HB 126

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 126 (Delegate Pena-Melnyk, *et al.*)
Economic Matters

Commercial Law - Gift Certificates - Balances - Presumption of Abandonment

This bill classifies a gift certificate or gift card as presumptively abandoned if it has been inactive for a period of four years after the date of purchase, or one year after the date of last activity, whichever is later. A person must remit 70% of the remaining balance on each gift certificate and gift card presumed abandoned during the previous calendar year to the Comptroller of the State.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues if Maryland could obtain revenue from all unspent gift cards sold or issued in the State, beginning in FY 2014. General fund revenues could be limited if the State can only claim funds from unredeemed gift cards sold by companies domiciled in Maryland. Special fund expenditures increase by $196,700 in FY 2010 for additional staff in the Office of the Comptroller associated with auditing and compliance. Future years reflect annualization and inflation.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	$0	$0	$0	$0	-
SF Expenditure	$196,700	$208,000	$218,300	$299,200	$240,700
Net Effect	($196,700)	($208,000)	($218,300)	($299,200)	($240,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A gift certificate is presumed abandoned on the later of four years after the date of purchase, or one year after the date of last activity on the gift certificate. By March 1 of each year, a person who sells or issues gift certificates must remit to the Comptroller 70% of the remaining balance on each certificate that was presumed to be abandoned during the previous year. The Comptroller must distribute the revenues to the general fund. Notice of the four-year presumption of abandonment must be included on each gift certificate sold or issued.

A person that sells or issues gift certificates in Maryland must maintain records on the certificates for at least two years after the date the certificate is presumed to be abandoned, and make the records available to the Comptroller upon request. The bill also narrows the definition of a gift certificate by excluding (1) a gift certificate sold by a charitable or nonprofit organization; (2) a card issued by an employer to an employee as proof of wages paid to the employee; and (3) a card issued by a public transit facility for the payment of any transit fares, parking fees, or transit-related expenses.

Current Law: A person may not sell or issue a gift certificate that is subject to expiration or a fee within four years after the date it is purchased. An expiration or fee that takes effect more than four years after the date of purchase must be printed on the gift certificate, on a sticker permanently affixed to the gift certificate, or on an envelope containing the gift certificate.

A sum payable on a written instrument, including a check, certificate of deposit, draft, or money order, is generally presumed abandoned three years from the date of issuance. The holder of property that is presumed abandoned must send written notice to the owner of the property before filing a required report with the Comptroller on the nature of the abandoned property. After the required notification procedures have been performed, the property must be delivered or paid to the Comptroller and the State takes custody of the property. Gift certificates and gift cards are not subject to these laws.

Background: Estimates of the share of gift card funds that are unused generally range from 5% to 10%, although a recent *Consumer Reports* survey found 27% of gift card recipients reported one or more unused cards. TowerGroup, an international advisory research and consulting firm for the global financial services industry, estimates that, approximately $6.4 billion of the $88.4 billion in gift cards sold in 2008 went unused. TowerGroup notes that retailers do not generate revenue from gift cards until they are used or until they are declared dormant; however, the money used to purchase the unredeemed gift cards may generate interest for the retailer. A November 2007 article on CFO.com states that Best Buy determined that, on average, gift cards that have not been used after two years will never be used. In its fiscal 2006 annual report, Best Buy reported a $43 million gain from gift cards unlikely to be used.

In *Texas v. New Jersey* (380 U.S. 518 (1965)), the U.S. Supreme Court ruled that the state with the first right to escheat abandoned property is the state of the creditor's last known address. If there is no known address for the creditor, the state where the debtor is located has the second right to the abandoned property. In the case of gift cards, the recipient of the card is the creditor. Since a retailer selling or issuing a gift card does not record the address of the recipient, the right to escheat would presumably fall under the second rule, which allows the debtor's state to take possession of the abandoned property. In the case of a gift card, that would presumably be the state of the retailer's corporate domicile; however, the Supreme Court has not specifically made any rulings about the escheatment of unredeemed gift card balances.

State Revenues: The amount of general fund revenues collected would depend greatly on whether all unspent balances on gift cards sold in Maryland may be claimed by the State. The escheatment rights of a state where a national retailer is domiciled may supersede Maryland's claim to the unused gift card funds. Additionally, it is assumed that the October 1, 2009 effective date postpones revenue collection to fiscal 2014 as the bill does not include a retroactivity clause. Nevertheless, if the abandoned funds on cards sold after October 1, 2005, must be remitted to the Comptroller beginning in fiscal 2010, it is unclear how many businesses would have records on the aggregate value and balances on gift cards sold in prior years.

