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Are You Ready? New Recordkeeping Requirements if You Offer Gift Cards in New Jersey

If you are an issuer of gift cards or other stored value cards in New Jersey, take note: new legislation set to take effect in that state will soon impose significant additional requirements affecting your sales and recordkeeping procedures. While implementation has been partially stayed by a preliminary injunction, other changes are currently scheduled to take effect on **February 1st, 2011**.

On July 1st, 2010, New Jersey law P.L. 2010, c.25 amended the state's Uniform Unclaimed Property Act to include "stored value cards," including, but not limited to, gift cards. The changes effected by this legislation would, *inter alia*, provide for custodial escheat of stored value cards issued or sold in New Jersey where there has been no activity on the card over a two-year period. Moreover, in order to allow the state to identify those cards that are within its jurisdiction and thus ripe for eventual seizure, the legislation introduced recordkeeping requirements to be borne by issuers of stored value cards. These requirements would affect issuers that have sold or issued stored value cards with an aggregate face value of \$250,000 or more over the preceding one-year period. According to the text of the legislation and subsequent interpretive guidance issued by the Office of the State Treasurer, the requirements applicable to issuers are as follows:

- if, in the normal course of its business, the issuer currently obtains the name and address of the purchaser or owner of any stored value card issued or sold in New Jersey, then the issuer shall continue to maintain that information;
- if the issuer of a stored value card requires the registration of the card by the purchaser or owner before initial use, then the name and address of the purchaser or owner must be obtained at that time and maintained by the issuer; and
- except as provided above, all other issuers are immediately required, at a minimum, to obtain and maintain the purchaser's zip code if a system is currently in place to do so. Issuers currently without such a system are required to implement a means to record and maintain purchaser zip codes by February 1st, 2011.

The issuer is required to report the information collected to the State (which may then use it in the escheat process). When such information is not available, the new law would effectively presume that the card is within New Jersey jurisdiction if the card was sold or issued in New Jersey by substituting the address of the point-of-purchase for the purchaser's address.

Perhaps not surprisingly, given the anticipated burden of compliance, the enactment of this legislation led to litigation; enforcement of certain provisions has been suspended pursuant to a preliminary injunction issued by the United States District Court, District of New Jersey. The enjoined provisions include the following:

- until further notice, issuers are not required to report unclaimed stored value cards issued prior to July 1st, 2010 for which the issuer is obligated to redeem the card solely for merchandise or services. However, unclaimed stored value cards redeemable for cash and deemed abandoned under the new law must be reported; and
- the provision described above, substituting the address of the point-of-purchase for the purchaser's own address where the latter is unavailable, is also temporarily enjoined.

Other recordkeeping requirements remain in place and have not been enjoined.

To assist companies issuing stored value cards as to how to comply with those provisions of the new law that have not been enjoined, the New Jersey Office of the State Treasurer has issued guidance in the form of several advisories. Acknowledging that enforcement of certain provisions of the law has been enjoined, these advisories have also delayed implementation of the law's recordkeeping provisions – including the *minimum* requirement that *any* issuer of stored value cards have in place a system or process capable of recording and maintaining the purchaser's zip code. Last week, the Treasurer issued Announcement FY 2011-07, which included the following statement:

In the interest of sound administration of Title 46 of the Revised Statutes of the State of New Jersey, and pursuant to the discretion granted to the Treasurer in L. 2010, c. 25, any issuer of stored value cards who does not have a system or process capable of recording and maintaining the purchaser's zip code will have until February 1, 2011 to install and implement a system or process that meets this requirement.

Next Steps:

Affected issuers of stored value cards in New Jersey should take immediate stock of their current policies and available systems for the collection and retention of purchaser information, in order to evaluate their current and upcoming recordkeeping responsibilities and the logistical steps necessary to achieve compliance with the new law by February 1st. Remember:

- if you currently collect customer address information, whether at the time of sale or at the time the card is registered (if a registration process is required), you must continue to do so;
- if you do not currently collect such information but have a system in place capable of collecting customer zip codes at the time of sale, you must begin to do so now; or
- if you do not collect any customer address information at this time and are not capable of doing so through existing systems, you must devise and implement a method to collect customer zip codes under the assumption that such recordkeeping will be mandatory in New Jersey as of February 1st.

If you have questions or concerns regarding the process of implementing these new requirements or your general obligations under this evolving and challenging new law, please contact [Melissa Landau Steinman](mailto:Melissa.Landau@Venable.com) at 202.344.4972 or msteinman@Venable.com.

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