



IN REPLY REFER TO
FILE NO.: _____

June 9, 2022

Sent by Email

Re: _____'s Requests for Interpretive Opinions

Dear Mr. _____:

Thank you for your March 25 and May 23, 2022 letters to the Department of Financial Protection and Innovation (Department) and emails to me dated May 31, June 6 and June 8, 2022. You have requested an interpretive opinion regarding whether _____'s (_____) product for donations to nonprofit organizations (NPOs) is exempt from the Money Transmission Act (MTA). Further, you have requested an opinion from the Department confirming that money held by _____ in an operating account, related to activities exempt under the MTA, is not stored value. The exempt activities include the NPO donations, closed loop transactions and bank-issued Visa and Mastercard open-loop gift cards without cash access.

I. FACTS

_____ is headquartered in the State of Washington. _____ sells reward programs to businesses (Clients). Clients commonly use the rewards (Rewards) to incentivize purchases by their own customers, reward customer loyalty, and reward employee performance.

_____ currently offers three types of Rewards—closed loop gift cards, open loop gift cards, and the opportunity to donate the reward to a designated NPO. _____ plans to introduce a fourth type of Reward (Payment Product) under which cash (or a credit to a specified credit card) will be deposited into the account specified by the Reward recipient (Recipient). This opinion letter does not address the Payment Product, as _____ acknowledges that it constitutes regulated activity under the MTA. Further, this opinion does not address closed loop gift cards and open loop gift cards because the

Department issued an opinion regarding these products on February 19, 2020.

_____ deposits money received from Clients into a _____ operating account at Wells Fargo Bank, N.A. _____'s operating account also includes profit from prior customer purchases of rewards and money received from _____'s largest investor. _____ maintains subledgers for its operating account for each Client, listing the amount of Rewards purchased. Funds are debited from the Client's subledger each time a Client requests that a Reward be fulfilled.

When an NPO donation is selected by a Recipient from Reward options (NPO Donations), the Reward amount is transferred from _____'s operating account to its custodial bank account designated For the Benefit Of Customers held at Wells Fargo (NPO Account). _____ aggregates contributions to each NPO and distributes these amounts, less its 8% administrative fee, directly to the NPOs on a weekly basis. Funds do not move out of the NPO Account until these payments are made and the NPO Account is not used for any purposes other than NPO Donations.

_____ recently revised its NPO Agreement to include language clarifying that _____ is the agent of the NPO payee.

II. ANALYSIS

A person may not engage in the business of money transmission in California unless he or she is licensed or exempt from licensure under the MTA.¹ Money transmission includes selling or issuing stored value or receiving money for transmission.²

A. NPO Donations

Financial Code section 2010, subdivision (l) states that the MTA does not apply to "[a] transaction in which the recipient of the money or other monetary value is an agent of the payee pursuant to a preexisting written contract and delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee." "Payor" means "the recipient of goods or services...."³ "Payee" means "the provider of goods or services...."⁴

The definition of "services" was recently clarified by regulation to "include charitable activities engaged in by organizations that have received recognition of tax exemption under Section 501(c)(3) of the Internal Revenue Code."⁵ All NPOs to which Recipients

¹ Fin. Code, § 2030, subd. (a).

² Fin. Code, § 2003, subd. (q).

³ Fin. Code, § 2010, subd. (l)(3).

⁴ *Id.* at subd. (l)(2).

⁵ Cal. Code Regs., tit. 10, § 10.80.126.30. effective 10/1/2021.

can choose to direct contributions are 501(c)(3) tax exempt entities.

_____’s NPO Agreement states that _____ is appointed as the NPO’s agent. _____ is obligated to remit all funds collected on the NPO’s behalf to the NPO. Receipt of the funds from _____’s Client constitutes receipt by the NPO, even if the NPO does not receive the funds from _____. _____ (not the Client or Recipient) is solely responsible to the NPO.⁶

_____’s current NPO Agreement satisfies the agent of payee requirements for exemption from the MTA. Therefore, the NPO Donations are not a regulated activity.

B. Stored Value

As explained in the Department’s February 19, 2020 opinion letter, closed loop gift cards and bank-issued open loop gift cards are not subject to regulation as “stored value” under the MTA.

When a Client prefunds a balance in _____’s operating account, the Client may only redeem the monetary value for Rewards sold by _____ or instruct _____ to return the funds to the Client’s bank account. This money stored in _____’s operating account is a closed loop transaction and does not constitute regulated money transmission under the MTA.

III. CONCLUSION

_____’s NPO Donation activity qualifies for the agent of payee exclusion under the MTA. NPO Donation activity is not subject to the MTA.

Client funds temporarily being held in _____’s Wells Fargo operating account in prepayment for closed loop gift cards, bank-issued open loop gift cards, and NPO donations are not stored value.

⁶ Attachment A, Terms and Conditions, NPO Program Participation Agreement, section 4.1, Administrative Fee and Agency.” “_____ Card is hereby appointed as NPO’s payment processing agent for the limited purpose of receiving [contributions] on NPO’s behalf. _____ Card is obligated to remit to NPO all funds collected by it on NPO’s behalf, less the administrative fee.... (....)_____ Card’s receipt of a [contribution] instruction from a [_____ reward recipient] and underlying funds from a Customer shall be deemed receipt of funds by NPO, at which point Customers’ payment obligations to NPO will be satisfied in full, even if such funds are not received by NPO from _____ Card. _____ Card, and not the Recipient or _____ Card’s customer, is solely liable to NPO if _____ Card fails to remit funds to NPO. (....) The parties further acknowledge and agree that _____ Card shall be held out to the public as accepting payments on behalf of the NPO.

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Please contact me if you have questions. Thank you.

Sincerely,

Clothilde V. Hewlett
Commissioner
Department of Financial Protection and Innovation

By

Senior Counsel

cc: Oscar Lumen, Department of Financial Protection and Innovation

_____, _____