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Unclaimed property rules for gift cards, gift certificates in Colorado, Washington State

State law restrictions and escheatment requirements for gift cards and certificates vary and can include restricting or prohibiting the use of expiration dates and inactivity fees.

Some state unclaimed property laws exempt gift cards and gift certificates from escheatment altogether. Other state laws require escheatment only if the gift cards and certificates include expiration dates and/or the issuer charges an inactivity fee. In addition, state laws differ regarding the definition of gift cards and certificates and the distinction between gift cards and stored-value cards.

To add to the confusion, Colorado and Washington State earlier in 2019 enacted gift card and gift certificate-related provisions—legislative changes that pose practical questions about the eligibility of gift cards and gift certificates for escheatment and how to apply the new restrictions that will be effective one year from today, on July 1, 2020.

Colorado—Senate Bill 88 includes gift card and stored-value card provisions

Current law in Colorado provides an exemption for gift “certificates” issued on paper; gift certificates issued by a business for food, products, goods, or services; and gift cards when the holder or issuer is a business association with annual gross receipts from the issuance of all gift cards totaling \$200,000 or less (defined as “small business”).

The new law (Senate Bill 88) maintains the exemption for paper gift certificates and gift cards issued by a “small business.” However, there is uncertainty with regard to the definitions of “gift card” and “stored-value cards.”

The definition of gift card includes stored-value cards, and the definition of stored-value card includes gift cards. Further, the new law prescribes different dormancy periods and treatment for stored-value cards versus gift cards. Gift cards continue to have a similar dormancy period as the current law—that is, five years after the later date of purchase or most recent use. On the other hand, stored-value cards are assigned a dormancy period that is three years after the latest of (1) December 31 of the year of

issuance; (2) the most recent indication of ownership interest; or (3) review of balance by or on behalf of the property owner.

KPMG observation

Considering that a stored-value card is defined as a gift card, and that a gift card is defined as a stored-value card, businesses may be perplexed when considering the applicable dormancy period and trigger date for outstanding gift cards or stored-value cards to determine escheatability.

Washington State—House Bill 1727 gift card restrictions, implications for escheatment

Washington State's unclaimed property law provides that gift cards and gift certificates are exempt if they meet the requirements of a particular section of the consumer protection law dealing with dormancy fees and expiration dates. This section of the consumer protection law was amended by the enactment of House Bill 1727 that affects the scope of the unclaimed property gift card exemption.

The current law of Washington State prohibits expiration dates and inactivity fees on gift cards and gift certificates resulting from a retail sale. The prohibition of expiration dates does not apply if the gift certificate is issued pursuant to a rewards or loyalty program, or a gift card or gift certificate is donated to a charitable organization. In the event that the gift card or gift certificate is in fact donated, it cannot have an expiration date less than one year from the date the gift card or certificate is issued.

Also, the existing law permits gift cards to be reduced by an inactivity fee under certain circumstances such as: (1) the card must contain a printed statement that includes the fee amount, frequency and that the fee is triggered upon inactivity; (2) the remaining value on the cards must be less than \$5; (3) the fee cannot exceed \$1 per month; (4) there has been no activity for 24 consecutive months; and (5) the bearer is allowed to reload the card.

Under House Bill 1727, inactivity fees are not allowed on any gift cards or gift certificates, and expiration dates are not permitted on gift cards or gift certificates with a few exceptions. Similar to existing law, the new law only permits expiration dates on gift cards or gift certificates if issued under an awards or loyalty program or donated to a charitable organization without any money or other value given in exchange.

KPMG observation

Gift cards or gift certificates meeting the existing law's requirements for charging an inactivity fee that are currently exempt from the unclaimed property law may no longer be exempt when the new law becomes effective on July 1, 2020. The new law is unclear as to whether it applies only with regard to gift cards and gift certificates issued on or after July 1, 2020, or whether it applies to all gift cards and gift certificates regardless of when they were issued. There may be some uncertainty when a retailer that has issued gift cards with valid inactivity fees prior to July 1, 2020, tries to determine if these gift cards and gift certificates remain exempt from the unclaimed property law or need to be reported as unclaimed property.

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