



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR Gavin Newsom · ACTING COMMISSIONER Christopher S. Shultz

IN REPLY REFER TO:
FILE NO:

September 24, 2021

Re: _____ - Request for Interpretive Opinion

Dear _____:

Thank you for your letter dated June 17, 2021, requesting an interpretive opinion from the Department of Financial Protection and Innovation (“Department”) as to whether the contemplated transaction service by your client, _____, meets the agent of payee exemption in the Money Transmission Act, Financial Code section 2000, *et seq.* (“MTA”).¹

I. Background

_____, a U.S. company headquartered in _____, and its global affiliates (collectively, “_____”) provide a global, fully integrated suite of back-end service, including sales compliance management, fraud prevention, risk management, tax and regulatory fee calculation, billing optimization, and remittance services to manufacturers, merchants, and retailers (collectively, “Brands”) that desire to sell or license products and services (collectively, “Products”) to end-users, businesses and consumers (collectively, “Shoppers”).

a. Existing _____ Service

_____ currently offers a “_____,” not the subject of its opinion request, where _____ takes title to Products offered by Brands and sells the Products to Shoppers. First, _____ takes title to products pursuant to contractual terms between _____ and Brands. Second, Shoppers purchase the products from _____ directly. For the sale of Products from a Brand to _____, the Brand keeps the responsibility for collection and remittance of the any applicable taxes. However, _____ calculates and

¹ Fin. Code, § 2010, subd. (I).

collects proper taxes from the sale of Products from _____ to the Shopper and makes payments of those taxes to the proper authority.

b. Future _____ Service

_____ is launching a new service called the “_____” Certain Brands want direct relationship with Shoppers, but also want to keep the benefit of _____ fully integrated suite of back-end services for selling their Products to Shoppers, including tax and regulatory fee calculation and processing refunds.

Under this service, Products transfer directly from Brands to the Shoppers without title first passing to _____ as it does in the _____. _____ will enter into a contract with a Brand for the _____. This contract expressly appoints _____ as the agent of the Brand for the purposes of facilitating the sale of Products, including receiving payments and settlement funds from Shoppers. _____ will also enter into a Terms of Use agreement with the Shopper. This agreement states the Shopper’s payment to _____ is considered payment to the Brand, thereby extinguishing Shopper’s payment obligation to the Brand.

The flow of funds involves _____ accepting funds from a Shopper on behalf of the Brand who sells the Product directly to the Shopper. The conclusion of the sale of the Products to a Shopper includes settlement of funds to the Brand and remitting proper sales taxes to the authorities. _____, as the entity responsible for remitting and reporting taxes stemming from the sales to Shoppers, has contractually agreed to handle tax compliance, such as audits.

II. Money Transmission Act

Financial Code section 2003, subdivision (q), defines “money transmission” to include receiving money for transmission. Financial Code section 2003, subdivision (u), defines “receiving money for transmission” as “receiving money or monetary value in the United States for transmission... by electronic or other means...”

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in California 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 provides certain exemptions from licensure in California.

III. Exemptions from Licensure – Agent of Payee

Financial Code section 2010, subdivision (l), exempts from the MTA transactions in which the recipient of the money is an agent of the payee (“Agent of Payee”), pursuant to a preexisting written contract, and delivery of the money to the agent satisfies the payor’s obligation to the

payee.² “Agent” is defined as one who represents another, called the principal, in dealings with third persons.³ “Payee” means the provider of goods or services, who is owed payment of money from the payor for the goods or services.⁴ “Payor” means the recipient of the goods or services, who owes payment of money to the payee for the goods or services.⁵

IV. Analysis

The sales transactions stemming from the _____ constitute “receiving money for transmission” because _____ receives money from the Shopper for transfer to the Brand in conjunction with the Brand selling Products directly to the Shopper. Thus, _____ is subject to licensure under the MTA for its _____.

However, based on the information provided, _____ qualifies for the Agent of Payee exemption. For each sales transaction, the Brand is the Payee, the Shopper is the Payor, and _____ is the Agent of the Brand based on the proposed contractual language in the _____ agreement. The _____ agreement stipulates that the Brand appoints _____ as its authorized agent and payment to _____ is considered a payment to the Brand, extinguishing the Shopper’s payment obligation to the Brand. Furthermore, the Terms of Use agreement between _____ and the Shopper makes it clear that a Shopper’s payment to _____ for an order extinguishes that Shopper’s payment obligation to the Brand.

a. Refund of Transaction

Based on the _____ agreement, _____ receives payment from Shoppers on a Brand’s behalf as the Brand’s agent, extinguishing the Shopper’s payment obligation to the Brand. When a refund is needed, _____ facilitates a Brand-generated refund. Because a refund is a reversal of the original transaction, a refund of an exempt transaction does not require licensure.

b. Taxes from Transaction

As part of the _____, _____ functions as the Brand’s agent to conclude the sale transaction of a Brand’s Products with the features offered in the agreement. Conclusion of the sale includes settlement of funds to the Brand and remitting proper taxes to the taxing authority. _____ computes the payment transmitted to the Brand by taking the amounts collected, net of the “transaction costs.” The _____ agreement defines “transaction costs” in part as “...amounts assessed or charged by third parties, including governments or other regulatory bodies, in connection with a transaction, such as any shipping

² For purposes of Financial Code section 2010, subdivision (I), “agent” has the same meaning as in Civil Code section 2295.

³ Civ. Code, § 2295.

⁴ Fin. Code, § 2010, subd. (I)(2).

⁵ Fin. Code, § 2010, subd. (I)(3).

charges and tax or regulatory charges we are obligated to pay, including any tax or other fee assessed against the value of individual transactions or assessed on a per item or per order basis..." Therefore, by contract, _____ is the party who is legally responsible for paying the local sales tax on the transaction. Since _____ is paying taxes on its own behalf, and not transmitting taxes owed by the Shopper, its payment of taxes to the tax authorities does not constitute money transmission.

V. Conclusion

The Department concludes _____ service remitting the net proceeds to Brands for Product sales to Shoppers falls within the definition of "money transmission" but is exempt under the Agent of Payee exemption. _____ payment of local taxes due for the sale of Products and refunds of exempt transactions do not constitute money transmission under the MTA.

This opinion is based solely on the facts presented in your communication. Any changes in the facts or circumstances, as we understand them, could lead to a different conclusion. If you have any questions, please feel free to contact me at _____

Sincerely,

Christopher S. Shultz
Acting Commissioner
Department of Financial Protection and Innovation

By

Senior Counsel

cc: Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division