By Any Other Name: Recent Developments in the Usage & Treatment of Stored Value Cards

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The Numbers

• 2013 Predicted Spending
  ▫ $202 Billion on reloadable cards (Mercator Advisory Group)
  ▫ $100 Billion on gift cards (CEB Tower Group)
Unclaimed Property Impact

• No matter the breakage rate, the potential unclaimed property is significant.
  ▫ Breakage rates range from 5% to 15%
What Prepaid Users & Holders Like Most

- Users
  - Accessibility for the unbanked
  - Cannot Overspend/Overdraft
- Holders
  - Reduced cost
  - Fees are still possible
    - Monthly or transaction based fee, foreign ATM fee
Paper to Plastic to...

- **Gift Certificates**
  - 1970’s to mid-1990’s
  - A paper certificate that represents a fixed one-time transaction.

- **Gift Cards**
  - Mid-1990’s to Present
  - A form of a stored value card that represents value already paid to the holder and may be redeemed at a later time by the owner.
  - Can be used for multiple transactions.
Paper to Plastic... *continued*

- **Closed loop:** Issued by a single retailer.
  - Examples: Dunkin’ Donuts & Home Depot

- **Open loop:** Issued by a financial institution. Also referred to as network branded prepaid cards.
  - Examples: American Express, Visa, MasterCard, Discover
Stored Value Cards

- Mid-1990’s to Present
- Growth attributable to non-gift usage
- Key feature – product is reloadable

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<th>Examples</th>
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<td>Payroll card</td>
<td>Employee reward card</td>
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<td>Incentive card</td>
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<td>General purpose card</td>
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The Future is Now!

• Moving to mobile devices
  ▫ Passbook, Google Wallet, etc.
States’ Treatment of Gift Certificates, Gift Cards & Stored Value Cards

• **1981 Uniform Act:** Added “gift certificate” to the definition of intangible property.

• **1995 Uniform Act:** Keeps “gift certificate” in the definition while adding language allowing holders to retain the profit margin.

• **Key Factor:** Neither Act defines a gift certificate nor addresses a gift card, prepaid card or stored value card.
The Current Situation

- 30+ states provide a full or partial exemption for “gift certificates” and/or “gift cards”

- Of the 30+ states, only 11 states specifically provide for a full or partial exemption of “stored value cards”
Current Issues to Consider

• Issue: Whether the states that exempt stored value cards intend to exempt non-gift stored value cards?

• Arguably, it is unclear if many of the states’ statutes exempt non-gift stored value cards.
Medium or Obligation

• Issue: Whether the medium (i.e., the plastic card) or the underlying obligation (i.e., the unpaid wages) governs the application of the treatment of stored value cards?

• In Texas and Pennsylvania, our examination of the holder's legal obligations not only defined the escheatable property at issue but also carefully identified the relevant “debtors” and “creditors.”

Medium or Obligation

• Issue: Is the card merely evidence of a contractual obligation?
  ▫ “This event offers one more indication that, in the public’s mind, what the business is selling is the obligation to provide a good or service, rather than just the card itself, and that businesses bear a responsibility to view prepaid funds as belonging to the card owners, and not to the holders.” (Journal of Accountancy)
Medium or Obligation

• On the other hand, some states’ statutes specifically address the medium, i.e. the stored value card, as the property type.

• A few states expand the definition of stored value cards to “other mediums that evidence the giving of consideration.”
Federal Preemption?

- State may escheat funds
- Fees and expiration dates subject to:
  - EFTA
  - Regulation E
- Funds treated as a deposit account?
Additional Issues to Consider

• Issue: In view of the ever-expanding uses of prepaid products as alternative payment instruments, should states distinguish between products that have a gift element and those that do not?
Current Issues to Consider

• Issue: Should the states or the holders be the custodians of the prepaid product’s breakage?
Factors to Consider

• In many states, holders retain 40% of the value as profit which is typically greater than most profit margins.

• Funds in the custody of the state avoid holder bankruptcy, charges and other dormancy fees.

• Arguably increased state outreach efforts make the states better custodians than the holders.
Factors to Consider

• Arguably, holders’ retention of names and addresses coupled with their marketing efforts to retain customers makes them the better party to serve as custodian.

• However, published reports continue to report compliance rates between 2% and 20%.
Factors to Consider

- Recent CFPB determination
  - Considered whether Maine and Tennessee’s unclaimed property laws are preempted by the EFTA as amended by the 2009 Credit Card Act?
  - The determination results in maximum consumer protection.
Questions