



Andrew W. Saag

## Gift Cards: New Legal Hurdles

In this down economy, businesses are eagerly searching for ways to gain a competitive advantage, and many businesses are turning to gift cards as a way to gain that advantage. A gift card attracts new customers to the business, builds brand loyalty and offers a versatile gift for the customer. The National Retail Federation estimated that U.S. consumers bought approximately \$24.9 billion worth of gift cards during the 2008 holiday season.

The popularity of gift cards has prompted many state legislatures to adopt a complex set of laws governing expiration dates and maintenance fees. These laws are especially difficult for business owner's operating in multiple states as each state's laws differ. The following will examine Alabama and its surrounding state's laws regarding gift cards.

### Alabama

Alabama has no expiration date or non-use regulations. In general, gift cards are presumed to be abandoned three years after being sold; however, gift cards issued by retailers are exempt from this provision.

### Florida

Florida prohibits expiration dates, post-sale charges and fees for both gift cards and stored value cards. This prohibition does not apply if the card is in exchange for a charitable contribution, loyalty program or employee incentive program where no consideration was given for the gift card.

### Georgia

Georgia allows expiration dates and non-use fees, but both must be conspicuously printed on the gift card. Gift cards that are unclaimed for five years are presumed to be abandoned.

### Mississippi

Similar to Alabama, Mississippi has no expiration date and non-use fee regulations. Gift cards unclaimed for more than five years are deemed abandoned.

### Tennessee

No gift card can expire within two years of issuance. A gift card is valid until redeemed or replaced if sold without a valid expiration date. Issuance fees are also prohibited. No service or non-use fees are allowed within two years of issuance.

### Income tax concerns

In addition to dealing with legal regulations, businesses must also consider how the IRS views income derived from the sale of gift cards. For financial reporting purposes, gift cards are only recognized as income when the gift card is redeemed. For income tax purposes, businesses recognize gift card income when the card is sold. However, if the taxpayer properly follows the deferral rules of Regulation Section 1.451-5 and Revenue Procedure 2004-34, unredeemed gift card income can be deferred up to the last day of the second tax year following the year of sale.

While gift cards can be an excellent way to stimulate revenue, business owners must be mindful that there are legal and income tax laws that must be considered before taking advantage of this opportunity. **C**



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Andy practices in the areas of Corporate and Tax Law. He received his J.D. from Cumberland School of Law as well as his M.B.A. from the Brock School of Business at Samford University and his B.S. from The University of Georgia in 2005.

Amy C. Capps

## Attorney Spotlight: Barry at Bat

Barry Ragsdale is a litigator in our Birmingham office who recently returned to Sirote, where he began his legal career, after 15 years spent representing plaintiffs and defendants in antitrust, securities, insurance, business fraud, products liability, shareholder and other complex litigation and class actions. Among his many accomplishments, Barry successfully represented on a *pro bono* basis the first death row inmate to have a death sentence commuted by an Alabama Governor in almost 40 years.

Barry has appeared on behalf of his clients in state and federal courts in Alabama and throughout the country, including the U.S. Court of Appeals for the First and Eleventh Circuits and the U.S. Supreme Court. Barry is currently serving as a member of the Board of Bar Examiners of the Alabama State Bar, as chair of the Alabama State Bar's Section of Business Torts and Antitrust Litigation, as a member of the Alabama Supreme Court's Standing Committee on the Appellate Rules of Procedure and is a Past President of the Birmingham Chapter of the American Inns of Court. Barry was recently selected as a Top Attorney by *Birmingham Magazine* and is a frequent lecturer on arbitration, class action and professional ethics.

### AC Where did you grow up?

**BR** In many ways, that's still a work in process. As the great poet Jimmy Buffet said, "I'm growing older, but not up." But, to answer your question, I spent my childhood in Huntsville. I went to Huntsville High School, and went on a debate scholarship to the University of Central Florida, and finished up at the University of Alabama in Tuscaloosa, which is also where I went to law school.

### AC What is your favorite memory from your childhood?

**BR** I have great memories from childhood of helping my parents who were very active in state and local politics in the 1960's and '70's. I would work on campaigns, riding on floats, or passing out literature, bumper stickers and things like that. I think that's when I became interested in politics as a hobby; it taught me the importance of civic activism.

### AC Were you in a college fraternity or any other organization?

**BR** No fraternities, because I would never consider joining one that would have me as a member. I was a collegiate debater, which required about 40 hours per week devoted to research and practice. We trav-

eled all over the country debating schools much larger and more established than Central Florida. We regularly debated against Harvard and other Ivy League schools. Three times we qualified for the national championship debate tournament, and twice we were in the top 10 nationally.

### AC What's one thing that's happened in your life that has made you who you are today?

**BR** Besides the values taught to me by my parents, participating in debate had a profound influence on my life. I learned more in high school and college debate than I learned in all the rest of my education combined. It teaches you rational thought, how to research and gather information to support your arguments and it teaches you that there are at least two sides to almost every issue. Those skills obviously have come in handy during my legal career.

### AC If you could change one thing that ever happened in your life, what would it be?

**BR** That's a difficult one for me because I don't tend to look backward. I very seldom worry about what might have been. If I had to answer, I would say that

