



STATE OF CALIFORNIA

## Department of Business Oversight

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

IN REPLY REFER TO:  
FILE NO:

November 26, 2019

**via e-mail:**

Re: Request for Interpretive Opinion –

Dear Mr. :

Thank you for your letters dated July 17, 2019, and August 20, 2019, supplementing May 3, 2019, and May 24, 2019, letters seeking an interpretive opinion from the Department of Business Oversight (“Department”) as to whether the agent-of-payee exemption in Section 2010, subdivision (I), of the Money Transmission Act<sup>1</sup> (“MTA”) applies to [redacted]’s (“ [redacted] ”) collection and processing of funds under the contracted bill payment (“CBP”) model. The Department concludes the MTA does not apply to CBP transactions where [redacted], acting as agent of its payee clients (“Clients”), receives payments from customers of Clients (“Customers”). Your August 20, 2019, letter confirms the scope of this opinion does not include [redacted]’s acceptance of any payments, including tax payments, on behalf of Government Clients.

### **Background**

Under the CBP model, [redacted] agrees to act as Client’s agent, or have [redacted]’s affiliate (“ [redacted] ”) act as Client’s agent, to accept payments from Customers for various services provided by Clients to Customers. [redacted]’ May 24, 2019, letter confirmed this opinion request only concerns the applicability of the agent-of-payee exemption to [redacted], and not [redacted].

All new Clients will be required to sign an updated Addendum to the written contract. The updated Addendum indicates:

- 1) Either [redacted] or [redacted] can act as Client’s agent in receiving Customer’s payments to Client;
- 2) The completion of Customer payments and/or the receipt of money from Customers by [redacted] or [redacted] shall be considered payment to Client, extinguishing Customer’s payment obligation to Client (in the principal amount paid by Customer) as if the Customer had paid the Client directly, even if the Customer Payment is not received by Client from [redacted] or [redacted].

---

<sup>1</sup> Fin. Code, § 2000 et seq. All further references to “Section” are to the Financial Code unless otherwise indicated.

All existing Clients have already agreed to substantially similar contractual provisions with . The only difference in those existing contracts is the designation of (“ ”) as ’s Designated Processor instead of ; the same CBP services were previously delegated to before being transitioned to and as a result of ’s acquisition of .<sup>2</sup> In April 2019, sent letters to existing Clients stating, “[i]n connection with the closing of the Transaction, or within a reasonable time hereafter, will remove as Designated Processor. At that time, all payments will be directly received by and processed by or another affiliate.” has now determined that Designated Processor will be .<sup>3</sup>

Following the transition, each CBP transaction will be handled by either or , but not both. When Customers submit their CBP payments, they will find out which entity, or , is performing the CBP services. If is performing the services, the Customer will receive terms and conditions authorizing to charge the Customer’s credit card (via one of the debit card networks) or bank account (via Automated Clearing House) for the CBP payment and ’s fees. At the time of payment to , Customers will also receive a receipt indicating their payment has been successfully submitted to Client. Once receives a payment from a Customer of ’s Client, always remits these funds directly to the Client.

### **Money Transmission Act**

Under the MTA, a person shall not engage in money transmission in California, unless the person is licensed, exempt from licensure, or an agent of a person licensed or exempt from licensure.<sup>4</sup> “Money transmission” includes: (1) selling or issuing payment instruments, (2) selling or issuing stored value, or (3) receiving money for transmission.<sup>5</sup> “Receiving money for transmission” is defined as “receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.”<sup>6</sup>

Section 2010 establishes various statutory exemptions from the MTA and, in subdivision (l), exempts transactions where the recipient of money or monetary value is an “agent of the payee.” This agent-of-payee exemption requires: (1) “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 (2) “delivery of the money or other monetary value to the agent satisfies the payor’s obligation to the payee.”<sup>7</sup> For purposes of this exemption, “agent” has the same meaning as that in Civil Code section 2295, “payee” means “the provider of goods or services, who is owed payment of money or other monetary value from

---

<sup>2</sup> On February 27, 2018, the Department issued an interpretive opinion ( ) concluding the MTA does not apply to CBP transactions where , as designated processor, receives customer payments as an agent of the payee.

<sup>3</sup> Existing Clients will not be required to sign the updated addendum appointing as ’s Designated Processor until the CBP services must be conducted by a licensed money transmitter.

<sup>4</sup> Fin. Code, § 2030, subd. (a).

<sup>5</sup> Fin. Code, § 2003, subd. (q).

<sup>6</sup> Fin. Code, § 2003, subd. (u).

<sup>7</sup> Fin. Code, § 2010, subd. (l).

the payor for the goods or services,” and “payor” means “the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services.”<sup>8</sup>

**Analysis**

engages in money transmission by receiving money from Customers for transmission to Clients. However, based on the information provided, the Department concludes \_\_\_\_\_’s activities qualify for the agent-of-payee exemption. The language in \_\_\_\_\_’s written contracts with both existing and new Clients shows Client is the Payee, Customer is the Payor, and \_\_\_\_\_ is an agent of the Client (i.e., agent of the payee). Moreover, the contracts state \_\_\_\_\_’s receipt of funds from the Customer extinguishes the Customer’s payment obligation to the Client.

**Conclusion**

The Department finds the services provided by \_\_\_\_\_ fall within the MTA’s definition of “money transmission”; however, the MTA does not apply to these transactions because \_\_\_\_\_ is acting as an agent of the payee pursuant to Section 2010, subdivision (l).

This opinion is limited to the facts and circumstances described above regarding the applicability of the agent-of-payee exemption under the MTA. Should any of the facts or circumstances change, the Department’s opinion may also change.

Please contact me at \_\_\_\_\_ or \_\_\_\_\_ with any questions.

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Business Oversight

By \_\_\_\_\_  
Senior Counsel

cc: \_\_\_\_\_, \_\_\_\_\_ ( \_\_\_\_\_ )  
Robert Venchiarutti, Department of Business Oversight, San Francisco  
Jonathan Lee, Department of Business Oversight, Los Angeles

---

<sup>8</sup> Fin. Code, § 2010, subd. (l)(1)-(3).