



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

October 15, 2019

Re: Request for Interpretive Opinion

Dear _____:

Thank you for your letter to Robert Venchiarutti, Deputy Commissioner of the Money Transmitter Division, dated May 17, 2019. As senior counsel for the Legal Division, the Commissioner requested that I respond to this matter. Your letter requests an interpretive opinion from the Department to determine whether the reporting practices of _____ and _____ (collectively, "_____") are consistent with the requirements of the California Money Transmission Act.

Background

In your letter, you explain that when an agent of _____, who is located in a state other than California, sells a prepaid card online to a California resident and mails the card to the mailing address provided by the customer, _____ reports the transaction to the money transmitter regulator in the state where the agent is located. _____ does not treat these as California sales or outstanding liabilities for purposes of its reports to the Department. Similarly, when an agent located in a state other than California sells a prepaid card in person, _____ reports the sale based on where the agent is physically located.

Your letter also describes information regarding _____' bulk sale of prepaid cards to businesses to distribute (not resell) to employees, customers, or others as incentives or rewards or for other similar purposes. _____ reports the sale to the state where the sale takes place.

You explained that this approach is consistent with the information provided in an email dated January 17, 2019, from the Department stating that out-of-state agents who have the ability to

sell to persons located in California are not to be included in licensees' California agent reports¹ because they are not located "in California."

Money Transmission Act

Financial Code section 2039, subdivision (d) requires licensees to submit quarterly reports to the Department that contains certain information related to branches, agents, and transaction data.

Specifically, Financial Code section 2039, subdivision (d)(3) requires a licensee to submit a report containing, in part, the total volume of activities, number of transactions conducted, and outstanding money transmission obligations in California and in the United States in the calendar year. For stored value, the licensee must report the average daily outstanding stored value liabilities in California in that calendar year quarter.

Financial Code section 2039, subdivision (d)(2) requires an agent report containing, in part, "the name of each person who acted as an agent in this state [...]."

Financial Code section 2003, subdivision (k) defines "in California" or "in this state" as physically located in California, or with, to, or from persons located in California.

Analysis

Reporting pursuant to Financial Code section 2039, subdivision (d)(3)

Whether a transaction for the sale of stored value takes place "in California" turns on where the customer is receiving the card. For online sales where the card is being sent to a person in California, the transaction will be "in California" because it is *with or to a person located in California*. For in-person transactions in a state other than California, the transaction is not with, to, or from a person located in California, and therefore is not a transaction in California.

Applying this to bulk sales of _____' prepaid cards, the sale should be reported in the state where the prepaid cards are received by the customer (i.e. the business that is purchasing the cards, not the end user). For example, for an in-person sale in Florida by an agent to a business, the sale occurred in Florida. If it was an online sale by an agent located in Florida, and the cards were mailed to the business in California, the sale should be reported in California.

¹ Financial Code section 2039, subdivision (d)(2) states that a licensee shall report "the name of each person who acted as an agent in this state [...]."

Reporting pursuant to Financial Code section 2039, subdivision (d)(2)

Regarding the Department's advice in its email dated January 17, stating that out-of-state agents who can sell to persons located in California should not be included in a licensee's California agent report, that advice still holds. Financial Code section 2039, subdivision (d)(2) states that a licensee shall report "the name of each person who acted as an agent in this state [...]." In this context, the portion Financial Code section 2003, subdivision (k)'s definition of "in this state" that applies is "physically located in California," as the remainder of the definition does not fit this context. Thus, the agent report should only include those agents physically located in California.

This opinion is based solely on the facts presented in your correspondence. Any changes in the facts or circumstances, as we understand them, could lead to a different conclusion.

You may call me at _____ with any questions.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

Senior Counsel