LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1871

STATE OF NEW JERSEY
215th LEGISLATURE

DATED: APRIL 19, 2012

SUMMARY

Synopsis: Reverses certain changes to laws governing State treatment of unclaimed property.

Type of Impact: A recurring revenue loss and recurring administrative cost reduction to the State General Fund.

Agencies Affected: Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	FY 2012	FY 2013	FY 2014
State Cost Savings	Minimal	Minimal	Minimal
State Revenue Loss:			
1) Remove Stored Value Cards from Unclaimed Property Escheatment Laws	Indeterminate — See Comments Below		
2) Elongation of Escheatment Period of Travelers Checks and Money Orders	Indeterminate — See Comments Below		

- The Office of Legislative Services (OLS) forecasts that this bill will lower annual State revenue by an indeterminate amount and might reduce State administrative expenses following the removal of stored value cards from unclaimed property escheatment laws. The OLS, however, refrains from quantifying the fiscal impact owing to a lack of data and uncertainty surrounding the outcome of litigation challenging the 2010 shortening of the escheatment period for travelers checks and the requirement that issuers of stored value cards remit certain unredeemed stored value cards to the State for custodial safekeeping.

- The bill applies only to stored value cards, travelers checks, and money orders issued after the bill's date of enactment. Consequently, the State will not have to return moneys already collected, or owed but not yet collected, from the escheatment of such instruments under P.L.2010, c.25.

BILL DESCRIPTION

Assembly Bill No. 1871 (1R) of 2012 reverses certain aspects of P.L.2010, c.25. Applicable to stored value cards, money orders, and travelers checks issued on or after the date of enactment, the bill (1) removes from New Jersey's unclaimed property escheatment laws stored value cards, such as gift cards and certificates, thereby eliminating the two-year inactivity period after which stored value cards escheat to the State under P.L.2010, c.25; (2) reverts the inactivity period after which travelers checks escheat to the State from three to 15 years; and (3) reverts the inactivity period after which money orders escheat to the State from three to seven years.

Under New Jersey's unclaimed property laws, the State deems certain properties abandoned by their rightful owners if no activity related thereto has been recorded during statutorily defined periods of time. Once the State deems property abandoned, it takes custodial possession of the property ("escheatment") and records a portion of its value as State revenue. Rightful owners, however, can reclaim their property.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The OLS has not received any fiscal estimate from the Executive on this bill. But the Administrator of the Unclaimed Property Administration in the Department of the Treasury included an estimate for this bill's precursor in the last legislative session, Assembly Bill No. 3250 of 2010, in a letter to the Assembly Appropriations Committee dated November 18, 2011, which complemented testimony by Treasury officials before the Senate Budget and Appropriations Committee on June 6, 2011 on the identical Senate Bill No. 2681 of 2011. Although the figures pertain to Assembly Bill No. 3250 of 2010 as introduced, which differs slightly from Assembly Bill No. 1871 (1R) of 2012, the OLS shares them for informative purposes.

The Unclaimed Property Administration projected that Assembly Bill No. 3250 of 2010, as introduced, would have resulted in a FY 2012 State revenue loss of $110.5 million and an annual revenue loss ranging from $20.0 million to $25.0 million thereafter. These numbers implied that the State would emerge victorious from the court cases in which issuers of stored value cards and travelers checks seek the nullification of provisions of P.L.2010, c.25.

Of the $110.5 million FY 2012 revenue loss, the Unclaimed Property Administration ascribed $44.0 million to the return of money orders ($40.0 million) and travelers checks ($4.0 million) to their issuers. In contrast to Assembly Bill No. 3250 of 2010, Assembly Bill No. 1871 (1R) of 2012 no longer requires the return of amounts the State has already collected.

In addition, the Unclaimed Property Administration anticipated that Assembly Bill No. 3250 of 2010 would cause the State not to take custodial possession of $66.5 million in travelers checks ($39.0 million) and stored value cards ($27.5 million) in FY 2012. The $39.0 million revenue loss associated with the elongation of the escheatment period for travelers checks would be a one-time event. Excluding stored value cards from the escheatment process, in turn, would result in a $27.5 million revenue loss in FY 2012 and an annual revenue loss ranging from $20.0 million to $25.0 million thereafter.

OFFICE OF LEGISLATIVE SERVICES

The OLS forecasts that this bill will lower annual State General Fund revenue by an indeterminate amount and might cause the Department of the Treasury to incur reduced administrative expenses following the removal of stored value cards from the unclaimed property program. The OLS, however, refrains from quantifying the fiscal impact owing to a lack of data and uncertainty surrounding the outcome of litigation challenging the State's legal authority to accelerate the escheatment period for travelers checks and to compel issuers of stored value cards to remit certain unredeemed stored value cards to the State for custodial safekeeping.

The OLS notes that the bill applies only to stored value cards, travelers checks, and money orders issued after the bill's date of enactment. Consequently, the State will not have to return moneys already collected, or owed but not yet collected, from the escheatment of such instruments under P.L.2010, c.25.

<u>I) Exempting Stored Value Cards from Escheatment:</u> Depending on the resolution of ongoing litigation two fiscal impact scenarios exist with regard to the bill's removal of stored value cards from New Jersey's unclaimed property laws: there will either be no impact or an indeterminate State revenue loss.

A) Court Case: On January 5, 2012, the United States Court of Appeals for the Third Circuit reaffirmed a previous decision by the United States District Court for the District of New Jersey that restricted the scope of the stored value card escheatment. It is unclear, however, whether the Third Circuit ruling will settle the dispute, as the issuers of stored value cards may continue to litigate the matter.

