



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Manuel P. Alvarez

IN REPLY REFER TO:
FILE NO: _____

June 30, 2020

VIA E-MAIL ONLY

Re: _____ – Agent of Payee Exemption

Dear Mr. _____:

Thank you for your letter to the Commissioner of Business Oversight, Manuel P. Alvarez, dated May 29, 2020, in relation to the opinion issued on December 12, 2019.

In your letter, you explained that _____ (“_____” and f/k/a _____) has amended its contractual agreement with the _____ regarding the transmission of tax payments to meet the statutory requirements of the agent of payee exemption of Financial Code section 2010, subdivision (l). This subdivision exempts from the licensing requirements of the Money Transmission Act¹ transactions in which the person who is receiving money for transmission is acting as an agent of the payee pursuant to a preexisting written contract, and delivery of the money to the agent satisfies the payor’s obligation to the payee. “Payee” means the provider of goods or services, who is owed payment of money from the payor for the goods or services.² “Payor” means the recipient of the goods or services, who owes payment of money to the payee for the goods or services.³

The amendment to _____’s contract with the _____ that you attached to your letter states:

“The _____ appoints the Contractor as its limited agent for the sole purpose of receiving payments on the _____’ behalf from taxpayers. The _____ agrees that:
(1) a payment received by the Contractor from a taxpayer constitutes a payment made directly to the _____ and fully satisfies the taxpayer’s obligation to the _____

¹ Fin. Code § 2000 et seq.

² Fin. Code, § 2010, subd. (l)(2).

³ Fin. Code, § 2010, subd. (l)(3).

to the extent of the amount of the payment, and (2) the ____ must fulfill its obligations to the taxpayer as if the ____ had received the payment directly from the taxpayer. Pursuant to this Agreement, the Contract is responsible for remitting to the ____ all payments received from taxpayers on the ____' behalf. The ____ acknowledges and agrees that if funds are not remitted by the Contract to the ____ pursuant to this Agreement, the ____ will have recourse only against the Contractor and not against the taxpayer.”

____'s amended contract with the ____ establishes that the ____ has appointed ____ to act as its agent and that payment to ____ extinguishes the taxpayer's payment obligation to the _____. Under current law, it is unclear whether the taxpayer is a “payor” (i.e. someone paying for a good or service); however, the Department recently proposed a regulation concerning the agent of payee exemption. While the Department engages in the rulemaking process, we decline to opine on the applicability of the exemption to ____'s processing of tax payments to the _____. The Department will not require ____ to report this activity as money transmission under the MTA while the rulemaking is pending.

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

cc: Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division
Jonathan Lee, Assistant Deputy Commissioner, Money Transmitter Division