

Court Affirms Injunction Against NJ Unclaimed Property Law

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In 2010, New Jersey's unclaimed property statute was amended to provide for the custodial escheat of stored value cards ("SVCs"). The New Jersey Retail Merchants Association, the New Jersey Food Council and American Express Prepaid Card Management Corporation filed a motion for preliminary injunction in the United States District Court against the New Jersey Treasurer and the New Jersey Unclaimed Property Administrator on the basis that enforcement of certain provisions of the 2010 changes ("Chapter 25") violated various constitutional provisions. On January 5, 2012, in *New Jersey Retail Merchants Association v. Sidamon-Eristoff*, 2012 WL 19385 (C.A. 3 (N.J.)), the United States Court of Appeals for the Third Circuit affirmed the District Court's Order which had granted, in part, and denied, in part, the issuers' motion for a preliminary injunction.

Retroactive Enforcement

The Court held that the SVC issuers had shown a reasonable likelihood of success on the merits of their Contracts Clause claim alleging that the retroactive enforcement of Chapter 25 substantially impaired the issuers' existing contractual relationships because it required SVC issuers to submit the value of SVCs in cash at the end of the abandonment period, even though the SVCs were redeemable only for merchandise or services under the issuers' contracts with their customers. Because the value of an SVC includes the issuer's expected profit or merchant fee, requiring issuers to turn over the entire value in cash would effectively transfer the issuers' expected benefits to state custody.

Place-of-Purchase Presumption

The Court also held that the SVC issuers had demonstrated a reasonable likelihood of success on their claim that Chapter 25's place-of-purchase presumption was preempted under federal common law. Under Chapter 25's place-of-purchase presumption, in all cases where the purchaser's address is unknown, the address of the place of purchase would be substituted for the address of the purchaser. Thus, if the address of the purchaser of an SVC purchased in New Jersey were unknown, New Jersey would be entitled to the unclaimed property. This place-of-purchase presumption is inconsistent with the priority rules established by the United States Supreme Court in *Texas v. New Jersey*, 379 U.S. 674 (1965), under which property is reportable to the state of the last known address of the owner or, when the address of the owner is unknown or is in a state which does not require reporting of the property, to the holder's state of incorporation or domicile. It would be impossible for an issuer to comply with both Chapter 25's place-of-purchase presumption and the federal common law rules in *Texas v. New Jersey*. Thus, the Court determined that the issuers had met their burden of showing that Chapter 25 is likely preempted. (The Court reached the same conclusion with respect to a Treasury Notice issued by New Jersey, which purported to apply the place-of-purchase presumption for issuers not domiciled in New

Jersey only in cases where the issuer's state of domicile exempts SVCs from unclaimed property reporting.)

Two-Year Abandonment Period/Data Collection Provision

The Court determined that the issuers had failed to show a reasonable likelihood of success on their claims that (1) Chapter 25's two-year abandonment period is preempted by the federal Credit CARD Act of 2009 because it provides for an abandonment period shorter than five years, and (2) the data collection provision, which requires issuers to obtain the name and address of the purchaser or owner of each SVC issued or sold and to, at a minimum, maintain a record of the zip code of the owner or purchaser, is unenforceable on a stand-alone basis (independent of the place-of-purchase presumption provision).

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