

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

May 4, 2016

Re: _____ – Request under the California Money Transmission Act

Dear _____:

Thank you for your letter dated April 7, 2016, in which you ask for a “no action letter,” or a letter finding that _____ is exempt from the licensing requirements of the California Money Transmission Act (“MTA”). In your letter you state that the California Department of Child Support Services has invited _____ to submit a bid to provide payment kiosks for child support. The Department of Child Support Services’ “Invitation for Bid” requires _____ to provide an “Exemption Letter” from the Department of Business Oversight (“Department”) stating that _____ is exempt from obtaining a money transmitter license.

BACKGROUND

Your letter describes a proposed business arrangement in response to the Department of Child Support Services’ Invitation for Bid. Under a potential contract with the Department of Child Support Services, _____ will receive money from non-custodial parents and transmit the money to the Department of Child Support Services. _____ kiosks will be located in public areas or in a Department of Child Support Services’ office. Non-custodial parents will deposit payments using cash, check, credit or debit card into a _____ kiosk and receive a receipt from the kiosk detailing the transaction. The funds from the transaction will be deposited into the State Disbursement Unit account owned by the Department of Child Support Services. The Department of Child Support Services will pay _____ a transaction fee for the use of _____’s kiosks and services.

MONEY TRANSMISSION ACT

Financial Code section 2030, subdivision (a) provides that a person shall not engage in the business of money transmission in California unless the person is licensed or exempt from

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licensure under the MTA, or is an agent of a person licensed or exempt from licensure. Section 2003, subdivision (q)(3) defines "money transmission" to include receiving money for transmission. Section 2003, subdivision (u) defines "receiving money for transmission" to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

Financial Code section 2010, subdivision (c) exempts from the MTA public entities including "state, county, city, or any other governmental agency or governmental subdivision of a state." Section 2010, subdivision (l) exempts transactions where the recipient of the money or monetary value is an "agent of the payee." This section also provides that the agent and payee must have a preexisting written contract for providing goods or services.

_____ will be receiving money from non-custodial parents for electronic transmission to the Department of Child Support Services. _____ is therefore "receiving money for transmission" as defined by the MTA and will require a license under the MTA, unless _____ qualifies for an exemption.

The documents submitted with your letter show that there is currently no written contract between _____ and the Department of Child Support Services. Without a preexisting written contract, _____ has not yet satisfied the requirements of Financial Code section 2010, subdivision (l). _____ has also not satisfied the requirements of Section 2030 because it is not an agent of the Department of Child Support Services, a government agency that would not be subject to licensure under Section 2010, subsection (c).

CONCLUSION

Based on the facts provided, _____ does not qualify for an exemption from licensure under the California Money Transmission Act.

This opinion is limited to the facts and circumstances described in your letter. Should any of the facts or circumstances change, the Department's opinion may also change.

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Should you have any questions, please contact the undersigned at (____) ____.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

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Counsel

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