Based on the Third Circuit's opinion, it appears that the permissible scope of stored value card escheat is that: (1) New Jersey must comply with federal priority rules concerning competing claims between states, meaning that a card may only escheat to the State if a) New Jersey is the owner's state of residence or b) the owner's state of residence is unknown or does not provide for escheat and New Jersey is the state of the issuer's corporate domicile (The Third Circuit's stored value card opinion blocked the use of the place of purchase as a proxy for the owner's state of residence.); and (2) the only escheatable cards issued before the law's effective date are those with the redemption option for cash. *New Jersey Retail Merchants Association v. Sidamon-Eristoff, 2012 U.S. App. LEXIS 130 (3d Cir. N.J. Jan. 5, 2012).*

B) No Fiscal Impact Scenario: If the court case ends with the striking down of the requirement that stored value cards escheat to the State, then this bill will not change current law and will not produce any fiscal impact. Although the possibility still exists that the courts may modify the conditions under which stored value cards escheat to the State, at this juncture in the judicial process it is extremely unlikely that the courts will invalidate the escheatment of stored value card entirely.

C) Indeterminate State Revenue Loss Scenario: If the court case concludes with the upholding of the escheatment of stored value cards, then the bill's rescinding their escheatability will generate an indeterminate State revenue loss. In their testimony before the Senate Budget and Appropriations Committee on June 6, 2011, Department of the Treasury officials shared their projection that the State would receive between $20 million and $25 million per fiscal year from the escheatment of stored value cards. The range represents an approximation of the annual revenue loss from removing stored value cards from New Jersey's unclaimed property laws. Given that the Treasury did not reveal the method undergirding its range and that the OLS does not have access to relevant data, however, the office is neither corroborating nor refuting the accuracy of this estimate.

II) Extending Inactivity Period for Money Orders: The OLS projects that extending the inactivity period after which money orders are deemed abandoned from three to seven years will produce an indeterminate State revenue loss that has two components.

First, the State will not collect any revenue from the escheatment of money orders for the *next four years following the bill's date of enactment*. This revenue loss will ensue because the State should already have a custodial possession claim on money orders with inactivity periods of at least three years under P.L.2010, c.25. It will therefore take four years for the next money order to escheat to the State under this bill. In its letter to the Assembly Appropriations Committee dated November 18, 2011, the Unclaimed Property Administration stated that it had collected $40 million from escheated money orders under P.L.2010, c.25. That number can be construed as an approximation of the cumulative four-year revenue loss from the bill's elongation of the inactivity period for money orders to seven years.

Second, the State will experience annual revenue losses from the escheatment of money orders *after the fourth year following the date of enactment* because the annual yield may wind up being inferior to current annual collections considering that fewer money orders are likely to be deemed abandoned with a longer time period of inactivity before escheatment.

III) Extending Inactivity Period for Travelers Checks: Depending on the resolution of ongoing litigation two fiscal impact scenarios exist with regard to the bill's extension from three to 15 years of the inactivity period after which travelers checks are deemed abandoned. There will either be no impact or a two-pronged indeterminate State revenue loss.

A) Court Case: To date issuers of travelers checks have taken the State to court unsuccessfully over P.L.2010, c.25's shortening of the escheatment period for travelers checks. In the latest court pronouncement in this matter, the United States Court of Appeals for the Third Circuit issued an opinion on January 5, 2012 that did not prevent the State from enforcing the accelerated escheatment period. *American Express Travel Related Services. v. Sidamon-Eristoff, 2012 U.S. App. LEXIS 129 (3d Cir. N.J. Jan. 5, 2012).* It is unclear, however, whether the issuers of travelers checks will continue further litigation.

B) No Fiscal Impact Scenario: If the court case ends with the striking down of the accelerated escheatment period for travelers checks, then this bill will not change current law and will not produce any fiscal impact. Although the possibility still exists that the courts may modify the conditions of the accelerated travelers check escheatment, at this juncture in the judicial process it is extremely unlikely that the courts will strike down the acceleration entirely.

C) Indeterminate State Revenue Loss Scenario: If the court case concludes with the upholding of the truncated three-year escheatment period for travelers checks, then the bill's restoration of the 15-year escheatment period will generate an indeterminate State revenue loss that has two components.

First, the State will not collect any revenue from the escheatment of travelers checks for the *next 12 years following the bill's date of enactment*. This revenue loss will ensue because the State should already have a custodial possession claim on travelers checks with inactivity periods of at least three years under P.L.2010, c.25. It will therefore take 12 years for the next travelers check to escheat to the State under this bill. In its letter to the Assembly Appropriations Committee dated November 18, 2011, the Unclaimed Property Administration estimated that it would collect a total of $43 million from escheated travelers checks under P.L.2010, c.25 if the State prevailed in court. The number can be interpreted as an approximation of the cumulative 12-year revenue loss from elongating the inactivity period for travelers checks to 15 years. Given that the Treasury did not reveal the method underlying its number and that the OLS does not have access to relevant data, however, the office is neither corroborating nor refuting the accuracy of this estimate.

Second, the State will absorb revenue losses from the escheatment of travelers checks after the 12th year following the date of enactment because the annual yield may wind up being inferior to current annual collections considering that fewer travelers checks are likely to be deemed abandoned with a longer time period of inactivity before escheatment.

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).