

The Retail Gift Card Association



National Press Building • 529 14th Street, NW, Suite 750 • Washington, DC 20045
(202) 591-2454 • www.thergca.org

October 20, 2015

Uniform Law Commission
Revise the Unclaimed Property Act Drafting Committee
c/o Ms. Katie Robinson, Staff Liaison
11 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602

Re: Project to Revise the Uniform Unclaimed Property Act

Dear Ms. Robinson:

On behalf of the Retail Gift Card Association (RGCA), we thank you for the opportunity to provide comments to the Uniform Law Commission's Drafting Committee (Committee) regarding the treatment of gift cards issued as merchandise credits in the Revised Uniform Law Commission's Uniform Unclaimed Property Act (RUUPA).

The RGCA is a member-governed trade association of diverse retailers with gift card programs, committed to promote and protect the use of gift cards. RGCA members follow a code of principles which promote best practice standards to help the prepaid card industry grow and shape in ways that benefit both members and consumers. The RGCA strongly believes that gift card programs can, and should be, consumer friendly.

It is our understanding that the Committee desires information regarding the issuance of gift cards as merchandise credits when an item of merchandise is returned without a receipt. It is important to note that RGCA members generally refund items returned *with* a receipt to the original form of payment (cash or refunds to debit or credit card). Unfortunately, the policy for merchandise returns without a receipt differs from returns with a receipt due to the overwhelming amount of fraud resulting from these transactions. The RGCA estimates hundreds of millions of dollars are at risk when items are returned without a receipt. In order to provide honest consumers with a flexible return policy, returns without a receipt are given in the form of a certificate or gift card that are redeemable in the retailer's merchandise. This practice protects against fraud by requiring dishonest consumers to purchase goods or services at the retailer rather than giving the fraudsters cash. These merchandise return credits do not generally expire and are not subject to fees in order to provide consumers with ample opportunity to redeem their merchandise return cards.

Merchandise return cards should be specifically excluded from the requirement to escheat

With this background information in mind, the RGCA encourages the committee to treat merchandise return credits consistent with its treatment of gift cards and exempt merchandise credits from the requirement to escheat. As explained above, the main purpose for issuing

merchandise returns in the form of a certificate or gift card is to restrict a consumer's access to a cash equivalent in order to curtail fraud. Merchandise returns that are redeemable only for the retailer's merchandise or service should be excluded from escheat because merchandise return credits are not redeemable for cash and requiring retailers to escheat these items would afford the states a greater right than the owner of the merchandise return credit. As such, exempting Merchandise return credits is consistent with the derivative rights doctrine. Conversely, by requiring merchandise returns to escheat, retailers are again faced with potentially hundreds of millions of dollars in losses due to fraud, and the states would be contributing to the fraud by allowing the fraudsters to claim the merchandise return credits

Definition of Merchandise Credit

Based on the foregoing, the RGCA proposes the following definition of "merchandise credit" for the RUUPA:

"Merchandise credit" means a record that evidences a promise, made in exchange for returned merchandise, by the issuer that the owner of the record will be provided, solely or a combination of merchandise, food, or services in the value shown in the record, which is prefunded and reduced upon each redemption, and may not be redeemed for money, unless required by law. The term "merchandise credit" includes, but is not limited to the following items, paper merchandise credits or certificates, records that contain a microprocessor chip, magnetic stripe or other means for the storage of information, gift cards, electronic gift cards, store merchandise return cards, and similar records or cards.

The RGCA understands the Committee plans to provide all gift card related language in a single provision to avoid confusion. It is the RGCA's position that provisions related to gift cards should include merchandise credits in order to make it clear that merchandise credits are also exempt from the requirement to escheat. For example, if the term "property" is defined to specifically exclude gift cards, it should also be defined to specifically exclude merchandise credits either as its own property category or as a sub-set of gift cards.

Thank you for considering the comments of the RGCA. We sincerely appreciate the opportunity.

Regards,

A handwritten signature in black ink, reading "Mike Pennington". The signature is stylized with a large, looped "M" and a cursive "Pennington".

Mike Pennington, CAE
Executive Director