

**To: New Jersey Law Revision Commission**  
**From: John Cannel**  
**Re: Revised Uniform Unclaimed Property Act**  
**Date: January 8, 2018**

## MEMORANDUM

This Memorandum provides supplemental information regarding the Revised Uniform Unclaimed Property Act in several different areas.

### Inclusion of Gift Cards

Four states have enacted RUUPA or have used parts of it in revising an older version of the Act. Of these, Tennessee, Utah, and Illinois did not include gift cards in their definitions of unclaimed property. Delaware includes gift cards. Maine's updated law is expected to include them; its revised version of the Act is now being drafted.

More important, New Jersey's inclusion of gift cards in the current Unclaimed Property Act is a relatively recent enactment. The first inclusion of gift cards in New Jersey was through L.2010 c.25. A number of related provisions were later adjusted in New Jersey by L.2012 c.25 and by L.2015 c.8. As a result, it seems appropriate to adopt the version of RUUPA that includes gift cards.

Current New Jersey law provides that when a gift card is presumed unclaimed, the amount to be sent to the Unclaimed Property Administrator is 60% of the value of the card. That is a recent enactment from L.2012 c.25. Before the 2012 enactment the whole value was included. Whatever arguments can be made for or against the 60% number, the Commission may decide that the recent Legislative judgment should stand.

Stored value cards that are not gift cards are valued at 100%, not 60% of unused value. That difference requires a statutory distinction. Current New Jersey law is that a card that is not a gift card if it is refillable.

N.J.S. 46:30B-42.1, at subsection b., provides that "The proceeds of a general purpose reloadable card presumed abandoned shall be the value of the card, in money, on the date the general purpose reloadable card is presumed abandoned. The proceeds of all other stored value cards presumed abandoned shall be 60% of the value of the card, in money, on the date the stored value card is presumed abandoned."

RUUPA provides that it is not a gift card if it may be redeemed in cash:

(11) "Gift card" means:

(A) a stored-value card:

(i) the value of which does not expire;

(ii) that may be decreased in value only by redemption for merchandise, goods, or services; and

(iii) that, unless required by law, may not be redeemed for or converted into money or otherwise monetized by the issuer; and

(B) includes a prepaid commercial mobile radio service, as defined in 47 C.F.R. 20.3, as amended.

The RUPA distinction seems more tightly related to the distinction between the two kinds of cards. If the card can be cashed, its real value is its total value. If the card can be used only for merchandise, the issuer could expect to derive some profit from the sale, and the 60% figure has justification.

#### Inactivity fees

RUUPA has one general provision on inactivity fees:

#### **SECTION 602. DORMANCY CHARGE.**

(a) A holder may deduct a dormancy charge from property required to be paid or delivered to the administrator if:

(1) a valid contract between the holder and the apparent owner authorizes imposition of the charge for the apparent owner's failure to claim the property within a specified time; and

(2) the holder regularly imposes the charge and regularly does not reverse or otherwise cancel the charge.

(b) The amount of the deduction under subsection (a) is limited to an amount that is not unconscionable considering all relevant factors, including the marginal transactional costs incurred by the holder in maintaining the apparent owner's property and any services received by the apparent owner.

New Jersey has some specific limitations on these charges the limitation on stored value cards including gift cards is:

#### **46:30B-43.1 Limitation on holder's power to impose charges.**

Limitation on holder's power to impose charges. A holder of property subject to R.S.46:30B-42, section 5 of P.L.2010, c.25 (C.46:30B-42.1), and R.S.46:30B-43 shall not impose on the property a dormancy charge or fee, abandoned property charge or fee, unclaimed property charge or fee, escheat charge or fee, inactivity charge or fee, or any similar charge, fee or penalty for inactivity with respect to the property. Neither the property nor an agreement with respect to the property may contain language suggesting that the property may be subject to that kind of charge, fee or penalty for inactivity.

L.2002, c.35, s.37; amended 2010, c.25, s.6. inactivity

New Jersey's current law also contains a limitation regarding traveler's checks and money orders as follows:

**46:30B-13. Limitation on holder's power to impose service charges.**

A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes the charges and does not regularly reverse or otherwise cancel them. The amount of the deduction shall be limited to and not to exceed \$2 per month. Notwithstanding any provision of this section to the contrary, no service charge, dormancy fee or other similar charge shall be imposed against a travelers check or money order within the twelve months immediately following the date of sale.

(cf: P.L.2002, c.35, s.12)

Again, as these are recent Legislative enactments, the Commission may wish to continue them in the New Jersey version of RUUPA.