



New York State to Allow Financial Institutions to Offer Savings Promotion Giveaways

September 30, 2014

Governor Cuomo has signed legislation allowing banks and credit unions in New York to offer savings promotion giveaways whereby depositors can be eligible to win prizes based on deposits made into a qualifying savings account. The legislation takes effect on September 23, 2015.

Under current New York law, a prize giveaway or sweepstakes where an entrant must buy something or provide some form of consideration in order to be eligible to win is deemed illegal. This has prevented financial institutions from engaging in promotions where winning a prize is based solely on making deposits in a savings account. The new legislation now creates an exception for promotions that encourage depositors to build and maintain savings deposits.

There are several requirements in order for a prize giveaway to be eligible for this exception:

1. The interest rate associated with the savings account having the promotion is not reduced when compared with other comparable savings accounts offered by the financial institution;
2. The financial institution cannot charge a fee for entering the promotion;
3. All service fees charged on the savings account having the promotion must be comparable with all service fees charged in connection with other comparable savings accounts offered by the institution;
4. Each entry in the savings promotion must have an equal chance of being drawn as a winner;
5. Participants in the savings promotion cannot be required to be present to win; and
6. The promotion may not otherwise be prohibited by federal law or regulation (which may make this exception unavailable for national banks, federal savings banks, and federal savings associations, as discussed below).

A savings promotion that meets these requirements will not be deemed an illegal lottery under New York law. Please note, however, that if the total announced value of the prizes exceeds \$5,000, certain requirements will apply to the promotion under New York General Business Law Section 369-e. That section requires, among other things, advance registration of the giveaway with the New York Secretary of State.

Also, please note that any prize giveaways may be subject to IRS information reporting requirements depending on the amount involved. Prizes with a value of \$600 or more are generally reported on IRS Form 1099-MISC.

The exception created by this new legislation applies to financial institutions chartered under New York law, as well as national banks, federal savings banks, federal savings and loan associations, and federal credit unions.

Please note, however, that federal banking laws generally prohibit banks from engaging in certain lottery-related activities. This prohibition may make this exception on savings promotion giveaways under New York law unavailable for banks until federal legislation is passed. Such legislation is currently pending in Congress.

The legislation is effective on September 23, 2015, which is one year after it was signed by the governor.

If you have any questions regarding this legislation, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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