

## Jim Burns

---

**From:** Jim Burns  
**Sent:** Thursday, January 17, 2013 1:44 PM  
**To:**  
**Subject:** RE: Request for guidance regarding exemption from money transmission license requirement

Hi

Thank you for your patience and in taking time to discuss this matter yesterday.

Based solely upon the representations made in your email of January 6, 2013, The Department of Finance is willing to take a no action position relative to the licensing provisions of the Idaho Money Transmitters Act for the described activities. This means that none of the parties identified in your communication need to consider licensing as a money transmitter in Idaho.

Presently, we would prefer to defer on making a blanket statement regarding the applicability of the banking exemption for the described circumstances.

Please let me know if the preceding no action position is insufficient for your to advise your client properly.

Regards,

Jim Burns, Investigations Chief  
MBA, CFE, CRCP  
Idaho Dept. of Finance  
P.O. Box 83720  
Boise, ID 83720-0031  
(208) 332-8080

---

**From:**  
**Sent:** Sunday, January 06, 2013 5:57 PM  
**To:** Jim Burns  
**Cc:**  
**Subject:** Request for guidance regarding exemption from money transmission license requirement

Dear Mr. Burns,

We would appreciate your input on whether an out-of-state bank-issued incentive card ("Card") for employees that is funded directly by an employer would qualify for the exemption from the money transmission license requirement set forth in the Idaho Money Transmitters Act ("Act").

Specifically, a well-known out-of-state chartered bank ("Bank") may facilitate an arrangement whereby employees ("Employees") of a nationwide employer ("Employer") will be given an option of receiving incentive payments they have earned or been granted via a Card. The Card will have a MasterCard (or other card association) logo and may be used to obtain cash withdrawals via ATMs, transfer up to \$200 per day to another U.S. bank account, or make purchases of goods and services at thousands of participating

merchants. The Employees will receive and activate the Card prior to use. An Employee who chooses to receive his incentive payment, in part or in full, via the Card will notify the Employer and the Bank of his choice; the Employer will then either electronically send the funds directly from the Employer's account to the Bank or the Bank will electronically pull the funds from the Employer's account. The Bank will hold such funds in an FDIC-insured custodial account held at the Bank in the Bank's name on behalf of the Employees until they are withdrawn or used by the Employee. In other words, the Employer will fund the Card account just as it funds its payroll account held at a bank. Only additional incentive payments earned by or granted to the Employee may be reloaded to the Card; no other reloads will be permitted by the Employee or anyone else.

The proposed contractual arrangements for such services are as follows: The Employer will enter into an agreement with a publicly traded company ("Company") for Company or its affiliate ("Affiliate") to coordinate such incentive payment services. The Affiliate will arrange for the services in accordance with an agreement the Affiliate has with the Bank. Neither the Company, the Affiliate, nor any other third party (other than the Employer or the Bank) will ever touch or handle the funds - again, the funds will go directly from the Employer's bank account to the custodial account held by the Bank for the benefit of the Employees. All loads and reloads will be done only by the Employer and only at the Bank. The Employees will receive Card terms and conditions from the Bank.

As the funds will flow directly from the Employer to the Bank, and no third party will otherwise handle the funds, we believe that this arrangement qualifies for the bank exemption from the money transmission license requirement under Section 26-2904(1)(d) of the Act, which states in pertinent part: "This chapter shall not apply to: ... (d) [b]anks, credit unions, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell payment instruments through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks."

We would greatly appreciate your input on whether we have properly interpreted your statutory exemption. As the parties would like to enter into this arrangement immediately, we would also very much appreciate your consideration of our inquiry as quickly as possible. Please feel free to contact me either by email or by phone at \_\_\_\_\_ if you have any questions. We ask that you treat this inquiry as confidential as it contains confidential information. Thank you,

---