

## **Notice of Action on Petition for Rulemaking**

### **Money Order Dormancy Fees**

Petitioner: MoneyGram Payment Systems, Inc., and The Western Union Company

**Take notice** that on July 14, 2009, the Division of Consumer Affairs (Division) received a petition for rulemaking from MoneyGram Payment Systems, Inc. and its predecessors and affiliates (MPSI), by Lonnie Keene, Chief Compliance Officer and Western Union Company and its predecessors and affiliates ( Western Union ), by Francis Aaron Henry, Assistant General Counsel. The petitioners requested that the Division adopt a rule clarifying that, under P.L. 2007, c. 326 (N.J.S.A. 56:8-182), retroactive calculation of money order inactivity fees is permitted for money orders sold in New Jersey after April 12, 2008; and that the Department of Treasury, Division of Taxation (Office of Administrator of Unclaimed Property) amend N.J.A.C. 18:13-3.2 to harmonize it with the requirements of N.J.S.A. 56:8-182. A notice acknowledging receipt of the petition and summarizing its contents was filed with the Office of Administrative Law and published in the New Jersey Register on September 8, 2009 at 41 N.J.R. 3328(a).

**Please take further notice** that on August 26, 2009, the Director of the Division determined to deny the petitioners request that the Division adopt a new rule under N.J.S.A. 56:8-182 permitting retroactive calculation of money order dormancy fees.

N.J.S.A. 56:8-182 provides that "no dormancy fee shall be charged against a money order within the 12 months immediately following the date of sale." Petitioners argue that N.J.S.A. 56:8-182 prohibits charging a dormancy fee "within" 12 months after the sale, but does not expressly prohibit charging a retroactive fee after 12 months have expired. Petitioners assert that N.J.S.A. 56:8-182 was intended to "maintain the historic and industry standard approach to levying inactivity fees and merely modified the variables applicable to calculating the fees," citing Division of Taxation's 2006 Inactivity Fee Rule (N.J.A.C. 18:13-3.2). The Division does not agree. There is no language in the statute authorizing the retroactive application of fees. Rather, the Legislature indicated its intention to change the current law: N.J.S.A. 56:8-182 begins with the words "notwithstanding any other provisions of law to the contrary . . ." Further, the general principle enunciated in the statute is that money orders sold after the effective date would retain full value until presented for payment (N.J.S.A. 56:8-182a). The dormancy fee is an exception that the Division believes should be read narrowly.

Petitioners allege that unless issuers are permitted to assess dormancy fees retroactively they "could be required to charge higher initial transaction fees in order to maintain current returns on capital." They claim that the new rule would serve to reduce costs for the vast majority of the petitioners' New Jersey customers whose money orders are cashed in a timely manner. The Division believes that the statutory dormancy rate cap of \$ 2.00 per month after 12 months following the date of sale, rather than the \$ 0.25 per month permitted under the current 2006 Inactivity Fee Rule, indicates the Legislature's intention that the fee would not be applied retroactively. Retroactive application of the fee would result in a charge of \$ 24.00 for the first 12 months. The maximum permitted fee under the 2006 Inactivity Fee Rule that petitioners rely on is \$ 21.00, or \$ 0.25 per month for the entire seven year period allowed under the New Jersey Unclaimed Property Act (N.J.S.A. 46:30B-1 et seq.).