



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • COMMISSIONER **Clothilde V. Hewlett**

IN REPLY REFER TO:

FILE NO: _____

January 14, 2022

VIA EMAIL ONLY

Re: Request for Interpretive Opinion

Dear _____:

Thank you for your request for an interpretive opinion to the Department of Financial Protection and Innovation (“Department”), received November 15, 2021. In your letter, you request an interpretive opinion from the Department regarding whether the payment processing activities of _____ of California (“_____”) are exempt from the licensing requirements of the California Money Transmission Act (“MTA”).

Background

In your correspondence, you explain that _____ will process payments related to a customer’s purchase of software products (“Apps”).¹ Customers, who are generally small business or merchants, use _____ point of sale terminals. Using the virtual marketplace that operates on these terminals, customers can purchase Apps that are developed, and licensed to customers, by third-party developers (“Developers”). The customer pays fees, merchant taxes, and other amounts for installed Apps (collectively, “Gross Revenue”). _____ receives the Gross Revenue payment and transfers that payment, less certain fees, charges, and taxes, to the Developer’s account. The Developers will agree to the terms of a Developer Agreement, which will explain, in part:

[...] You authorize _____ to appoint _____ as the Payment Processor and to join the Payment Processor as a party to the Contract.

[...] The Payment Processor will act as your agent to collect and hold all Gross Revenue on your behalf and to remit the Remittance Amount to your Payment

¹ You explain that these payment processing services were previously conducted _____ and were going to be transitioned to _____. However, these services will now be transitioned to _____ of California instead.

Account. You must enter into any additional terms and conditions required by the Payment Processor and you must comply with any such terms.

[...] You agree and _____ will make it clear in its dealings with the Merchants that: 1. The Payment Processor collects any and all Gross Revenue on your behalf; and 2. Payment by a Merchant to the Payment Processor of any and all Gross Revenue will constitute full and final settlement of such Gross Revenue (except for Merchant Taxes) payable by such Merchant to you. The Payment Processor, not the Merchant, is solely liable to you if the Payment Processor fails to remit payments received from the Merchant to you.

Money Transmission Act

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 2003, subdivision (q), defines “money transmission” to include receiving money for transmission and issuing stored value. 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 2010, subdivision (l), exempts from the MTA transactions in which the recipient of the money is 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 for the goods or services provided. An “agent” is one who represents another, called the principal, in dealings with third persons.² A “payee” is the provider of goods or services, who is owed payment of money from the payor for the goods or services.³ A “payor” is the recipient of goods or services, who owes payment of money to the payee for the goods or services.⁴

Analysis

_____ receipt of funds from a customer for the purposes of transmitting to the Developer constitutes “receiving money for transmission.” Thus, these payment processing activities are subject to licensure under the MTA.

However, these activities satisfy the requirements of the agent of payee exemption in Financial Code section 2010, subdivision (l). Pursuant to the Developer Agreement, _____ acts as the agent of the Developer (payee) and _____ receipt of payment satisfies the customer’s (payor’s) obligation to the Developer for goods or services.

² Fin. Code, § 2010, subd. (l)(1); Civ. Code, § 2295.

³ Fin. Code, § 2010, subd. (l)(2).

⁴ Fin. Code, § 2010, subd. (l)(3).

Conclusion

_____ payment processing services fall within the definition of “money transmission” but are exempt from the MTA to the extent _____, as the Developer’s agent, receives money from customers as payment for goods or services.

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. If you have any questions, please feel free to contact me at _____.

Sincerely,

Clothilde V. Hewlett
Commissioner
Department of Financial Protection and Innovation

By

Senior Counsel

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