



**IDAHO**  
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

October 4, 2007

Re:

Dear M

We thank you for the clarifying information contained in your letter of October 2, 2007 regarding the business model.

In furtherance of our prior communication and with the additional clarifications in mind, we remain of the opinion that [redacted] will need to become licensed as a money transmitter in Idaho to engage in the described activities.

Should you have additional questions or if you would like to submit additional information that may be relevant to our consideration of this matter, please feel free to contact the undersigned directly.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Burns".

James A. Burns  
Investigations Chief

SECURITIES BUREAU

800 Park Blvd., Suite 200, Boise, ID 83712  
Mail To: P.O. Box 83720, Boise ID 83720-0031  
Phone: (208) 332-8004 Fax: (208) 332-8099  
<http://finance.idaho.gov>

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2007 OCT -3 AM 9:56

STATE OF IDAHO  
DEPARTMENT OF FINANCE

October 2, 2007

**CONFIDENTIAL TREATMENT REQUESTED**

**BY FEDERAL EXPRESS**

James A. Burns  
Investigations Chief  
Securities Bureau  
Department of Finance  
800 Park Blvd, Suite 200  
Boise, ID 83712

Re:

Dear Mr. Burns:

In a letter dated December 12, 2006, we requested an opinion from the Department of Finance on behalf of our client, \_\_\_\_\_, as to whether \_\_\_\_\_ is engaged in the business of money transmission in Idaho pursuant to the Idaho Money Transmitters Act, and, as a result, whether \_\_\_\_\_ subject to the licensing requirements of that statute.

In a subsequent letter dated January 17, 2007, you raised an additional question regarding specific aspects of the services \_\_\_\_\_ offers in Idaho. Based on the information received from \_\_\_\_\_, responses to your questions are below.

*...[I]t remains unclear whether any funds provided to or handled by \_\_\_\_\_ have, by contract, the same legal standing as a payment made directly to the ultimate recipient of the funds. More directly, do \_\_\_\_\_ clients guarantee that funds paid to or through \_\_\_\_\_ will be treated the same as any payment made directly to the recipient (whether or not the recipient ever receives the funds from*

Payments made through \_\_\_\_\_ are not guaranteed until the payments are received and accepted by the payee. This is disclosed in \_\_\_\_\_ Terms of Use, which are accepted by each payor prior to submission of their payment.

We apologize for the delay in providing these responses to you. Over the last several months, \_\_\_\_\_ parent company, \_\_\_\_\_ has been evaluating its strategic direction and how best to deploy its financial and managerial resources. As a result of this effort, \_\_\_\_\_ has now determined to focus on its core

James A. Burns  
October 2, 2007  
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competency in electronic payment processing and has undertaken to divest certain business units or lines of business not fully consistent with this focus. The delay in the response was due to uncertainties regarding which business(es) would be divested and how the business model for those retained might be modified.

We respectfully request confidential treatment of this letter because of the non-public information it contains.

Please let us know if you have any additional questions regarding      Thank you for your assistance.

Best regards,

cc:



**IDAHO**  
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

January 17, 2007

Re:

Dear M

Your letter of December 12, 2006 requests interpretive guidance regarding the applicability of the Idaho Money Transmitters Act to the business activities being conducted or anticipated to be conducted by \_\_\_\_\_ in Idaho.

The description of \_\_\_\_\_ activities support a conclusion that a money transmission business is being effected by \_\_\_\_\_ as defined in Idaho Code §26-2902(11). However, you argue that \_\_\_\_\_ should be viewed as a party exempt from the Idaho Money Transmitters Act since \_\_\_\_\_ acts as an extension (agent) of some parties that are exempt from the Act pursuant to Idaho Code §26-2904.

For your information, the Department has not previously extended the exemptions of Idaho Code §26-2904 to contractors associated with exempt parties. Moreover, it does not appear that all of parties that \_\_\_\_\_ provides services for in Idaho meet the described exemptions (e.g., private schools).

Finally, it remains unclear whether any funds provided to or handled by \_\_\_\_\_ have, by contract, the same legal standing as a payment made directly to the ultimate recipient of the funds. More directly, do \_\_\_\_\_ clients guarantee that funds paid to or through \_\_\_\_\_ will be treated the same as any payment made directly to the recipient (whether or not the recipient ever receives the funds from \_\_\_\_\_).

Based on the facts presented in your letter, we are of the formative opinion that \_\_\_\_\_ will need to become licensed as a money transmitter in Idaho to engage in the described activities.

Should you have additional questions or if you would like to submit additional information that may be relevant to our consideration of this matter, please feel free to contact the undersigned directly.

Sincerely,

James A. Burns  
Investigations Chief

SECURITIES BUREAU

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Phone: (208) 332-8004 Fax: (208) 332-8099  
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DEC 14 2006

DEPT. OF FINANCE  
STATE OF IDAHO

December 12, 2006

**CONFIDENTIAL TREATMENT REQUESTED**

**BY FEDERAL EXPRESS**

Mr. James Burns  
Investigations Chief  
Department of Finance  
800 Park Blvd, Suite 200  
Boise, ID 83712

Re: Licensing Status  
Under the Idaho Money Transmitters Act

Dear Mr. Burns:

On behalf of our client, \_\_\_\_\_, we request an opinion from the Department of Finance (the "Department") as to whether \_\_\_\_\_ is engaged in the state of Idaho in the business of money transmission as that term is defined pursuant to the Idaho Money Transmitters Act (the "Act"), and, as a result, whether \_\_\_\_\_ is subject to the licensing requirements of the Act.

