



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Manuel P. Alvarez

April 24, 2020

IN REPLY REFER TO:
FILE NO: _____

VIA EMAIL & U.S. MAIL

Re: _____ – Request for Exemption under Financial Code section 2010(j)

Dear Ms. _____:

Thank you for your letter to the Department of Business Oversight (“Department”) dated March 11, 2020, which provided additional information requested by the Department. _____ (“_____”) has requested a determination that its digital disbursements offering (“Digital Disbursements”) qualifies for the payroll processing exemption in Financial Code section 2010, subdivision (j).¹

I. BACKGROUND

_____ is a California money transmitter licensee. _____ offers an electronic payment solution in which its non-employer clients can utilize _____’s Digital Disbursements platform to transfer payroll advances to individuals. One of _____’s clients is _____. These advances can be used to fund a participating employee’s Health Savings Account, Health Reimbursement Account, and/or Flexible Spending Account, or as a general payroll advance. _____ contracts with both the employee and the employer. This contractual relationship allows _____ to verify, through the employer, the wages that an employee has earned in order to determine the amount the employee is eligible to transfer.

In order to disburse payroll advances, _____ funds its wallet in _____’s bank account and provides payment instructions to _____. As the funds are leveraged to pay participating employees, _____ replenishes its wallet, to ensure sufficient funds at all times

¹ Your letter references Financial Code section 2124 for examples of “transaction types that are exempt from reporting.” However, Section 2124 relates to the maintenance of certain records. It does not exempt any transaction types from reporting. Therefore, Section 2124 will not be addressed herein.

to support _____'s projected disbursements activity. _____ is repaid by the employers when the participating employee's wages are reconciled or by the employee directly via a debit by _____ from the employee's bank account.

_____ does not receive funds directly from employers. The funds that _____ transmits are _____'s own funds. The relevant agreements confirm this fact. The Master Agreement between _____ (an affiliate of _____) and _____ ("Master Agreement") provides: "_____ will debit the account containing 'Client's funds' for transfers to beneficiaries. 'Client' is defined as _____." ² The Employee Wellness Services Agreement ("_____ Wellness Agreement") between _____ and an employer specifies: "_____ has the responsibility of funding the payments to participating employees, and the employer shall not be obligated to fund such payments." ³

Under _____'s program, in exchange for a payroll advance, a participating employee sells his or her future received wage payment to _____. The employee authorizes the employer to make a deduction from the employee's next scheduled paycheck in the amount of the advance and to pay such amount directly to _____. Alternatively, the employee can elect to repay the advance directly by authorizing _____ to debit the employee's bank account for the amount of the advance. However, in the event that the employee does not receive a wage payment from the employer corresponding to the advance, _____ does not have recourse against either the employer or the employee if the employee fails to repay _____. ⁴

II. MONEY TRANSMISSION ACT

Financial Code section 2003, subdivision (q), 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 2030 prohibits a person from engaging in the business of money transmission in this state unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.

Financial Code section 2010, subdivision (j), exempts from the MTA:

A person that delivers wages or salaries on behalf of employers to employees or facilitates the payment of payroll taxes to state and federal agencies, makes payments relating to employee benefit plans, makes distribution of other authorized deductions

² Section 2(a) of the Digital Disbursement Services Schedule, Master Agreement.

³ Section 7 of the _____ Wellness Agreement.

⁴ See _____ Benefit Membership Agreement (between _____ and participating employees); _____ Wellness Agreement.

from employees' wages or salaries, or transmits other funds on behalf of an employer in connection with transactions related to employees. Notwithstanding this subdivision, a person described herein that offers money transmission services or provides stored value cards directly to individual customers shall comply with this division to the extent of that activity.

As described above, _____ does not transmit funds on behalf of employers. Rather, it transmits funds on behalf of _____. These are _____'s own funds, which are payroll advances to participating employees of other companies. These payroll advances are loans extended by _____.

Because _____ does not transmit funds "on behalf of an employer," _____ acknowledges that it does not qualify for the payroll exemption based on delivering or transmitting funds "on behalf of an employer." Instead, _____ argues that it qualifies for the exemption because it "makes distribution of other authorized deductions from employees' wages or salaries."

_____ 's Digital Disbursements, however, do not meet the criteria of the exemption. As noted, _____ is distributing _____'s own funds. The fact that an employer may later reimburse _____ with deductions from an employees' wages or salaries does not convert _____'s payroll advances into wage deductions. In fact, according to the _____ Wellness Agreement, the employer has no obligation to fund _____'s payroll advances. Therefore, _____ does not "make distribution of other authorized deductions from employees' wages or salaries."

The legislative history supports the conclusion that the payroll processing exemption was only intended to encompass activities conducted by payroll processors. Specifically, the legislative history explains that the activities listed in the exception fall within "the umbrella of payroll processing" and includes the "subset of activities that a payroll processor might engage in."⁵ Under the current facts, _____ is not acting as a payroll processor. Rather, _____ is acting as a transmitter of _____'s loan disbursements to individuals.⁶

For the reasons discussed, _____'s Digital Disbursements platform that is used to transfer payroll advances to individuals does not qualify for the payroll processing exemption under Financial Code section 2010, subdivision (j). Therefore, _____ must continue to report activity related to the Digital Disbursements.

⁵ Assembly Floor Analysis, A.B. 786, May 22, 2013.

⁶ Based on the description of _____'s program, _____ also does not appear to be acting as a payroll processor. Under the _____ Wellness Agreement, an employee sells to _____ his or her future rights to his or her wages. Factoring of future received wage payments is generally not considered distributing wages from an employer to an employee.

If you have any questions, please contact me at (____) _____.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

/s/

Senior Counsel

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco
Jonathan Lee, Department of Business Oversight, Los Angeles