



April 9, 2019

Department of Business Oversight, Legal Division
ATTN: Mark Dyer, Regulations Coordinator
1515 K Street, Suite 200
Sacramento, CA 95814-4052
regulations@dbo.ca.gov

Re: Invitation for Comments on Proposed Rulemaking, Money Transmitter Act: Agent of Payee (Pro 07/17)

To Whom It May Concern:

Internet Association (“IA”) is submitting this letter in response to the Invitation for Comments on Proposed Rulemaking (the “Invitation”) released by the Department of Business Oversight (“DBO”) on February 8, 2019. The Invitation states that the DBO intends to clarify, via a rulemaking, the scope of the exemption from the California Money Transmitter Act, Cal. Fin. Code § 2000 et. seq. (the “MTA”), for an “agent of a payee” as defined by Cal. Fin. Code § 2010(l) (the “Agent of Payee Exemption”).

IA represents over 40 of the world’s leading internet companies, and is the only trade association that exclusively represents leading internet companies on matters of public policy.¹ For the reasons outlined in this letter, IA believes that narrowing the Agent of Payee Exemption would be particularly harmful to transactions enabled by the internet.

Summary

The California Legislature included the Agent of Payee Exemption “to ensure that e-commerce transactions are not inadvertently regulated as money transmission” and “to reflect the increasing use of the Internet as a platform for the exchange of goods and services.”² IA and our member companies are responding to this comment of proposed rulemaking because we know that the Exemption plays a critical role in fostering innovation not only in the brick and mortar context, but in the online world where goods and services are increasingly delivered. A broad interpretation of the Agent of Payee Exemption is necessary to ensure the objectives of the California Legislature are achieved and that the internet economy is not undermined.

We encourage the DBO to continue its broad interpretation of the Agent of Payee Exemption. In furtherance of this, it would be helpful for the DBO to reaffirm that returns are covered by the Exemption. Returns of goods or services are commonplace and involves the agent of the payee returning funds to the payor. Beyond this

¹ IA is dedicated to fostering innovation, promoting economic growth, and empowering people through the free and open internet. IA member companies include over 40 leading internet companies. The full list of members is listed at the following hyperlink: <https://internetassociation.org/our-members/>. For more information regarding IA, please visit <https://internetassociation.org/>.

² *Money Transmitter Act: Hearing on AB 2209 Before the Senate Banking & Financial Institutions Committee* (June 18, 2014).



reaffirmation, we request the DBO not make changes to the definitions of “goods or services,” “payor,” or “payee.” To the extent the DBO decides to include new definitions of these terms, Internet Association encourages the DBO to consider definitions that do not frustrate the policy considerations underpinning the Agent of Payee Exemption.

Consumer Protection is not Harmed by the Agent of Payee Exemption

Internet Association understands that the MTA’s primary policy purpose is to protect consumers. IA fully supports this policy goal and believes that the Agent of Payee Exemption does not undermine consumer protection. Under well-accepted principles of agency law³, once a payment is delivered to the agent of the payee, the consumer’s obligation to the payee is extinguished. As such, we believe that Agent of the Payee Exemption does not introduce any additional risk to the consumer. Indeed, the Agent of Payee Exemption merely excludes from additional regulatory oversight those transactions where a consumer is already well-protected by clearly established legal principles.

Agent of Payee Exemption & Innovation

Moreover, the Agent of Payee Exemption creates space for innovation. It does so by: (i) enabling parties to explore new and creative commercial relationships and (ii) allowing those commercial relationships to quickly evolve in response to the changing needs and demands of consumers. Businesses with expertise in certain aspects of commerce (selling shoes, scheduling transportation, acquiring payments etc.) can safely and efficiently work together to enable transactions between consumers and merchants. This allows internet-based businesses to flourish, which was a cornerstone of the Legislature’s intent behind the Exemption in the first place.⁴

Innovation is further served by enabling several parties to a transaction to avail themselves of the Agent of Payee Exemption. A common e-commerce transaction might involve several parties, including a consumer, an online service, an end-merchant, and a payment processor. In such a transaction, the consumer might purchase a product from an end-merchant selling a specific good via an online service; the consumer’s payment might be processed by the payment processor; the payment processor might settle funds owed to the various parties, including the end-merchant. The consumer’s obligation is satisfied when the consumer delivers payment to the payment processor. In this common online transaction, there is no risk to the consumer even if both the payment processor and online service rely on the Agent of Payee Exemption, because the consumer’s obligation is satisfied when the consumer makes the payment to the payment processor.⁵ Importantly, each participant in the transaction adds value and expertise by (i) helping to connect consumers and merchants and (ii) simplifying

³ See, e.g., *Nels E. Nelson, Inc. v. Tarman*, 163 Cal. App. 2d 714, 727, 329 P.2d 953, 959–60 (1958) (“[A] principal is responsible to third persons for the ordinary contracts and obligations of his agent with third persons made in the course of the business of the agency and within the scope of the agent's powers as such, although made in the name of the agent and not purporting to be other than his own personal obligation or contract.”).

⁴ See, e.g., *Money Transmitter Act: Hearing on AB 2209 Before the Senate Banking & Financial Institutions Committee* (June 18, 2014) (“This bill is intended to update the MTA to ensure that e-commerce transactions are not inadvertently regulated as money transmission and make other changes intended to reflect the increasing use of the Internet as a platform for the exchange of goods and services.”).

⁵ Indeed, such arrangements involving co-agency and sub-agency are well-established principles in agency law. See, e.g., *Trane Co. v. Gilbert*, 267 Cal. App. 2d 720, 727, 73 Cal. Rptr. 279, 283 (Ct. App. 1968) (“Where an agent is authorized to employ a subagent, or his act in doing so is ratified by the principal, the latter is, as to third persons, bound by the acts of the subagent to the same extent as if they had been performed by the agent.”).



economic exchange (i.e., the settlement of payments for the provision of goods or services).

For these reasons, Internet Association believes the DBO should continue its broad interpretation of the Agent of Payee Exemption, should reaffirm its application to return transactions, and resist making additional changes to the definitions of “goods or services,” “payor,” or “payee.” If the DBO decides to include new definitions of these terms, IA encourages the DBO to develop broad definitions that will enable the Agent of Payee Exemption, rather than narrow definitions that will undermine it.

* * *

Internet Association appreciates the opportunity to respond to the DBO’s invitation for comment. If you have any questions, please contact me at (916) 836-8974 or kevin@internetassociation.org.

Respectfully submitted,

/s

Kevin McKinley
Director, California Government Affairs