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## retail

August 8, 2012

Dear Retail Clients and Friends,

Retailers with gift cards and operations in New Jersey should take note of the new requirement under New Jersey's revised gift card law **that retailers redeem gift cards for cash when the balance falls below \$5**. This is the latest episode in the ongoing controversy regarding New Jersey's handling of gift cards under its unclaimed property law. This edition of ***Morgan Lewis Retail Did You Know?*** describes the new law and its application to retailers.

### Background

In 2010, New Jersey amended its unclaimed property law to include a number of controversial provisions regarding stored-value cards (SVCs or gift cards). The law, which purported to apply retroactively, considered gift cards abandoned after two years of nonuse and, if the holder's records did not disclose the owner's last-known address, would escheat to the place of purchase, not to the place of the holder's domicile (the traditional second priority rule). New Jersey also added a data-collection requirement, instructing retailers to obtain the name and address of the purchaser or owner of each gift card and maintain, at a minimum, the last zip code for each purchaser. Many in the retail industry saw these amendments as an effort to increase New Jersey's ability to claim unused gift card balances.

Several retail and industry groups challenged the New Jersey law in court and obtained a preliminary injunction barring the law's key provisions from taking effect. Ultimately, the U.S. Court of Appeals for the Third Circuit reaffirmed the preliminary injunction, ruling that the retroactive application of New Jersey's escheat law and the "place of purchase" rule likely violated federal law. The court did, however, find that the data-collection requirement was acceptable. Both sides have appealed that decision to the U.S. Supreme Court.

Notwithstanding the fact that most of the New Jersey law did not go into effect, the data-collection requirement was set to become effective this year. As a result, in spring 2012, three of the largest gift card sellers in New Jersey decided to stop selling gift cards in the state rather than comply with the data-collection requirement. That stand-off led to the data-collection requirement being deferred for at least four years.

### The New Gift Card Law

On July 29, Governor Chris Christie signed into law Senate Bill 1928, amending New Jersey's gift card law. As a compromise for deferring the data-collection requirements, the new law includes a requirement for gift cards in New Jersey, instructing that retailers provide, at customer request, a cash redemption on gift cards that have less than \$5 in value. The law makes clear that the provision does not apply to gift cards with an initial value of \$5 or less and does not apply to promotional or rewards cards. **This requirement will be effective starting September 1, 2012.** The law imposes statutory penalties of **up to \$500 per violation**, as enforced by the New Jersey Director of the Division of Consumer Affairs. It makes clear, however, that this is the exclusive remedy, and certainly that was the legislative intent, meaning that a private right of action (including a class action) should be disallowed. Lastly, the new law expressly provides that a retailer has no obligation to inform consumers of the availability of a cash refund, and may include a statement on a gift card to the effect that "This card is not redeemable for cash except as required by law."

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## Practical Implications

Retailers should prepare to implement cash redemption procedures for stores in New Jersey in the event that customers make such requests. Retailers should take particular care to (1) make sure they have a process in place that allows cashiers to provide cash redemptions of gift cards, (2) revise internal policies and procedures to allow for cash redemptions of gift cards that are less than \$5 in value, (3) consider revisions to terms and conditions for gift cards, (4) have stores in New Jersey properly train cashiers to provide cash redemptions of gift cards under \$5.

## How We Can Help

Morgan Lewis can assist with an analysis of a retailer's gift card program and the impact of state unclaimed property laws, including ways to avoid escheat of unused gift card balances to New Jersey and compliance with the new requirements for gift cards sold in New Jersey. We can also assist with implementations of policies and procedures to comply with the cash redemption requirements.

## Contacts

If we can be of assistance to you in these matters, please feel free to get in touch with your Morgan Lewis contact or any of our Retail Practice leaders:

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These individuals are part of our international Retail Practice. Attorneys from our 24 offices regularly represent national, regional, and local retailers in a broad array of subject matters including litigation, labor and employment, real estate, tax, transactional, and regulatory.

**About Morgan Lewis Retail Did You Know?** This message is part of our effort to educate our retail clients and friends about important legal developments. One thing we hear frequently from our retail clients is that it is hard to keep track of new and emerging laws and lawsuit trends that affect retailers. All too frequently, the first notice comes in the form of a lawsuit seeking millions of dollars. To help you be more proactive in managing legal compliance, we are providing these emails.

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