As discussed further below, we have reviewed the Act governing money transmission. It appears, based on this review, that \_\_\_\_\_ should not be required to obtain a money transmitter license in order to engage in its current and proposed business activities in the state. Nevertheless, because \_\_\_\_\_ business model is one not expressly addressed by the Act, we request your confirmation of this conclusion.

**Description of**

\_\_\_\_\_ is incorporated in Delaware and is a wholly-owned subsidiary of \_\_\_\_\_, a publicly traded company.

\_\_\_\_\_ primary business is providing proprietary internet and telephone Interactive Voice Response ("IVR") systems to facilitate electronic payments to the United States Internal Revenue Service, 26 state governments, and over 2,000 municipalities and counties in all 50 states.

### **Description of Activities in Idaho**

Payment Processing. principal business is assisting states or other government units facilitate online and IVR payments from residents. Pursuant to contracts with the government entities, operates websites and IVR systems that permit individuals and companies to pay bills and obligations, including the following:

- Personal, real estate, personal property, and school district taxes;
- Sales and use taxes, withholding, disability insurance and corporate taxes;
- Fines for speeding and other traffic rule violations;
- Parking rule violations; and
- Tax auction.

processes payments for the IRS, 26 States and over 2,000 municipalities and counties in all 50 states. Payments are accepted via credit card and ACH transaction. Virtually all taxing authorities, including the IRS, consider payments made upon authorization of the transaction.

A convenience fee for this service is paid for by either the taxpayer or the government entity, depending on the arrangement agreed to by and the government entity. When payment is made via credit card, the funds for payment are credited by the card companies directly into accounts owned by the government entities. (funds to pay the convenience fee are credited directly into an account owned by ).

### **Description of Proposed Activities in Idaho**

Mealpay. In connection with partnership with , the Mealpay service allows parents of secondary school students to pre-fund their children's school meals using credit cards or ACH transfers. The service also allows parents to view the balance on such an account. Payments can be made via the internet or using IVR systems.

The Mealpay service is offered pursuant to contracts between and and between either or and the schools. Horizon is responsible for setting up the physical equipment at the schools. The convenience fee for this service is paid for by either the parent or the school, depending on the arrangement agreed to by the school and or Funds are placed initially into an account before being disbursed to the schools at intervals set out in the contract.

The participating schools are primarily public schools, although a few private schools offer the Mealpay service to their students as well. All of the students' funds are handled by the schools. Funds are available for students' use either immediately or the next business day, depending on the arrangement agreed to by the school and or

University Payments. Pursuant to contracts between and a number of colleges and universities nationwide, accepts payments on behalf of these colleges and universities by their students and

Mr. James Burns  
December 12, 2006  
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parents for various fees owed to the college or university. These fees include payments for tuition, books, and other miscellaneous fees. Payments are accepted via the internet or through IVR systems.

A convenience fee for this service is paid for by either the student or the university, depending on the terms of the contract between            and the college or university. When payment is made via credit card, the funds for payment are credited by the card companies directly into an account owned by the college or university (funds to pay the convenience fee may be credited directly into an account owned by            or remitted to            by the college or university).

### **The Idaho Money Transmitters Act**

The Act provides that “no person except a person exempt ... shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter.” Idaho Code § 26-2903.

The Act defines money transmission as:

[T]he sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer. Idaho Code § 26-2902(11).

The Act defines payment instrument as:

[A]ny check, draft, money order, traveler's check or other instrument or written order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not such instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services. Idaho Code § 26-2902(13).

The Act provides that it does not apply to:

- (a) The United States or any department, agency or instrumentality of the United States; [and] ...
- (c) The state or any political subdivision of the state. Idaho Code § 26-2904(1).

### **Applicability of the Act to            Activities**

As noted above,            Payment Processing service is provided pursuant to contracts with the IRS, state governments, counties and local municipalities and other governmental entities on whose behalf            processes payments. We also note that            Payment Processing service is performed on

Mr. James Burns  
December 12, 2006  
Page 4

behalf of entities exempt from application of the Act. Accordingly, as an agent of such entities, should likewise be exempt.

Mealpay service will be provided pursuant to contracts with schools on whose behalf processes payments. We also note that Mealpay service is performed primarily on behalf of public schools and school systems, which are entities that appear to be exempt from application of the Act. Accordingly, as an agent of such entities, should likewise be exempt.

University Payments service will be provided pursuant to contracts with colleges and universities on whose behalf processes payments. We also note that University Payments service is performed on behalf of some public colleges and universities, which are entities that appear to be exempt from application of the Act. Accordingly, as an agent of such entities, should likewise be exempt.

### **Conclusion**

Please provide us with the Department's written opinion as to whether activities require a money transmitter license.

We respectfully request confidential treatment of this request as required by Idaho Code § 26-2916, because of the non-public information it contains.

Please date stamp and return the extra copy of the letter to confirm your receipt of this submission. Thank you in advance for your assistance. Please do not hesitate to contact me if you have any questions or need anything further.

Best regards,

cc: