Visa, Inc.'s Statement Regarding the Treatment of Payroll Cards Under the proposed Vermont Revised Uniform Unclaimed Property Act

House Bill 550 would amend the state's unclaimed property statute. Among other things, the proposed Revised Uniform Unclaimed Property Act would treat "amounts held on a payroll card" like a paycheck and subject the funds to the one year presumptive abandonment period applicable to wages. This is an unnecessary change that deviates from the Uniform Law Commission's model law and will harm consumers.

Payroll cards allow workers without traditional bank accounts and those with limited access to traditional financial services to enjoy the convenience and security that their coworkers experience with direct deposit. Without payroll cards, these workers often rely on expensive check cashing services to access their wages, and then incur additional expense when purchasing money orders to pay their bills. Payroll cards provide unbanked and under-banked workers with a safe place to store their wages and offer them a convenient means of making purchases and paying their bills. Additionally, many payroll card programs provide program features that consumers have come to expect from mainstream financial service providers—including online bill pay, savings functions, and mobile check cashing.

It is easy to understand why a paper paycheck, left uncashed for a one year period, might be considered abandoned property by the state of Vermont. There are few instances where workers would pick up a paycheck after leaving it unclaimed for a year. Funds deposited on a payroll card and left unspent for a year, however, are very different from the uncashed check and should not be treated the same. First, the funds have been paid to the worker and deposited in a bank account. Funds on a payroll card are not unclaimed. Second, payroll cards have similar consumer protections as checking and savings accounts. Third, many payroll cards have a savings feature that allows workers to put aside money to accumulate towards a specific goal or to serve as a rainy day fund. A one-year escheatment period would hinder a payroll card user's ability to save for their futures or require them to unnecessarily apply to the state to reclaim their funds. For these reasons, the Uniform Law Commission approved a three year abandonment period for payroll cards.

Vermont would be only the second state in the country to subject wages loaded on a payroll card to a one year abandonment period. Washington and Minnesota considered similar measures this legislative session, but they have wisely changed course and applied abandonment terms consistent with other consumer asset accounts.

As discussed below, payroll card accounts operate like consumer asset accounts used for direct deposit, not paychecks, and should be subject to the three year presumptive abandonment period for demand, savings, and time deposits.

- ***Crediting wages to a payroll card account is like depositing wages to a checking or savings account.*** Payroll cards are connected to an account or subaccount at a financial institution that is owned and controlled by the employee. In fact, payroll card accounts serve as the primary transaction account for many employees. On payday, wages are deposited directly into the account and the funds are irrevocably transferred from the employer to the employee. This is precisely how direct deposit to an employee's checking or savings account works. In contrast, when wages are paid by check, the funds remain in the employer's bank account until the check is cashed by the employee or remitted by the employer to the state as unclaimed property.

- ***The Uniform Law Commission's Revised Uniform Unclaimed Property Act subjects payroll cards to the same presumptive abandonment period as for demand, savings and time deposits.*** The Uniform Law Commission explained that "payroll cards … mean the bank account into which wages and other compensation can be paid and accessed electronically by the employee. Accordingly, payroll cards have the same three year holding period as bank accounts, rather than the one year holding period for unpaid compensation being held by the employer."[1]

- ***Payroll card accounts are recognized to be consumer accounts under federal banking law.*** Payroll cards are "accounts" under federal Regulation[2] E and, therefore, are subject to the same consumer protections as other consumer asset accounts. These protections include disclosure requirements, error resolution procedures, access to account information, change in terms notices and limited liability for unauthorized use. Similarly, the Federal Deposit Insurance Corporation (FDIC) recognizes payroll cards as insured accounts eligible for FDIC insurance coverage up to the statutory limits.[3] Unclaimed property statutes should also treat payroll cards as consumer asset accounts.

- ***Payroll card accounts often include funds that are not wages.*** Like other consumer accounts, most payroll cards are able to receive funds from sources other than the employer (e.g., unemployment insurance, court ordered child support, tax refunds, and funds from the employee) and may be used by the employee after the employment relationship has ended. As such, payroll card accounts should be treated like other consumer accounts holding a variety of commingled funds including wages.

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[1] Revised Uniform Unclaimed Property Act with Prefatory Notes and Comments (December 5, 2016).
[2] 12 C.F.R. § 1005.2(b)(2).
[3] FDIC General Counsel Opinion No. 8, 73 Fed. Reg. 67157 (November 13, 2008).