



Feds Say States Can Enforce Gift Card Laws

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Boston— Federal regulators say three New England states should be allowed to enforce state restrictions on fees and expiration dates for retail gift cards issued through national banks.

A letter from the U.S. Office of the Comptroller of the Currency backs a key element in the legal battle by the attorneys general of Massachusetts, Connecticut and New Hampshire to protect the rights of consumers who buy the cards.

Cards that are issued by national banks rather than a retailer or mall owner, such as the Simon Visa Giftcard, can be used in more locations than traditional gift cards, but they often carry tougher restrictions and higher fees if they're not quickly redeemed.

Massachusetts Attorney General Thomas Reilly released a letter Tuesday from the federal agency in support of his motion to dismiss a lawsuit that Simon Property Group Inc. filed in November. Simon, North America's largest shopping mall owner, filed the complaint in U.S. District Court in Boston in anticipation of the states' lawsuits that followed.

Indianapolis-based Simon is fighting Reilly's efforts to resolve the battle in state court by asserting a Massachusetts gift card law that is more stringent than federal law.

Simon argues the card instead falls under the National Bank Law covering interstate commerce because it is jointly issued with Bank of America.

The letter to both sides from Daniel Stipano, acting chief counsel for the agency charged with administering the federal law, said the OCC does not believe the federal law pre-empts state laws.

Simon issued a statement Wednesday saying the company "remains confident" that its card complies with all legal requirements.

Among the properties Simon owns is the Crystal Mall in Waterford, Conn. Connecticut Attorney General Richard Blumenthal and state Treasurer Denise Nappier said the company violated state law by subtracting \$2.50 a month from Crystal Mall gift cards that had an unused balance after six months, and charging a \$7.50 fee to reactivate an expired card. They sued Simon in November to end the practice.

"The OCC's ruling assures that state law can be applied, and we will do so aggressively — to protect consumers from Simon's unconscionable fees and expiration dates," Blumenthal said.

Connecticut state Treasurer Denise Nappier said Connecticut enacted laws specifically to fend off practices such as those used by Simon. She said the OCC opinion supports the legislation.

"The reason for Connecticut's gift card law was to protect consumers from having the value of gift cards eroded, which was a common practice," Nappier said. "Not any more. Retailers have complied and many even advertise the fact that gift cards in this state are free from the previous fees. There should be no doubt that Connecticut will continue to protect its consumers."

Alice Moore, chief of Reilly's Public Protection Bureau, issued a statement saying Reilly's office is "certainly pleased that the OCC has weighed in and agreed that state law applies."

Bank of America spokeswoman Shirley Norton declined to comment, noting the bank is not a party in the litigation.

Spokeswoman Rhonda Bentz of Visa USA — which also is not involved in the lawsuit — said the payment card association fears the impact of gift card laws like those in Massachusetts.

"The larger concern is what all this will do to the marketplace and a product consumers love," Bentz said.

The attorneys general claim Simon violates state laws by subtracting \$2.50 a month from gift cards that had an unused balance after six months, and charging a \$7.50 fee to reactivate an expired card.

Reilly argues the cards are not immune from state enforcement "because they are not a bank product."

Simon's prepaid cards are sold in 35 states at 159 malls. The cards can be used anywhere Visa debit cards are accepted, including locations not affiliated with Simon malls.

The growing number of cards issued jointly with national banks has expanded consumers' options on where they can use the cards, making them attractive as gifts for out-of-state relatives, said Carol Baroudi, a retail analyst with the Waltham-based research firm Hurwitz & Associates. But consumer rights are at risk in cases where the issuer tries to avoid state laws that are more restrictive than federal regulations, Baroudi said.

"I feel strongly that the consumer protections in place in the state or commonwealth where I buy it should apply, even if it's a national brand," she said.

Massachusetts law requires that gift cards be redeemable at full face value for up to seven years after they are issued, but the Simon card expires after one year, Reilly said.

Simon has said its card is not a retailer gift card, and features terms and conditions based on those used with Bank of America's own branded gift card.

Simon said it does not benefit from the underlying sales of items purchased using its cards, so it must recover costs for the cards through fees. Simon also receives a portion of an "interchange" fee from Visa each time a card is used.

Solomon McCown, the Boston law firm that represents the company in the gift card lawsuit, released a statement Wednesday reaffirming the Simon Property Group's claim that the gift card fees are legitimate and enforceable.

"Simon Property Group remains confident that based on the underlying facts and applicable legal standards, its Simon Visa Giftcard complies with all legal requirements," it said in a brief statement said that referred only to its Massachusetts malls. "The number of Massachusetts malls in the Simon portfolio is among the highest of any state, Simon is one of the largest taxpayers in Massachusetts, and Simon Malls employ more than 28,000 Massachusetts residents and generate \$3.5 billion dollars in consumer spending every year."

Day staff writer Chuck Potter contributed to this report