



Unclaimed Property Briefs

Promotional Incentive Exemptions

One of the exemptions that were added to Virginia's Uniform Disposition of Unclaimed Property Act ("Act") in 2000 was "promotional incentives." It is found in subsection B of § 55-210.8:1 that reads as follows:

The following property is exempt from the provisions of this chapter and shall not be assessed by the administrator as unclaimed property: (i) credit balances payable to a business association, (ii) outstanding checks resulting from or attributable to the sale of goods or services to a business association, **(iii) promotional incentives**, and (iv) credits, gift certificates, coupons, layaways, and similar items, provided such credits, gift certificates, coupons, layaways, and similar items are redeemable in merchandise, in services, or through future purchases. (Emphasis added).

Standing alone, the promotional incentive exemption appears to be broad and appears to cover rebates, but its application is narrowed significantly when one looks at the definition of "promotional incentive" that was added to § 55-210.2 of the Act at the same time. The General Assembly defined a "promotional incentive" as a "*coupon, rebate or other promotional device offered to induce a consumer to purchase goods, food or services and for which (i) no direct consideration is given by the consumer or (ii) the consideration given is less than the value of the goods, food or services to be received.*" Va. Code Ann. § 55-210.2 (2007 Repl. Vol.) (Emphasis added). To be consistent with the consumer protection purpose of the Act, the General Assembly defined a "promotional incentive" so that it must meet a two-part test to be exempt under § 55-210.8:1 from the provisions of Virginia's Act.

As explained below, the Treasurer of Virginia, whose role as Administrator is to interpret, apply, and enforce the provisions of Virginia's Act, finds that the majority of uncashed rebate checks mailed to consumers who purchased a product and complied with the rebate terms and refund instructions are not exempt from reporting under Virginia's Act because they fail to meet the second prong of the test. While the word "rebate" is used in the definition of "promotional incentive" as an example of a "promotional device" just like the word "coupon", a typical "rebate" is not exempt because the consumer pays consideration (full or sales price) for the goods purchased before receiving the mail-in rebate form. The typical example of a rebate is when a consumer buys a camera at its regular retail price of \$150 and the consumer receives a mail-in rebate form for \$25. The consumer completes the form and attaches a copy of the sales receipt and the proof of purchase and submits the rebate form. The consumer receives a check for \$25, but forgets to cash it. The rebate



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check is not exempt in Virginia because the consumer paid consideration of \$125 for the camera. The uncashed rebate check is covered under the general rule in § 55-210.2:1 of Virginia's Act and is reportable after five years.

Examples of promotional incentives that would be exempt in Virginia would be a \$20 instant rebate check that can be used when you purchase a single item at a certain retail store that you are given when you open a savings account at a bank or a \$20 gas card for test-driving a new car. There was no consideration given by the consumer in these examples, and, therefore, both prongs of the "promotional incentive" definition are met.



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