



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

IN REPLY REFER TO:

FILE NO: _____

May 8, 2023

VIA EMAIL ONLY

RE: Request for Interpretive Opinion

Dear Mr. _____:

Thank you for your letter to the Commissioner of Financial Protection and Innovation, Clothilde V. Hewlett, dated January 28, 2022 and your emails dated April 6, 2022, October 5, 2022, and January 27, 2023 on behalf of _____ (“_____”). In your correspondence, you request an exemption pursuant to Financial Code section 2011 for one _____ payment service and confirmation that other _____ payment services are not subject to licensure under the Money Transmission Act (“MTA”).¹

_____ Payment Services

In your correspondence, you describe three payment services that _____ offers. First, _____ provides funds transfer services to DFS Services, LLC (“Discover”) for the collection of credit card debts and loans. You explain that attorneys retained by Discover collect payment from a consumer for the credit services that Discover provided to that consumer. Then, _____ collects the funds from the attorneys and transmits the funds to Discover.

Second, _____ provides a funds transfer service that allows taxpayers to make _____ tax payments owed to the _____ (“_____”). Third, _____ receives money for transmission to various government entities related to the collection of fees and taxes, including real estate taxes, citations, and court fees.

Background

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

¹ Fin. Code, § 2000, et seq.

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. One such exemption is found in Financial Code section 2010, subdivision (I). This subdivision exempts transactions in which the person who is receiving money for transmission is acting as 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. “Payee” means the provider of goods or services, who is owed payment of money from the payor for the goods or services.² “Payor” means the recipient of the goods or services, who owes payment of money to the payee for the goods or services.³ California Code of Regulations, title 10, section 80.126.30 defines “goods or services” as any good or service, other than money transmission, for which the payor has a payment obligation to the payee.

Under Financial Code section 2011, the Commissioner may, by regulation or order, exempt from all or part of the MTA a person or transaction if she finds such action to be in the public interest and that regulation of the person or transaction is not necessary.

Analysis

Payments for Law Firm Collection Agent

In your correspondence, you state that _____ receives payments from Discover’s collection attorneys and remits those payments to Discover. You request an exemption pursuant to Financial Code section 2011 for those transactions. That exemption has been granted and the order is enclosed. The order is based solely on the facts as represented in your correspondence, and the Department’s understanding of those representations.

_____ Payments

For _____ tax payments services, you explain that the customer’s payment obligation to the _____ is extinguished once the customer has submitted a payment through _____ service. _____ contract with the _____ that you attached to your letter states:

The _____ appoints Contractor⁴ as its limited agent for the sole purpose of receiving

² Fin. Code, § 2010, subd. (I)(2).

³ Fin. Code, § 2010, subd. (I)(3).

⁴ In your letter of January 28, 2022, you explain that “Contractor” refers to _____.

payments on the _____'s behalf from taxpayers. The _____ agrees that: (1) a payment received by the Contractor from a taxpayer constitutes a payment made directly to the _____ and fully satisfies the taxpayer's obligation to the _____ to the extent of the amount of the payment, and (2) the _____ must fulfill its obligations to the taxpayer as if the _____ had received the payment directly from the taxpayer. Pursuant to this Agreement, the Contractor is responsible for remitting to the _____ all payments received from taxpayers on the _____'s behalf. The _____ acknowledges and agrees that if funds are not remitted by Contractor to the _____ pursuant to this Agreement, the _____ will have recourse only against the Contractor and not against the taxpayer.

The Department agrees that the agent of payee exemption applies to these transactions. _____ contract with the _____ establishes that the _____ has appointed _____ to act as its agent and that payment to _____ extinguishes the taxpayer's payment obligation to the _____. As such, transactions conducted pursuant to this contract are exempt from the MTA under the agent of payee exemption.

Payments to Government Entities

For _____ services for fees and tax payments to government entities, you explain that _____ has a contract with each government entity which contains this, or substantially similar, language:

[Payee] appoints _____ as its limited agent for the sole purpose of receiving payments on [Payee]'s behalf from [Payor]. [Payee] agrees that: (1) a payment received by _____ from [Payor] constitutes a payment made directly to [Payee] and fully satisfies the [Payor]'s obligation to [Payee] to the extent of the amount of the payment, and (2) [Payee] must fulfill its obligations to [Payor] as if [Payee] had received the payment directly from the [Payor]. Pursuant to this Agreement, _____ is responsible for remitting to [Payee] all payments received from [Payor] on [Payee]'s behalf. [Payee] acknowledges and agrees that if _____ does not remit funds received from [Payor] to [Payee] pursuant to this Agreement, [Payee] will have recourse only against _____ and not against [Payor].

The Department agrees that the agent of payee exemption applies to these transactions. The language above establishes that the government entity has appointed _____ to act as its agent and that payment to _____ extinguishes the payor's payment obligation to the government entity. Therefore, transactions conducted pursuant to contracts containing such language are exempt from the MTA under the agent of payee exemption.

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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.

In response to your request for confidential treatment, the Department refers to Financial Code section 159, which provides applications are confidential.

If you have any questions, please feel free to contact me at _____@dfpi.ca.gov.

Sincerely,

Clothilde V. Hewlett
Commissioner
Department of Financial Protection and Innovation

By

Senior Counsel

cc: Robert Venchiarutti, Deputy Commissioner, DFPI
Jonathan Lee, Assistant Deputy Commissioner, DFPI