because earlier this year U.S. Representative Rodney Frelinghuysen (R-New Jersey) introduced H.R. 85. This bill is named the Gift Card Protection Act and it would require the Federal Trade Commission to promulgate a rule providing that *it shall be an unfair or deceptive act or practice for gift certificates issued by any person to include or bear expiration dates, or for any person to deduct service charges or dormancy fees from such gift certificates.* “Gift certificate” is defined very broadly and includes any “electronic card with a stored dollar value, a merchandise credit, or any other medium that evidences that the issuer has received payment for the full face value for the future purchase or delivery of goods or services.”

All retailers that issue gift cards, electronic merchandise credits, and any other store value cards, should evaluate their current policies concerning expiration dates and service fees. Stevens & Lee can assist you in the following areas:

- Evaluate whether your cards are in compliance with current state unclaimed/abandoned property and consumer protection laws and suggest means to help defeat or mitigate any legal claims. We can help explore, offer, negotiate and execute voluntary disclosure agreements to resolve compliance responsibilities while minimizing look-back periods, and penalties and interest assessments.
- Evaluate whether you are properly accounting for card sales and redemptions, and suggest process improvements.
- Assist you to strategically position your store value card function within your organization to maximize the retention of unclaimed balances.
- Represent you in unclaimed property audits.

- In conjunction with our Government Relations Practice in Harrisburg, PA and Washington, DC, assist in educating policymakers on the impact of state and federal unclaimed property legislation.

For more information about Stevens & Lee's State and Local Tax Practice, please visit our website at www.stevenslee.com/practice/salt.htm. Tom Bowen and Matt Wilk together have over 25 years of state and local tax experience. Contact them directly at:

Tom Bowen
717-561-5264
tab@stevenslee.com

Matt Wilk
610-478-2272
mw@stevenslee.com

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