

Summary

The Department of the Treasury, Unclaimed Property Administration (UPA), proposes an amendment and a new rule to implement certain provisions of the Uniform Unclaimed Property Act (Act), N.J.S.A. 46:30B-1 et seq., governing unclaimed property, including the provisions of P.L. 2010, c. 25, as further amended by P.L. 2012, c. 14 and P.L. 2015, c. 8, implementing new language related to stored value cards.

N.J.A.C. 17:18-3.1 is proposed for amendment to include definitions for the following new terms: “charitable program,” “consideration,” “customer loyalty program,” “face value,” “holder,” “issuer of a stored value card,” “last known address,” “promotional program,” “purchaser,” “seller,” and “stored value card.” These new definitions are necessary as a result of the adoption of P.L. 2010, c. 25. The definition of “Uniform Unclaimed Property Act” is also proposed for amendment to make clear what is meant by references to the “Act.”

N.J.A.C. 17:18-3.3 is a proposed new rule. It is intended to implement the part of P.L. 2010, c. 25, as amended by P.L. 2012, c. 14 and further amended by P.L. 2015, c. 8, pertaining to stored value cards. Proposed new subsection (a) explains the exemption for reporting stored value cards sold for merchandise or services prior to the effective date of the Act (July 1, 2010), as well as exemptions for reporting stored value cards issued under a promotional, customer loyalty, or charitable program for which there is no consideration tendered or where stored value cards issued in the preceding year beginning July 1 through June 30, are sold with an aggregate total value of \$250,000 or less.

Proposed new subsection (b) further differentiates the requirements for reporting stored value cards issued by retailers on or after July 1, 2010, that may be redeemed for merchandise or services only at their stores or on their websites from those stored value cards issued by banks and other financial institutions that may be redeemed at multiple merchants. Retailers that issue stored value cards that may be redeemed for merchandise or services only will be required to escheat 60 percent of the value of the unused balance if there is no consumer-generated activity for five years or longer. Proposed new subsection (c) provides that banks and other financial service companies that issue stored value cards that may be redeemed at multiple merchants (general purpose reloadable cards) will be required to escheat the full value of the unused balance if there is no consumer-generated activity for five years or longer. In addition, these banks and financial institutions may charge fees other than for activation or replacement.

Proposed new subsection (d) further requires that funds associated with stored value cards issued on or after December 1, 2012, shall be valid until redemption and shall not expire. In addition, under proposed new subsection (e), beginning September 1, 2012, if a stored value card is issued as a gift card or gift certificate that as a result of its usage has a residual value of \$5.00 or less, at the owner’s request the merchant or other entity redeeming the card must refund the balance in cash to the owner.

Consistent with the Act, proposed new subsections (b), (h), and (i) also reiterate that there shall not be any dormancy charges or fees, abandoned property charges or fees, unclaimed property charges or fees, balance inquiry fees, escheat charges or fees, inactivity charges or fees, or any similar charges, fees, or penalties for inactivity imposed with respect to the card. Proposed new subsection (f) also makes clear that abandoned stored value cards may also be exempt from reporting requirements as the State Treasurer may determine pursuant to N.J.S.A. 46:30B-42.1.f.

Subject to the exemptions noted above, proposed new subsection (a) restates the statutory requirement that the issuer or seller of a stored value card must report and remit the unused balance of the card, if and when deemed abandoned, to the State of New Jersey if the last known address on the records of the seller is located in New Jersey. Also, proposed new subsection (g) states that since a related bank account is opened for stored value cards issued for the purposes of wage payments, the appropriate dormancy period would be three years from the last transaction date as these stored value card funds are treated as bank accounts pursuant to N.J.S.A. 46:30B-18. Proposed new subsection (h) states that stored value cards issued in lieu of a refund for merchandise returned without a receipt are subject to reporting under the requirements

TREASURY—GENERAL

(a)

UNCLAIMED PROPERTY ADMINISTRATION

Unclaimed Personal Property

Proposed Amendment: N.J.A.C. 17:18-3.1

Proposed New Rule: N.J.A.C. 17:18-3.3

Authorized By: Steven R. Harris, Administrator, Unclaimed Property Administration.

Authority: N.J.S.A. 46:30B-107.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-268.

Submit written comments by February 2, 2018, to:

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The agency proposal follows:

of N.J.S.A. 46:30B-42.1. Proposed new subsection (i) specifies that the conversion of stored value card funds to bank accounts does not represent owner activity, so that the unused balances are subject to reporting five years from the last activity under the requirements of N.J.S.A. 46:30B-42.1.

