

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

Jan Lynn Owen
Commissioner of Business Oversight

May 15, 2015

Re: _____ – Opinion Request

Dear _____:

This is in response to your letters dated February 6, 2015, in which _____ requests a determination by the Department of Business Oversight (Department) regarding the applicability of new exemptions from the Money Transmission Act to certain _____ products. The issues you seek to resolve are (1) whether _____'s payroll processing activity complies with the exemption requirements of Financial Code subsection 2010(j), and (2) whether _____'s "Register Payments Platform Services" complies with the exemption requirements of Financial Code subsection 2010(l).

Background

Your letters state that _____ offers products that it currently reports as money received for transmission or stored value. _____ asserts that some of the products that it offers meet the criteria set forth in Financial Code sections 2010(j) and 2010(l), and therefore, are exempt under the Money Transmission Act. Specifically, _____ argues that the following products are no longer money transmission under the Money Transmission Act:

- Payroll Processing Services
- _____ Register
- _____ Order
- _____ Invoices
- _____ Sites

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With respect to the first bullet point above, _____ has submitted its Payroll Processing Services business model, which asserts that this activity is exempt from regulation pursuant to Financial Code section 2010(j). The model indicates that _____ delivers wages on behalf of employers to employees and it facilitates the payment of payroll taxes to state and federal agencies. Furthermore, your letter states that _____ does not provide stored value cards in connection with its Payroll Processing Service.

With respect to the remaining products listed above (the Register Payments Platform Services), _____ has submitted the existing written agreements for each product that it asserts is exempt under Financial Code section 2010(l). You state that the agreements establish that (1) _____ is the agent of the payee for purposes of receiving payments from payors, and (2) _____'s receipt of any payor's money satisfies the payor's obligation to the payee.

Money Transmission Act

Financial Code section 2010 sets forth statutory exemptions from the Money Transmitter Act. Assembly Bill number 2209 (2014), which became effective January 1, 2015, amended Financial Code section 2010 to also include subsections (j) and (l). Financial Code subsection 2010(j) exempts persons who deliver wages, facilitate the payment of taxes and the distribution of other authorized deductions, or transmit funds on behalf of employers in transactions related to employees. This exemption does not extend to transmission services or the selling of stored value cards to such person's customers.

_____ 's Payroll Processing Services, per the business model described in your February 6, 2015 letter, include directing "...the payment in an amount equal to the wages (after taxes and applicable employee deductions) to each employee and ...facilitate the payment of payroll taxes..." These activities are the specific activities enumerated in subsection 2010(j) as being exempt. However, the transmission services provided to and selling of stored value cards to _____ 's customers would not be exempt under subsection 2010(j).

Financial Code subsection 2010(l) exempts transactions in which the transmitter operates as the "agent of the payee." Under this subsection, the recipient of the funds to be transmitted, when acting as an agent of the payee under a preexisting written contract, is exempt from the Money Transmission Act, if such receipt of funds satisfies the payor's obligation to the payee.

The Seller Agreement submitted with your letter shows that the merchant is the payee, that the merchant's customers are payors, that _____ is the agent of the merchant , and that _____ 's receipt of funds satisfies any obligation the merchant

customer has to the merchant. The Seller Agreement mirrors the requirements of subsection 2010(l).

Conclusion

The payroll processing transactions described herein comply with the requirements of Financial Code subsection 2010(j). The Department has reviewed these agreements and has determined that the two requirements in Financial Code section 2010(l) have been met. Therefore, the Department confirms that _____'s Payroll Processing Service is exempt from the Money Transmission Act.

The Department also confirms that the following products, to the extent they involve money received for transmission, are exempt from the Money Transmission Act pursuant to Financial Code section 2010(l) and reporting for these products is no longer required:

- _____ Register
- _____ Order
- _____ Invoices
- _____ Sites

The Department's determination is limited to _____'s money received for transmission products and does not extend to its stored value products. The Department expects _____ to continue reporting its stored value products

This opinion is based solely on the facts as represented in your correspondence, and may change if any of the conditions or circumstances under which _____ provides products or services is altered in the future. If you have any questions, please feel free to contact me at (415) 263-8541.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

Paul. T. Crayton
Senior Counsel

PTC:acp

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