

DIRK KEMPTHORNE
GOVERNOR



GAVIN M. GEE
DIRECTOR

STATE OF IDAHO
DEPARTMENT OF FINANCE
700 W. STATE STREET, 2ND FLOOR
P.O. BOX 83720
BOISE, IDAHO 83720-0031
Website: finance.state.id.us

June 27, 2002

Re: Prepaid Debit Card Product

Dear Mr. _____:

On April 17, 2002, you provided this Department with an update of the business model being pursued by _____. In conjunction with our review of that correspondence, you later provided a third-party agency agreement to be used with debit card distribution entities. You also provided a draft copy of the agreement between _____ and _____ National Bank.

As noted in our communication of January 3, 2002, we are of the view that pre-paid debit cards / cash cards constitute a form of "payment instrument" pursuant to the Idaho Money Transmitters Act. In that letter, we also communicated our view that the offer and sale of such instruments in or into Idaho would invoke the licensure requirements of the Idaho Money Transmitters Act.

New Business Model – The new business model presented by _____ does not alter our view that pre-paid debit cards/cash cards remain a form of payment instrument as defined under the Idaho Money Transmitters Act. However, your recent communications provided additional clarity regarding the mechanics of how these payment instruments would be distributed in Idaho. Additionally, details were provided regarding the relationships that will exist between INB, _____, and the point-of-distribution retailers.

It has been represented that the cash/debit cards would be issued by _____, and a liability of _____ National Bank. You have also represented that local distributors of the cards would become an agent of _____ and an agent of INB. It is presumed that local distributors would not be financial institutions.

Idaho Code §26-2904 provides a limited number of exemptions from the provisions of the Idaho Money Transmitters Act. Idaho Code §26-2904(1)(d) extends an exemption from the statute for banks and other identified financial institutions, *"provided that they do not issue or sell payment instruments through authorized delegates who are not banks..."*

Banks & Savings Banks (208) 332-8005
Credit Unions (208) 332-8003
Securities (208) 332-8004
Money Transmitters (208) 332-8004

PHONE: (208) 332-8000
FAX: (208) 332-8098
Director's Fax: (208) 332-8097
Securities Fax: (208) 332-8099

Supporting Services (208) 332-8001
Mortgage Companies (208) 332-8002
Finance Companies (208) 332-8002
Collection Agencies (208) 332-8002

EQUAL OPPORTUNITY EMPLOYER

Based solely on the facts presented in your letter and related materials, we believe that the debit/cash card distributors will be conducting a non-exempt money transmission business within the context of the Idaho Money Transmitters Act. As such, licensure would be required.

As you and I discussed, the local distributors could become individually licensed as money transmitters, or they might act as an authorized agent of a licensed money transmitter. Here, the local distributors would be exempt pursuant to Idaho Code §26-2904(2) as they would likely be “authorized representatives of a licensee, acting within the scope of authority conferred by a written contract conforming to...section §26-2918, Idaho Code...”

Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

James A. Burns
Idaho Dept. of Finance

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January 3, 2002

Re: Prepaid Debit Card Product

Dear M

Your inquiry of December 18, 2001 seeks to determine what license, if any, might be required to offer a non-bank prepaid debit card to Idaho residents. As it pertains to the statutes that this Department administers, we provide the following:

Money Transmission Issues

Idaho Code §26-2902(11) defines money transmission as the "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 by any and all means...".

Idaho Code §26-2902(13) defines payment instrument to include any check, draft, money order, or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons.

Based solely on the facts presented in you letter, we are of the view that the debit card product falls within the context of a payment instrument as defined under the Idaho Money Transmitters Act. As such, the offer and sale of such instruments in or into Idaho would require licensure as a money transmitter.

Other Issues In Need Of Consideration

The Idaho Bank Act states that "it shall be unlawful for any person to engage in or transact any banking business" with out the proper authority (Idaho Code §26-202). Further, the Idaho Bank Act defines "banking business" to include "soliciting, receiving or accepting money or its equivalent on deposit as a regular business..." (Idaho Code §26-106).

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EQUAL OPPORTUNITY EMPLOYER

Based on your description, _____ should consider whether the Idaho Bank Act would apply to its activities. We have forwarded your correspondence to our banking division for their review and comment.

Conclusion

As noted herein, we are of the view that _____ will need to obtain an Idaho Money Transmitters license if they intend to offer the prepaid debit card in or into Idaho. Our money transmission application, surety bond and related materials can be found on our website at <http://finance.state.id.us/industry/forms.asp>.

Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

James A. Burns
Idaho Dept. of Finance