Proposed new subsection (j) specifies that consideration tendered by the recipient/owner for a stored value card obtained under a promotional, customer loyalty, or charitable program, may consist of, but not be limited to, a rebate for a purchase made, a credit to be given by the issuer or holder in return for taking certain action, or an incentive for taking some other action by the recipient/owner, such as providing a service, making a purchase, or taking some other action beneficial to the issuer or holder, thus, bringing the issuance of the stored value card outside the exemptions recognized in the rule.

As the Administrator of the UPA has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and new rule clarify and explain to holders of stored value cards the methodology to be followed by the holders in their compliance efforts under the Act and to develop a uniform understanding between the Unclaimed Property Administration and holders of unclaimed property with regard to the various operational steps to be taken by the holders in reporting and delivery of property.

The proposed amendments and new rule clarify for holders the occurrence of events needed to determine whether property should be deemed abandoned under the statute. The rules should assist holders in their compliance efforts under the statutes and should continue to develop a uniform understanding between the Unclaimed Property Administration and holders in reporting and delivery of property. The rules afford a comprehensive and consistent treatment of property to protect the holder, the rightful owner, and the State. As a result, potential litigation concerning an interpretation of the Unclaimed Property Act and its application to unclaimed property is minimized.

Economic Impact

The proposed new rule and amendments are expected to have no adverse economic impact in and of themselves because they primarily state and implement the basic requirements of the Act.

Approximately 75 percent of the money generated by the administration of the abandoned property program is ultimately deposited into the State's General Fund. The remaining funds are retained for payment of claims and to administer the program. There is no time limit on when claims may be made. Sufficient funds will always be made available for the payment of claims since the State is obligated in perpetuity to pay all valid claims.

It is not expected that the Unclaimed Property Administration will require any staff increase or additional resources to carry out its responsibilities under the rules.

Jobs Impact

The Unclaimed Property Administrator does not anticipate that any jobs will be generated or lost as a result of the proposed new rule and amendments.

Federal Standards Statement

The proposed new rule and amendments do not contain requirements that exceed any requirements imposed by Federal law, rather they represent policies of the State of New Jersey regarding implementation of N.J.S.A. 46:30B-1 et seq., that are independent of Federal requirements or standards. Accordingly, no Federal standards analysis is required.

Agriculture Industry Impact

The proposed new rule and amendments will have no impact on the agriculture industry beyond their general impact on the population as a whole.

Regulatory Flexibility Analysis

The proposed new rule and amendments apply to all holders of unclaimed property subject to the Act, which may include small

businesses as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

As discussed in the Summary above, the proposed new rule and amendments contain reporting, recordkeeping, and compliance requirements. All issuers of stored value cards are required to obtain and maintain the names and addresses of the recipients of the cards. The Act provides for general reporting and compliance requirements pertaining to unclaimed property. These requirements are not contingent on business size and must apply uniformly.

Some financial institutions may wish to retain the services of professionals such as appraisers to ascertain if the rules pertain to their businesses. However, this should have no impact on the operations of any financial institutions assuming that the professionals charge at normal rates. The Unclaimed Property Administration anticipates that the proposed new rule and amendments will not increase capital costs of small businesses or their need for professional services.

Housing Affordability Impact Analysis

The proposed new rule and amendments will not in and of themselves result in a change in the affordability of housing or the average costs associated with housing in the State since the proposed amendments and new rule pertain to stored value cards and only involve procedures for holding, reporting, and paying out claims pertaining to unclaimed property. The proposed new rule and amendments will only implement what is necessitated by the Act.

Smart Growth Development Impact Analysis

The proposed new rule and amendments will not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed new rule and amendments have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey, but only involve procedures for holding, reporting, and paying out claims pertaining to unclaimed property.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 3. DORMANCY FEES AND STORED VALUE CARDS

17:18-3.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Charitable program” means a program that provides money, goods, or services to accomplish a social benefit or to promote the welfare of a community in whole or as individuals, usually without anticipating or receiving consideration or anything of value in return. It employs all its resources to those charitable activities under its direct control, does not distribute any part of income generated for the benefit of any trustee, trustor, member, or other private individual and does not contribute to or associate with political organizations. A charitable program may be one that is run by an organization with a 26 U.S.C. § 501(c)3 status.

