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VIA E-MAIL

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Re: **Second-Hand Prepaid Gift Card Dealers**

Dear ██████████:

The New York City Department of Consumer Affairs (the "Department") sends this response to your request for a legal interpretation asking whether "the redemption of prepaid gift cards constitutes a 'purchase' of second-hand goods requiring licensing as a 'dealer in second-hand articles.'" Specifically, you described the following scenario:

[A] customer will present his/her prepaid gift card to a teller at a Client check cashing branch location; the teller will independently verify the amount of funds on the card by contacting the card issuer; the teller will then tender to the customer an amount in cash *representing a percentage* of the monetary value remaining on the card, together with a receipt; *the Client will then aggregate the cards which are then forwarded periodically to the Client's vendor in exchange for a fee.*

(Emphasis added.) The short answer to your question is yes. Your client would require a second-hand dealer license from the Department for each location where the transactions described above occur.

The New York City Administrative Code ("NYC Code") defines a "dealer in second-hand articles" as "any person who, in any way or as a principal broker or agent: 1. Deals in the purchase or sale of second-hand articles of whatever nature" NYC Code § 20-264(a)(1). NYC Code § 20-265(a) states that "[i]t shall be unlawful for any person to act as a dealer in second-hand articles without a license therefor." Furthermore, NYC Code § 20-268(a) makes it "unlawful for any dealer in second-hand articles to carry on his or her business at any place other than the one designated in such license."



The transactions you describe fall squarely within the activity contemplated by the statute. First, what you characterize as “redeem[ing]” or “cash[ing]” “closed loop”¹ gift cards is, in fact, the purchase of those gift cards for less than their actual value.² Second, what you characterize as “forwarding periodically to the Client’s vendor in exchange for a fee” is actually the sale of those gift cards to a third-party vendor for profit. Both activities constitute “[d]eali[ing] in the purchase or sale of second-hand articles of whatever nature,” for which a license from the Department is required. *See* NYC Code §§ 20-264(a)(1), 20-265(a).

We make no representation as to whether the contemplated activity violates any laws not discussed in this letter or the terms and conditions of the gift cards. Finally, the terms of some gift cards expressly prohibit resale³ and, thus, your client should seek advice regarding whether the resale of gift cards that have terms and conditions expressly prohibiting resale violates any local, state, or federal laws.

Please contact us should you have additional questions.

Sincerely,



Staff Attorney

¹ “Closed-loop” means “a consumer can only use the product at a specific merchant or group of merchants.” *See* Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 79 Fed. Reg. 77102, 77104 (proposed Dec. 23, 2014).

² Even if your client were to pay the full value of the gift the card, it would not be considered redemption, because closed loop gift cards may only be redeemed by the issuer of the card. *See* 79 Fed. Reg. at 77104; *see also* Office of the Comptroller of the Currency, Comptroller's Handbook, at 31 (August 2014) (“Closed-loop gift cards constitute the majority of the gift card market; are typically issued by a merchant, not by a financial institution; and generally can only be used to make purchases at the merchant or group of merchants.”).

³ For example, Walmart’s Gift Cards Terms and Conditions state, “Resale of Walmart Gift Cards is strictly prohibited.”