



## Unclaimed Property ADVISORY ■

**DECEMBER 14, 2016**

### New York Puts Coal in Gift Card Issuers' Stockings with New Rules

On September 26, 2016, New York Governor Andrew Cuomo signed legislation amending Section 396-i of the New York General Business Law to provide additional restrictions and limitations applicable to the issuance of gift certificates and gift cards. The Act ([A067610E/S04771E](#)), which becomes effective December 25, 2016, and applies to all cards issued after this date, increases the minimum time before cards can be charged a service fee, prohibits early expiration dates and requires additional terms and conditions for the replacement of cards. As described by the Act's author, the Act is intended to protect and ensure the consumer's right to the services promised on the card within a reasonable amount of time.

#### **Current Law**

Under existing law, retailers that issue gift cards in New York are required to "clearly and conspicuously" state in the card's terms and conditions the card's expiration date and whether any service fees will be assessed against the balance of the card. Fees are currently not allowed to be assessed before the thirteenth month of dormancy (i.e., non-use of the card). Current New York law does not specify how much of a fee can be assessed and does not provide any expiration date restrictions—in other words, card issuers were free to expire a card at any time under New York law, although the federal CARD Act generally prohibits gift cards sold for personal or family use from expiring in less than five years.

#### **New Law**

Under the new law, the legislature has added additional restrictions and limitations for gift card issuers:

- Issuers are prohibited from charging a service fee before the twenty-fifth month of dormancy. Moreover, any service fees that are applied after this time must be waived *and put back on the card if the card is used within three years of the issue date.*
- No card may have an expiration date of earlier than five years from the date the card was issued or the date the funds were last loaded to the card. Issuers are required to disclose the terms of the expiration clearly and conspicuously on the card. However, this restriction does not apply to cards "sold below face value or at a volume discount to employees, to nonprofit and charitable organizations, or educational institutions for fundraising purposes" or cards distributed to a consumer or employee as part of an awards, rewards, loyalty or promotional program without any consideration being given in exchange for the card by the consumer or employee.

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- Issuers are required to disclose clearly and conspicuously the procedure for replacing cards that are lost, stolen or destroyed, if any such procedure exists.

## **Moving into the New Year**

The new law takes effect on December 25, 2016, and applies to cards issued on or after that date. A card issuer that fails to comply with the new law may be subject to an injunction preventing the issuer from selling gift cards as well as a civil penalty of \$1,000 per violation. The new law also opens the door for potential class action lawsuits under the New York General Business Law for deceptive acts and practices. Moving into the new year, card issuers should review their existing gift card terms and conditions and practices to ensure that these new requirements are reflected. If a card issuer is not able to update the backs of its cards by December 25, 2016, or immediately after, a retailer should consider using a card carrier, envelope or receipt providing the disclosures required under the new law.

However, it is likely that most issuers of closed-loop gift cards are complying with most (if not all) of these requirements, at least for card issuers that sell cards in states other than New York, given that many other states already have relevant restrictions in place limiting or prohibiting the use of expiration dates or dormancy fees. The federal CARD Act already prohibits gift cards sold to consumers for personal or family use from expiring in less than five years (with the exception of promotional/loyalty cards). Moreover, a significant number of states prohibit *all* expiration dates and service fees on closed-loop cards. New York's new requirements should not impose burdens on national closed-loop gift card issuers that are stricter than those that are currently in place, with the exception of the requirement to disclose clearly and conspicuously the process for replacing lost, stolen or damaged cards, if such replacement is allowed. However, issuers of open-loop gift cards (which are also covered by the new law's requirements) may be more likely to be affected by the New York statute's increased restrictions on imposition of dormancy fees or service charges and by the obligation to disclose the process by which a cardholder may obtain a replacement for a lost, stolen or damaged card.

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