

February 10, 2011

Love is in the Air in New Jersey...at least for the Retailers

Just in time for Valentine's Day, Cupid has pointed his arrow right at the hearts of New Jersey retailers and the judges of the U.S. Court of Appeals for the Third Circuit. As previously reported, on January 31, 2011, pursuant to a request for emergency relief from the New Jersey Retail Merchants Association, the Third Circuit temporarily enjoined New Jersey from implementing the ZIP code maintenance requirements of the state's new gift card law. (For a recap of this saga, see Sutherland's Legal Alert, "[Drama in New Jersey...Retailers Breathe a Temporary\(?\) Sigh of Relief](#)," issued on February 1, 2011).

The enjoined provision, enacted last summer as part of a significant expansion of New Jersey's unclaimed property law, requires retailers and other gift card issuers to collect the residential zip code of anyone purchasing gift cards in the state. That injunction was temporary and intended only as emergency relief while appeals of five separate cases challenging various aspects of New Jersey's new unclaimed property law were pending. On February 8, 2011, the Third Circuit acted on these appeals by consolidating all of the cases and granting a stay of the District Court's denial of injunctive relief on the zip code issue. The panel granting the injunction has asked all parties to consult with each other and within three days provide the court with a proposed expedited briefing schedule to determine the underlying substantive issues related to the validity of the new law. *N.J. Retail Merch. Ass'n v. Sidamon-Eristoff, et al.*, Civil Case No. 11-1170 (3d Cir. Feb. 8, 2011) (order granting injunction).

February may truly end up being the month of love for retailers and other companies adversely affected by last summer's expansion of New Jersey's unclaimed property law. On January 31, 2011, the New Jersey legislature re-introduced Senate Bill 2681 which would entirely repeal the 2010 gift card law and address the other issue in the pending appeals by returning the statutory dormancy period for travelers checks and money orders from the new three years to the original 15 years.

This is far from over. The fact remains that New Jersey is in a desperate financial situation, and the extra \$70-plus million in revenue per year anticipated from the new unclaimed property law could provide some relief. The retailers have strong arguments on their side in the battle over the legal validity of the new law, but there is also an emotional feeling that something just isn't right about this less-than-discrete money grab by the state. In recent years, some courts have reined in states' aggressive unclaimed property collection laws when it appears that the motive behind a law has shifted from the traditional goal of reuniting the property holder with his/her property to a new goal of shoring up state coffers without increasing taxes or decreasing government services.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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