For illustrative purposes only, assuming no other states' escheatment rights supersede Maryland's claims, State general fund revenues from unredeemed gift card balances could total an estimated $48.8 million in fiscal 2014. The information and assumptions used to derive this "best case" scenario are stated below.

- TowerGroup reports a total of $88.4 billion spent nationally on gift cards and gift certificates in calendar 2008; however, approximately $28.5 billion is attributable to bank cards that can be used in many stores and do not fall under the statutory definition of gift certificates. This leaves an estimated $59.9 billion spent nationally on qualifying gift cards, a 14.4% decrease from an estimated $70 billion spent in calendar 2007.

- If Maryland consumers purchased 2% of the $59.9 billion in gift cards sold nationally, approximately $1.2 billion in gift cards were sold in the State in 2008. Based on the sharp decline in retail-sponsored gift card sales from 2007 to 2008, declining consumer confidence in such cards, and a shift to branded products from financial institutions, a 3% annual decrease in retail-sponsored gift card sales is assumed in fiscal 2010 through 2014. A projected 3% annual decrease in qualifying gift card sales may be too conservative, as sales declined 14.4% from 2007 to 2008.

- Based on available estimates, it is assumed that 6% of gift card purchases go unspent in Maryland. Under the bill, Maryland's share of the unredeemed cards is 70%. Given the economic downturn, any heightened awareness among consumers to quickly spend gift cards would significantly impact the amount of abandoned funds available to the State.

- This estimate assumes that the remaining balances on all gift cards sold or issued in Maryland would escheat to the State; however, it is unclear whether this would occur. Supreme Court decisions suggest that another possible result is that only those gift cards and gift certificates sold by companies that are incorporated in Maryland would escheat to the State. In this case, general fund revenues would be much lower.

If, however, revenues were able to be collected beginning in fiscal 2010, at most, the State could receive $7.1 million in fiscal 2010, $49.5 million in fiscal 2011, $58.8 million in fiscal 2012, and $50.3 million in fiscal 2013. The lower estimate for fiscal 2010 reflects two additional assumptions:

- The bill does not specify if gift cards purchased four years prior to the October 1, 2009 effective date are presumptively abandoned nor does it explicitly contain a prospective application provision. However, assuming retroactive application of the bill's provisions, the State would collect revenues in fiscal 2010 from approximately one-quarter of Maryland gift card purchases from calendar 2005. Future year revenue estimates would then reflect a full calendar year of revenue.

- Chapter 456 of 2005 prohibited gift cards issued in Maryland after July 1, 2006, from having an expiration date prior to four years from the date the card was issued. The Comptroller estimates that approximately one-third of the gift cards and gift certificates sold prior to July 1, 2006, have expiration dates earlier than four years after the date of issuance; therefore, revenues would not be collected for approximately one-third of the cards that were sold before that date. This would further reduce general fund revenues in fiscal 2010.

State Expenditures: According to the Comptroller's Director of Compliance, two additional revenue examiners and two additional field auditors are required for enforcement of the bill's provisions beginning in fiscal 2010. Legislative Services concurs with this assessment given the bill's extensive record keeping requirements and reporting provisions required of all persons issuing gift certificates in the State. Thus, special fund expenditures increase by $196,744, which accounts for the bill's October 1, 2009 effective date.

Positions	4
Salaries and Fringe Benefits	$152,672
One-time Start-up Costs	39,752
Ongoing Operating Expenses	4,320
Total FY 2010 State Expenditures	**$196,744**

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover and 1% annual increases in ongoing operating expenses.

Small Business Effect: Small businesses that issue gift certificates would forfeit 70% of any unspent funds from the gift certificates, although they would continue to retain 30% of the remaining balances and any interest they make on the money that was originally used to purchase the gift certificates. Businesses may also incur administrative expenses relating to added recordkeeping responsibilities.

Additional Information

Prior Introductions: A similar bill was introduced during the 2008 Session as SB 998 but did not receive a recommendation by the Finance Committee. Its crossfile, HB 613 had a hearing in the Economic Matters Committee, but no further action was taken. HB 1080 of 2007 was referred to interim study by the Economic Matters Committee.

Cross File: SB 418 (Senator Pugh, *et al.*) - Finance.

Information Source(s): Comptroller's Office, Office of the Attorney General, TowerGroup, *Consumer Reports*, *Baltimore Sun*, CFO.com, Department of Legislative Services

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ncs/ljm

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