



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Manuel P. Alvarez

IN REPLY REFER TO:
FILE NO: _____

April 6, 2020

Via Email

Re: _____ – Request for Interpretive Opinion

Dear Mr. _____:

Thank you for your letter to the Department of Business Oversight (“Department”) dated February 12, 2020. You have asked the Department for a determination about whether certain ancillary payroll processing payments made to employees and 1099-independent contractors and conducted by _____ (“_____”), an affiliate of _____ (“_____”), meet the payroll processing exemption¹ in the Money Transmission Act (“MTA”)². Alternatively, _____ requests an exemption under Section 2011 of the MTA if the Department finds that the ancillary payroll processing payments do not meet the payroll processing exemption.

I. BACKGROUND

_____ is currently an MTA licensee. _____ is not a licensee.

In response to _____’s prior request dated February 4, 2019, the Department issued a determination, dated April 18, 2019, related to _____’s processing of wage payments to 1099-independent contractors, who are the functional equivalent of employees. For the reasons discussed therein, the Department concluded that such activity fell within the scope of the payroll processing exemption (“Exempt Payroll Processing Service”).

¹ Fin. Code, § 2010, subd. (j).
² Fin. Code, § 2000 et seq.

_____ is now offering a new ancillary payments service (“Ancillary Payments Service”) in the context of the Exempt Payroll Processing Service. Under the new service, _____ facilitates payments of amounts owed by employers, other than wages or benefits, to their workers. For example, a worker may be owed a reimbursement payment for meals or supplies purchased in connection with the worker’s employment. An employer can use the Ancillary Payments Service to repay their employees these amounts owed. Importantly, the Ancillary Payments Service cannot be used as a general bill payment service nor is it available to the general public.

Employers can also use the Ancillary Payments Service to handle payments of amounts owed to independent contractors (i.e., 1099-independent contractors) who do not qualify as employees but nonetheless are individuals engaged in activity analogous to the activity ordinarily performed by employees. In other words, these 1099-independent contractors are “functional equivalents” of employees. As with employees, the owed amounts relate to costs incurred in the context of the person’s performance of job duties.

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 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.

Financial Code section 2011 establishes a discretionary exemption, which permits the Commissioner to exempt persons, transactions or classes of persons by regulation or order if the Commissioner determines that it is in the public’s interest not to regulate such transactions or persons.

A. Ancillary Payments to W-2 Employees

The Ancillary Payments Service enables employers to repay amounts owed to their workers incurred in connection their employment. The service cannot be used as a general bill payment service. The service is not available to the general public.

The payroll processing exemption, among other things, covers the transmission of “funds on behalf of an employer in connection with transactions related to employees.” Because the payments here relate to amounts that employers owe to workers and that have been incurred in connection with their employment, they meet the standard of being “transactions related to employees.”

Therefore, such payments to employees made on behalf of employers by _____ under the Ancillary Payments Service fall within the payroll processing exemption and are exempt from the MTA.

B. Ancillary Payments to 1099-Independent Contractors

As noted above, the Department has previously determined that the payroll processing exemption covers payments to 1099-independent contractors where such payments are the functional equivalent of wage and salary payments to W-2 employees. In the case of payments made under the Ancillary Payments Service, the amounts still relate to payments owed to workers that have been incurred in connection with their job duties.

Thus, to the extent the 1099-independent contractors incurred these amounts in connection with their duties where they acted as a functional equivalent of an employee, a company’s payments to such contractors made by _____ under the Ancillary Payments Service fall within the payroll processing exemption and are exempt from the MTA.

III. CONCLUSION

The Commissioner finds that _____’s processing of payments under the Ancillary Payments Service on behalf of employers to employees and 1099-independent contractors is exempt from the MTA pursuant to Financial Code section 2010, subdivision (j). Because the Department has determined that the payroll processing exemption applies to the facts described herein, we need not reach _____’s request for an exemption under Section 2011.

_____ has indicated that it may expand the functionality of the Ancillary Payments Service at some later date. This opinion is based solely on the facts as represented in your February 13, 2020 correspondence, and the Department’s understanding of those representations. This opinion does not extend to any future functionality that _____ may

offer under the Ancillary Payments Service. The Department may reach a different conclusion under other facts and circumstances.

Please contact me at (____) _____ if you have any questions.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By /s/

Senior Counsel

cc: Department of Business Oversight, Money Transmitter Division, San Francisco