

LEGISLATIVE RESEARCH REPORT

MARCH 14, 2006



REPORT NUMBER 06.154

GIFT CERTIFICATE LEGISLATION ELIMINATING EXPIRATION DATES IN OTHER STATES

PREPARED FOR REPRESENTATIVE BERTA GARDNER

BY BECKY TAYLOR, LEGISLATIVE ANALYST

You asked whether other states have considered legislation limiting expiration dates on gift certificates. Specifically, you were interested in the laws from California, Louisiana, and Washington.

A number of states have passed legislation in recent years limiting expiration dates and the escheatment, or reversion to the state, of unclaimed gift certificates.¹ As you know, under current Alaska law, the value of gift certificates that are not used for more than three years are presumed to be abandoned property and typically must be turned over to the state (AS 34.45.240). According to a 2004 article from *SmartMoney.com*, at that time about thirty-nine states had some type of escheatment law requiring retailers to turn over the value of a gift certificate to the state if it was not redeemed within a certain timeframe, typically three to five years. Once the money is turned over to the state, customers can then file a claim to have the cash value returned.² This process has been criticized by both consumer and business groups for being cumbersome and unfair, and a number of states have passed laws that eliminate expiration dates and allow businesses to retain revenues from unused gift cards.

One reason businesses, particularly restaurants, are opposed to having unclaimed gift cards escheat to the state is that having consumers redeem their cards produces sales and potential repeat customers. One vice president of sales and marketing points out that when a gift card is redeemed, the average order is 31% higher than a business's typical order. According to the *Smartmoney.com* article, some merchants are so eager to have customers use their gift cards

¹ "State Gift Card Consumer Protection Laws," Consumers Union, July 1, 2005, available at www.consumersunion.org/pdf/gift-factsheet.pdf. We include this document as Attachment A.

² "Looking a Gift Card in the Mouth," *SmartMoney.com*, available at www.smartmoney.com/consumer/index.cfm?story=20040108. We include this article as Attachment B.

that they will call and remind customers that they still have value remaining on their cards.³ The National Restaurant Association supports the elimination of expiration dates and escheatment of unclaimed gift cards for the following reasons:

- ♦ Restaurants rely on repeat customers and customer satisfaction. Therefore, most restaurant owners would not turn away a customer with an expired gift card or certificate; however, if the money has already been turned over to the state the business may not be reimbursed.
- ♦ States' laws vary on abandoned property, which can create challenges when doing business in multiple parts of the country.
- ♦ Although abandoned property laws were enacted to protect customers and businesses from losing their property, some states now rely on unclaimed property as a source of revenue.
- ♦ Many restaurants donate gift certificates to charitable causes, many of which are unused, but in some jurisdictions may still escheat to the state.⁴

Franchise businesses with multi-state or national gift card programs face particular challenges when trying to comply with the abandoned property laws in multiple states. One attorney pointed out that for companies trying to operate across state lines negotiating these different laws can present a "legal minefield."⁵

In addition to presenting challenges to businesses, the application of abandoned property laws to gift cards can also create challenges for state governments. Robert Casey, the State Treasurer for Pennsylvania, urged legislators to eliminate expiration dates on gift cards. He stated that it is difficult for the Treasury to return money to gift card owners because businesses often do not collect the names and addresses of gift card purchasers or recipients. When a merchant turns over unredeemed gift card funds, the Treasury may have no way of knowing who the owner is and cannot advertise the individual's name. In 2005, the Pennsylvania Treasury collected \$650,000 in unused gift card funds, but was only able to return about \$25,800 to card owners.⁶ The Washington State Department of Revenue also expressed that it was difficult to return to consumers funds from unredeemed gift cards because of the small denominations and absence of clear records of ownership.⁷

³ "Looking a Gift Card in the Mouth."

⁴ "Background: Gift Cards/Certificates," and "Talking Points: Gift Cards/Certificates," National Restaurant Association, available at <http://www.restaurant.org/government/state/giftcards/index.cfm>. We include these documents as Attachment C.

⁵ Yoon, Tacie H., "Electronic Gift Card Laws—The Risks Along with the Rewards," Wiley Rein & Fielding LLP, February 21, 2006, available at http://www.wrf.com/publication.cfm?publication_id=12513. We include this article as Attachment D.

⁶ "Casey Calls for Elimination of Gift Card Expiration Dates, Inactivity Fees," *Treasury News*, The Pennsylvania Treasury Department, available at <http://www.patreasury.org/press/028-2006.htm>

⁷ "Consumers Reap Benefits from New Gift Card Law Signed by Governor," *Washington State Department of Revenue News*, March 26, 2004, available at http://dor.wa.gov/Docs/Pubs/News/2004/NR_Gift_Cards_Law.pdf.

Some critics of laws eliminating escheatment of unused gift cards to the state argue that this policy allows businesses to keep money that should be used for the good of all people. According to Dr. Dan Horne, marketing professor and gift card expert, businesses should be allowed to keep a percentage of the funds from unredeemed gift cards to cover the costs of these programs, but the merchant should not be entitled to the entire balance.⁸ In addition to the issue of expired cards, Dr. Horne points out that many consumers are frustrated by dormancy fees, or inactivity fees, that reduce the value of a gift card over time. In his opinion, legislation that eliminates expiration dates and dormancy fees would be a good compromise between consumer and retail interests.⁹ According to an article in *The Seattle Times*, the National Retail Federation asserts that fees are a valid way for businesses to cover the costs of operating a gift card program and should not be banned.¹⁰

LEGISLATION IN OTHER STATES

The National Conference of State Legislatures has compiled a list of expiration date, fee, and escheat provisions for all 50 states, and a list of legislation that has been considered by state legislatures from 2000-2006.¹¹ In addition, we also include the following related documents for your convenience:

Arizona (Attachment F)

Chapter 315, State of Arizona 47th Legislature, First Regular Session 2005.

"Final Amended Fact Sheet for S.B. 1299," Senate Research, Arizona State Senate forty-seventh Legislature, First Regular Session, June 7, 2005.

California (Attachment G)

Deering's California Code § 1749.5, 1749.51, and 1520.5.

Louisiana (Attachment H)

Act No. 69, Louisiana Legislature Regular Session, 2004.

Washington (Attachment I)

Chapter 168, Laws of 2004, 58th Washington State Legislature, 2004 Regular Session.

"House Bill Report EHB 3036," Washington State Legislature.

⁸ Lewis, Peter, "New State Law Will Ban Gift-Card Expiration," *The Seattle Times*, June 28, 2004, available at http://seattletimes.nwsource.com/html/localnews/2001966397_gift27m.html.

⁹ Personal communication from Dan Horne, Assistant Professor, Department of Marketing, Providence College. Dr. Horne can be reached at (401) 865-2722.

¹⁰ Lewis, Peter.

¹¹ "Gift Cards and Gift Certificates Statutes and Recent Legislation," National Conference of State Legislatures, February 17, 2006, available at <http://www.ncsl.org/programs/banking/GiftCardsandCerts.htm>. We include this document as Attachment E.

"Gift Certificates and Gift Cards—Change for Businesses/Holders," Washington State Department of Revenue Special Notice, June 10, 2004.

Legal information (Attachment J)

The following three documents are available from the Incentive Gift Card Council at <http://www.usegiftcertificates.org/displaycommon.cfm?an=5>.

George B. Delta, Esq., "Legal Issues in Incentive Marketing: 2005 Update," July 25, 2005.

George B. Delta, Esq., "Gift Certificates and Laws of Escheat," September 15, 2003.

"State Escheat Laws as Applied to Gift Certificates," September 15, 2003.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.