

Update on Gift Card Escheatment Law in New Jersey

By [Peter J. Mucklestone](#) and [Evan M. Shapiro](#) on February 1st, 2012

Selling gift cards in New Jersey only seems to get more complicated. On January 5, 2012, the United States Court of Appeals for the Third Circuit issued its opinion in [New Jersey Retail Merchants Association v. Sidamon-Eirstoff](#). The court affirmed the District Court's ruling, including its grant of a partial preliminary injunction to prevent the state from enforcing newly enacted changes to New Jersey's unclaimed property statute, but also affirmed the lower court's denials.

In a bill enacted in 2010 (known as "Chapter 25"), New Jersey expanded the coverage of its unclaimed property statute to add "stored value cards," which includes gift cards redeemable for merchandise or services as well as cards redeemable solely for cash. Among other provisions, Chapter 25: (1) creates a two-year trigger for abandonment after which the issuer must transfer any remaining value of the card to the state; (2) provides for retroactive application of its provisions; (3) creates a presumption that the place of purchase is New Jersey for unclaimed property purposes if the issuer does not maintain the purchaser's address; and (4) requires issuers to obtain the name and address of purchasers, and at a minimum, a record of the purchaser's zip code.

- **Two-Year Abandonment Period.** The court upheld Chapter 25's two-year dormancy period, finding that this provision is not preempted by the 2009 federal Credit CARD Act and that it rationally relates to the state's interest in protecting consumers.
- **Retroactive Application Enforceable for Cash Cards, but not Goods and Services.** Although it upheld retroactive application of the law to cards redeemable for cash, the court held that Chapter 25 may not be applied retroactively to cards redeemable for goods or services because it imposes unexpected obligations on issuers and impairs issuers' contractual relationships with customers.
- **Place of Purchase Presumption.** The court found Chapter 25's place of purchase presumption in direct conflict with the priority rules for escheatment outlined by the United States Supreme Court in *Texas v. New Jersey*. It declined to depart from the *Texas* priority rules, noting that the place of purchase does not create a sufficient connection for escheat, and that the potential for a "windfall" for issuers in states whose unclaimed property laws do not cover unused gift card balances does not merit parting with the *Texas* priority scheme.
- **Data Collection.** The court held that the data collection provision is severable from the place of purchase presumption, and upheld New Jersey's authority to require issuers to collect purchaser data. Unlike the place of purchase presumption, the court found that data collection furthers the purposes of *Texas* by making it more likely that a purchaser would be reunited with abandoned cards.

What does this mean for gift card issuers? Stay tuned. The Third Circuit's decision is not yet final – it granted the parties until February 9, 2012, to file a petition for rehearing. In the meantime, issuers



should prepare for data collection and prospective enforcement of the two-year dormancy period under Chapter 25.

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