

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*
Jan Lynn Owen
Commissioner of Business Oversight

April 25, 2017

Re: Request for an Order of Exemption under Financial Code section 2011

Dear _____:

Thank you for your letter dated February 17, 2017 to the Commissioner of the Department of Business Oversight. As Counsel for the Legal Division, I have been asked to respond to this matter. Your letter requested confirmation that the California Money Transmission Act (“MTA”) does not apply to the money transfer services _____ provides to county and regional jails. In an email dated March 2, 2017 and a letter dated April 3, 2017 you provided additional information showing _____ acts as the agent of government-run jails. For the reasons discussed below, the Department denies your request for an order of exemption and instead finds _____ is exempt as an agent of a governmental subdivision.

Background

_____ is a private company that provides commissary and food services to county and regional jails. Commissaries can be operated by _____ or by the jail. _____ provides limited kiosk and data processing services for money transfers for the purchase of items from the commissary or funding an inmate’s commissary account. All services are provided pursuant to a written contract. The jails _____ services are all operated by a county or regional government. None of the jails serviced by _____ are located in California, and _____ has no physical presence in California. However, the company’s website can be accessed by California residents to purchase items from the commissary or to transfer funds to an inmate’s commissary account (“Online Services”).

An Online Services request is initiated when someone who wants to transfer money (“Sender”) accesses _____’s website. The Sender enters credit card information on the website and authorizes a purchase from the commissary or a charge for the amount to be transferred to the inmate’s commissary account.¹ _____ can credit the funds to an inmate’s account within thirty minutes of the Sender authorizing the transfer, but it can take up to three business days to complete the transfer of funds from the Sender’s credit card account to _____’s bank account.

¹ The inmate’s commissary account is a sub-account of the “Inmate Trust Account,” a bank account of which the jail is the legal owner.

Money Transmission Act

The MTA provides that a person shall not engage in the business of money transmission in California unless the person is licensed or exempt from licensure under the MTA, or is an agent of a person licensed or exempt from licensure.² Financial Code section 2003, subdivision (k) defines “in California” to include from persons located in California. Financial Code section 2003, subdivision (q) defines “money transmission” in relevant part as receiving money for transmission. Financial Code section 2003, subdivision (u) defines “receiving money for transmission” as receiving money or monetary value in the United States for transmission within or outside of the United States by electronic or other means.

“Receiving Money for Transmission”

_____ uses its Online Services to transmit money by electronic means from persons located in California to jails located in other states. The company receives money on its website to pay for goods in a commissary or to fund an inmate’s commissary account. Once the Sender authorizes the credit card transaction, _____ has constructive possession of the Sender’s money because the money can only be sent to _____.³ Because _____ receives money from persons located in California that is sent to jails within the United States, _____ receives money for transmission pursuant to the definitions in Section 2003. As a result, its Online Services are subject to licensure under the MTA unless there is an exemption for those transactions.

Agent of an Exempt Entity

Financial Code section 2030, subdivision (a) prohibits a person from transmitting money in California without a license unless the person is exempt from the MTA, or is an agent of a person licensed under or exempt from the MTA. Financial Code section 2010, subdivision (c) exempts from the MTA governmental entities including a “state, county, city, or any other governmental agency or governmental subdivision of a state.”

Since _____ does not currently have an MTA license, the company cannot engage in money transmission unless it is exempt from the MTA or is an agent of someone licensed under or exempt from the MTA. _____ provides money transmission services to county and regional jails pursuant to a written contract, and these jails could be part of a governmental subdivision. Your April letter clarifies that the jails are operated by governmental subdivisions (e.g., a county) and not private or “for profit” companies. As extensions of a governmental subdivision, the jails with which _____ contracts are exempt from the MTA under Section 2010, subdivision (c). Pursuant to Section 2030, subdivision (a), _____ is able to engage in money transmission without a license if _____ is an agent of the exempt jails.

² Fin. Code, § 2030, subd. (a).

³ Cal. Code Regs., titl. 10, § 80.129. “Receiving money for transmission” includes constructively receiving money or monetary value for transmission.

The contract submitted with your April letter provides that _____ is an agent of the county or regional jail to which it transmits money. For example, Section 12.D states, “_____ is an authorized agent for the purpose of collecting and processing” funds from the Online Services. That section further states that the jail “expressly acknowledges that receipt of Funds by _____ as authorized agent will be treated by [the jail] as if [the jail] had received those Funds directly from the Sender.” _____ is also referred to as the jail’s agent in the section of the contract that describes the relationship of the parties. Based on the contract provided, _____ has satisfied the requirements of Section 2030, subdivision (a): it has been designated an agent of an entity that is exempt from the MTA under Section 2010, subdivision (c). As a result, _____ is also exempt from the MTA.

Public Interest Exemption

Under Financial Code section 2011, the commissioner may, by regulation or order, exempt from all or part of the MTA a person or transaction if she finds such action to be in the public interest and that regulation of the person or transaction is not necessary.

Because _____ qualifies for another exemption, we find it unnecessary to consider or grant an order under Financial Code section 2011.

Conclusion

Based on the information provided, the Department finds that _____ is an agent of an exempt entity and is exempt from the MTA pursuant to Section 2030, subdivision (a) for the money transmission services it provides pursuant to the aforementioned contract.

This opinion is limited to the facts and circumstances described above regarding the application of the MTA. Should any of the facts or circumstances change, the Department’s opinion may also change.

If you have any questions, please contact the undersigned at _____.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

Shavaugn I. Lewis
Counsel

SIL:acp

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco