



GIFT CERTIFICATE TRENDS AND ISSUES



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Background



- **Gift certificates** have been an issue in state legislatures for more than 15 years.
- Retailers persuaded the National Conference of Commissioners on Uniform State Laws to include a provision in the **1995 Uniform Unclaimed Property Act** allowing businesses to report less than 100% of the face value of gift certificates in order to recognize a profit margin.
- Throughout the 1990's, spurred by lobbyists representing retailers and other holder groups, numerous state legislatures **exempted gift certificates** from state unclaimed property laws.
- Gift certificates are currently fully or partially exempted from the unclaimed property laws of more than **20 states**.
- Although state legislatures are still considering gift certificate bills, and although some states are still considering exempting gift certificates from unclaimed property laws, more recently **the trends have begun to shift and broaden**.



Legislative Trends



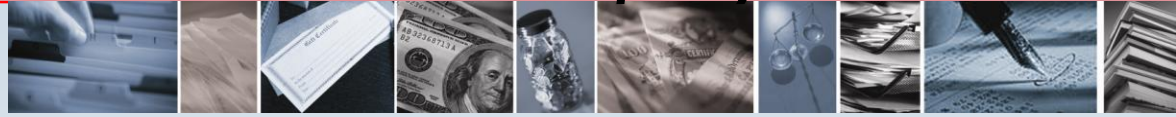
In 2004 and again this legislative season, gift certificate legislation has followed 3 main approaches:

- *Exempt Cards from Unclaimed Property Statutes*
- *Prohibit Expiration Dates and Service Charges*
- *Require Disclosure of Conditions*

An additional requirement for gift certificates is also catching on:

- *Require the holder to record name and address information*

Exempt Gift Certificates from Unclaimed Property Statutes



Bills were introduced this legislative session in a number of states to exempt gift certificates, at least under certain circumstances. Examples include:

CT, RI: pure exemption

NE: exempt if there is expiration date or fee unless it is waived

IN: exempt if issued by financial institution

ME: exempt if no expiration date or service charge

PA: exempt if issued by restaurant

Prohibit Expiration Dates and Service Charges



Many of these bills have been introduced purely as consumer protection measures without any specific language relating to unclaimed property reporting, but they complement the consumer protection aspect of the states' unclaimed property programs.

Examples of introduced bills that prohibit expiration dates and service charges include:

ME, OR, RI, TX: pure prohibition

MT: may also exempt cards from unclaimed property act

CO, HI, MD, ND, NY, OH, TN, VT: card must be good for certain number of years

*The U.S. Congress also has legislation pending in this area. **H 85** would direct the FTC to issue rules to prohibit expiration dates and fees on gift certificates.*

Require Disclosure of Conditions



Some introduced bills would permit conditions to be imposed on gift certificates, but only if disclosed to the consumer up front. Examples of these bills include:

VA: card to contain statement of expiration date and fees and/or telephone number or internet address to obtain information

AZ, MD: must provide statement of expiration date and fees in manner appropriate to method of sale

TX: expiration dates and service charges must be disclosed at time of purchase

Require Holder to Record Name and Address Information



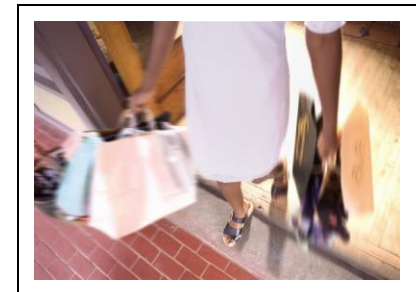
Gift certificates have generally been considered a type of owner unknown property reportable to the holder's state of incorporation. This category of property has also been underreported historically in part because the lack of owner information has made enforcement difficult. Some states are taking steps to change all that.

- **ND** and **PA** introduced bills requiring issuers to keep records of gift certificate sales.
- The **PA** bill follows the lead of existing CT law and provides that if there is no address the address is presumed to be that of the Bureau of Unclaimed Property.
- These name and address requirements would allow a state to collect gift certificates as owner known property under the primary rule of *Texas v New Jersey*.

Litigation Involving Gift Cards



- Gift cards have been the subject of recent court action as several states have sued Simon Property Group over its gift card fees and expiration dates.
- Simon operates malls and shopping centers in 36 states. It offers gift cards under a Visa label. These gift cards may be used anywhere Visa is accepted. The Simon gift cards are issued by Bank of America.
- Simon charges an initial fee for its cards as well as a dormancy fee of \$2.50 per month if the balance is not used within 6 months. The cards expire after 1 year. Simon charges a fee for balance inquiries, replacement of lost or stolen cards, and reissue of expired cards.



Litigation Involving Gift Cards (con't)



- Massachusetts, Connecticut, and New Hampshire all sued Simon claiming that its practices were in violation of state gift certificate laws. Simon claimed that state laws were preempted by federal law because the cards were issued by a national bank.
- In December 2004, a former governor of Georgia sued Simon on behalf of 2 Georgia consumers alleging similar violations of law. The suit seeks class action status.
- In March 2005, New York settled a dispute with Simon. Under the settlement, Simon agreed to waive its monthly dormancy fee unless the card has been not been used for 12 consecutive months; notify customers of replacement and reissue fees; extend the expiration date to 18 months; and provide free customer service calls. Simon will also list all charges on the card.



Conclusion



Prediction: Gift certificates/gift cards will remain a subject of interest to unclaimed property professionals, legislators, holders, and consumer advocates for the foreseeable future. This property type continues to grow in popularity and convenience, and the interested parties will continue to struggle with the recurring issues of fees, expiration dates, and unused balances. Look for an update about this issue again next year.