“Consideration” means a right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by another. It can also be the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid. A discount offered for a promotional stored value card would be considered consideration. For example, a card with a \$10.00 face value given to a consumer as a result of the consumer purchasing a minimum amount of goods or services, would be deemed to have been given for consideration, and any unused balances would be reportable to New Jersey as five-year property.

“Customer loyalty program” means a structured marketing effort designed to reward, and, therefore, encourage loyal buying behavior that is potentially beneficial to the program initiator, by encouraging the continued patronage of customers. It is designed to lower the turnover among users of a product or service by providing

customers with incentives and other benefits for remaining a customer. It may involve the gathering of data on customer behavior in order to decipher trends, reward loyalty, and influence shopping behavior, including, but not limited to, providing rewards cards and pay-for-membership cards.

...

“Face value” means the agreed-upon value of the stored value card to the purchaser, which may not necessarily equal the amount paid by the purchaser for the card.

“Holder” means an entity, wherever organized or domiciled, that is the original obligor indebted to another on an obligation and that has the ultimate responsibility of reporting abandoned stored value card information and remitting the unredeemed balance to the Administrator of unclaimed property.

“Issuer of a stored value card” is any person, retailer, merchant, vendor, provider, institution, or business association that:

1. Sells the stored value card directly to the purchaser and is also responsible for honoring the liability represented by the face value of the card that may be redeemable for, solely or in a combination of, merchandise, services, or cash; said issuer is also responsible for reporting and delivering proceeds of the stored value card if abandoned; or

2. Acts as an agent, distributor, or retailer for the holder and is not directly responsible for honoring the liability represented by the face value of the stored value card, but must sell the card under the same terms and conditions as required of the holder of the stored value card.

“Last known address” means a description of the location of the apparent owner, sufficient for the purpose of determining which state has the right to escheat the abandoned property and the zip code of the apparent owner’s (creditor’s) last known address is sufficient.

“Promotional program” means a program designed to influence, inform, or persuade a potential buyer’s purchasing decision. It is developed with the intention to increase demand for merchandise or services and/or to differentiate a product. It may include incentives such as discounts, free items, or a contest with the intent of increasing the sales of a given product.

“Purchaser” means a recipient of the stored value card at the point of sale.

...

“Seller” means the entity or person who sells or tenders to the purchaser the stored value card at the point of sale or transaction.

“Stored value card” means a record that evidences a promise, made for monetary or other consideration, for the face value of the card by the holder, issuer, or seller of the record that the purchaser/owner of the record will be provided, solely, or for a combination of, merchandise, services, or cash in the value shown in the record, which is pre-funded and the value of which is reduced upon each redemption. The term “stored value card” includes, but is not limited to, the following items: paper gift certificates, records that contain a microprocessor chip, magnetic stripe, or other means for the storage of information, general purpose reloadable cards, gift cards, electronic gift cards, rebate cards, credits for merchandise returned without a receipt, stored value cards, or certificates, store cards, and similar records or cards. A card is not to be considered a “stored value card” for the purposes of this subchapter when it is used for the following purposes:

1. Wage pay cards. These are cards that are issued for wages owing in the ordinary course of business. A related bank account is opened for the employee when a stored value card is issued for the purpose of wage payments. The bank holding the funds will have the primary obligation of identifying and reporting any funds that are deemed abandoned. The deposit is presumed abandoned three years from the last transaction in accordance with N.J.S.A. 46:30B-18; or

2. Cards issued for merchandise credits. Cards issued for credit balances, customer overpayments, security deposits, refunds, credit memoranda, unused tickets, or in payment of other liabilities that occur in the ordinary course of business that are redeemable for cash are deemed credits and have three-year abandonment periods

pursuant to N.J.S.A. 46:30B-42. Issuers of stored value cards issued for the above-mentioned purposes are required to obtain and maintain the name and address of the recipients of these cards.

“Uniform Unclaimed Property Act” or “Act” means the act found at N.J.S.A. 46:30B-1 et seq.

17:18-3.3 Stored value cards

(a) Issuers and holders of stored value cards:

1. Are exempt from reporting stored value cards that are redeemable for merchandise or services only that were issued or sold prior to July 1, 2010, the effective date of the Act. Stored value cards redeemable for merchandise or services only that were issued or sold on or after that date as well as all stored value cards redeemable for cash, regardless of date of sale, must be reported to the State if the last known address on the records of the issuer or seller is located in New Jersey, pursuant to N.J.S.A. 46:30B-46 et seq., except for those stored value cards issued:

i. Under a promotional, customer loyalty, or charitable program for which no monetary or other consideration has been tendered by the owner; or

ii. By any issuer that in the preceding year beginning July 1 through June 30, sold stored value cards with an aggregate total value of \$250,000 or less.

2. For purposes of this subsection, sales of stored value cards by businesses that operate either under the same trade name as, or under common ownership or control with, another business or businesses in the State or as franchised outlets of a parent business, whether in or outside of New Jersey, shall be considered sales by a single issuer.

(b) Retailers that issue stored value cards that may be redeemed for goods or services only at their stores or on their websites:

1. Will be required to escheat 60 percent of the value of the unused balance if there is no consumer-generated activity for five years or longer; and

2. Shall not impose any dormancy charges or fees, abandoned property charges or fees, unclaimed property charges or fees, balance inquiry fees, escheat charges or fees, inactivity charges or fees, or any similar charges, fees, or penalties for inactivity with respect to the card. Neither the property nor an agreement with respect to the property may contain language suggesting that the property may be subject to these kinds of charges, fees, or penalties for inactivity. Fees may only be assessed for activation and for each occurrence of adding value to an existing stored value card, as well as for replacement of a lost or stolen card.

(c) Banks and other financial service companies that issue stored value cards that may be redeemed at multiple merchants (general purpose reloadable cards):

1. Will be required to escheat the full value of the unused balance if there is no consumer-generated activity for five years or longer; and

2. May charge fees other than for activation or replacement.

(d) Funds associated with stored value cards issued on or after December 1, 2012, shall be valid until redemption and shall not expire. Even though a stored value card may contain an expiration date, it applies only to the card or other tangible medium through which the underlying funds may be accessed. However, the underlying liability for the funds does not expire.

(e) Beginning September 1, 2012, if a stored value card is issued as a gift card or gift certificate that as a result of its usage has a residual value of \$5.00 or less, at the owner’s request the merchant or other entity redeeming the card must refund the balance in cash to the owner.

(f) Issuers and holders of stored value cards are not required to report abandoned stored value cards under (a)1i and ii above or as deemed exempt from the reporting requirements by the State Treasurer pursuant to N.J.S.A. 46:30B-42.1.f.

(g) Since stored value cards issued for purposes of wage payments result in the funds being placed in a related bank account in the name of the employee, the bank has the primary responsibility for compliance with the Act. The appropriate dormancy period is three

years from the date of the last customer generated transaction or contact in accordance with N.J.S.A. 46:30B-18.

(h) Stored value cards issued as a result of merchandise that is returned without a receipt that are redeemable for merchandise or services only shall be subject to the reporting requirements of N.J.S.A. 46:30B-42.1. The unused balances are subject to reporting five years from the date of last activity at 60 percent of the value of the card, in money, on the date such stored value cards are deemed abandoned, pursuant to N.J.S.A. 46:30B-42.1. Holders are prohibited from imposing on these cards dormancy charges or fees, abandoned property fees, unclaimed property charges or fees, escheat charges or fees, inactivity charges or fees, or any similar charges, fees or penalties for inactivity with respect to the card. Neither the card nor an agreement with respect to the card may contain language suggesting that the card may be subject to these kinds of charges, fees, or penalties.

(i) Conversion of the stored value card to a bank account does not represent owner activity. Unused stored value card balances are subject to reporting five years from the last customer generated activity pursuant to N.J.S.A. 46:30B-42.1. The Act does not provide for a holder of a stored value card to impose on the card dormancy charges or fees, abandoned property fees, unclaimed property

charges or fees, escheat charges or fees, inactivity charges or fees, or any similar charges, fees, or penalties for inactivity with respect to the card. Neither the card nor an agreement governing use of the card may contain language suggesting that the card may be subject to these kinds of charges, fees, or penalties.

(j) For the purposes of (a) above, any monetary or other consideration that has been tendered by the recipient/owner for the stored value card obtained under a promotional, customer loyalty, or charitable program may consist of, but is not limited to, a rebate for a purchase made, a credit to be given by the issuer or holder in return for taking certain action, or an incentive for taking some other action. Such action or incentive on the part of the recipient/owner may include providing a service, making a purchase, or taking some other action beneficial to the issuer or holder, such as agreeing to promote the issuer's or holder's merchandise or services or entering a contest to increase the sales of a given product, even if no cash or other item of monetary value was exchanged, in reliance on the stored value card being offered to the owner. Stored value cards obtained under these circumstances are not exempt and, therefore, must be reported under N.J.S.A. 46:30B-1 et seq.
