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DIRECTOR

STATE OF IDAHO
DEPARTMENT OF FINANCE
700 W. STATE STREET, 2ND FLOOR
P. O. BOX 83720
BOISE ID 83720-0031
www.state.id.us/finance/dof.htm

November 9, 2000

Request For Opinion

Dear M

Your communication of August 21, 2000 regarding _____ has been referred to me for response. In connection with your letter, we provide the following:

Money Transmitter Issues

Your letter seeks to confirm that the Idaho Money Transmitters Act does not apply to a _____ operation. In this regard, your formative view is that "although Idaho resident may use _____ service, none of _____ activities are performed in Idaho, and no fee is charged to the consumer".

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...".

Your description of the _____ business operations (and our corresponding review of their website) clearly falls within the definition of "money transmission". Moreover, your communication does not appear to argue this point. In this regard, we presume that you agree that money transmission, as defined under Idaho statute, is occurring.

Having concluded that money transmission is occurring, the only issue remaining is whether an Idaho money transmitters license is needed to conduct the _____ business.

Idaho Code §26-2903(1) states that "no person... shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter." §26-2903(2) further clarifies that a "licensee may conduct its business in the state at one (1) or more locations, directly or indirectly owned, or through (1) or more authorized representatives...".

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

It is our view that Idaho Code §26-2903(2) merely acknowledges that a licensee “may” conduct business in Idaho when located in Idaho or through authorized representatives located in this state. We do not view this language as limiting licensure solely to those businesses that have a physical presence in this state. To do so would create an “un-level playing field” where certain classes of money transmitters might circumvent the provisions of the statute and the costs associated therein.

You state that although an “Idaho resident may use _____ service, none of _____ activities are performed in Idaho, and no fee is charged to the consumer”. We note that the Idaho Money Transmitter Act does not require that a fee or compensation element be present in order for the licensure provisions to be applicable. As such, it appears that the only way that _____ might be excluded from Idaho’s licensure provisions is to claim that _____ money transmission business is not being conducted or otherwise transmitted into or from Idaho. In summary, you appear to argue that this Department may not be able to assert jurisdiction over the activities of the business model.

The _____ website indicates that _____ services are currently not available to persons living outside of the United States and that money cannot be sent internationally through the website. Indeed, _____ is currently available only to U.S. residents”. The implication of this representation is that Idaho residents or entities are free to transmit funds through _____ and its web-driven business model.

To the extent that _____ does not transmit money into Idaho, or deliver funds emanating from an Idaho resident, an argument may be made that the Idaho Money Transmitter Act should not be applied. However, it is our view that once Idaho residents or entities engage in the transmission or receipt of funds through _____ money transmission is occurring that would be subject to the licensure requirement of the Idaho Money Transmitters Act. In this regard, the Act does not appear to focus on the means of transmission, or the origin of the money trail. The statute merely requires licensure of anyone “engaged” in the business of transmitting money. Obviously, more contacts and transactions conducted with Idaho residents or entities would further support our claim of jurisdiction.

As described herein, we do not concur that _____ can facilitate the transmission of funds that are associated with Idaho residents or entities without the benefit of licensure under the Idaho Money Transmitters Act.

Other Issues In Need Of Consideration

Idaho Bank Act - Your letter notes that beneficiaries (recipients) of funds through the _____ system are asked “whether he or she would prefer that _____ (a) deposit the payment directly into the Recipient’s United States bank account; (b) send the Recipient a check in the amount of the payment; or (c) keep the money on account so that the Recipient may use the balance to send a payment to another customer.”

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).

Based on your description, [redacted] should consider whether the Idaho Bank Act would apply to [redacted] activities as they relate to the retention of funds a) during the pendency of check issuances to recipients (apparently up to 7 days after the recipient requests a check), or b) your description that [redacted] will offer to "keep the money on account" for future payment to others.

Idaho Collection Agency Act—Our review of the [redacted] website reveals that users of the [redacted] system might be used to "ask your friends for money they owe you". These transactions use [redacted] as a gateway to send apparent collection notices (personalized messages can be sent along with the "request" for money) to debtors of the [redacted] client.

In this regard, we are concerned that [redacted] may be offering services to Idaho residents or businesses that falls within the ambit of the Idaho Collection Agency Act. More specifically, Idaho Code §26-2223 states that "No person shall without complying with the terms of this act and obtaining a permit from the director: Engage, either directly or indirectly in this state in the business of collecting or receiving payment for others of any account, bill, claim or indebtedness."

Conclusion

As noted herein, we are of the view that [redacted] will need to obtain an Idaho Money Transmitters license if they intend to act on the requests of Idaho residents or entities for money transmission services. Additionally, we believe that [redacted] will also be engaged in money transmission in Idaho to the extent that they wire transfer funds or maintain accounts for the Idaho "recipients" of money transmission transactions.

As it relates to the Idaho Bank Act and the Idaho Collection Agency Act, we ask that you review these issues and provide us with your views regarding these matters.

For your convenience, we have included a money transmitter license application and related materials.

Your prompt attention is greatly appreciated, and your response is requested not later than December 8, 2000. 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

August 21, 2000

VIA FACSIMILE AND U.S. MAIL – 208-332-8098

State of Idaho
Department of Finance
Financial Institution Bureau
P.O. box 83720
Boise, ID 83720-0031

RECEIVED
AUG 25 2000
DEPARTMENT OF FINANCE

Re: Idaho Money Transmitters Statute

Dear Sir or Madam:

As part of our representation of _____ a
Delaware corporation whose headquarters are in _____ we are in the process of determining
whether the money transmission and check sale laws of the several states apply to the
service it has offered since March of 2000.

The _____ service is a consumer-to-consumer payment
service offered free of charge to United States residents who have a working e-mail address.
Using the _____ website _____, a consumer ("Sender") can send a payment to
another consumer ("Recipient") by using his or her Visa, MasterCard, or American Express card
number with the requirement that the payment be directed to the Recipient's e-mail address.¹
The Sender is given immediate notification as to whether the transaction is approved or declined
by Visa, MasterCard or American Express. Contemporaneous with transaction approval, the
Recipient is notified by e-mail that the Sender has sent a payment. The Recipient is then asked
whether he or she would prefer that _____ (a) deposit the payment directly into the
Recipient's United States bank account; (b) send the Recipient a check in the amount of the

¹ Because the Sender uses Visa, MasterCard or American Express to generate the _____ transaction,
the funds transferred are protected by all Visa, MasterCard or American Express fraud policies.

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payment; or (c) keep the money on account so that the Recipient may use the balance to send a payment to another consumer. _____ is widely recognized as a cost-effective, secure and expeditious method for sending consumer-to-consumer payments.

_____ conducts the entirety of its _____ perations via the internet from its headquarters in _____. It does so without any "delegates," "agents" or "licensees" – i.e., there are no physical offices in Idaho or any state where a consumer can go to initiate a _____ ransaction.

We have reviewed the Money Transmitters Act and believe that, as it is currently written, it does not apply to _____ activities. Our conclusion is based upon the fact that, although Idaho resident may use _____ service, none of _____ activities are performed in Idaho, and no fee is charged to the consumer.

In order to complete our inquiry into licensing requirements for Idaho, we would appreciate your written confirmation as to whether or not the Money Transmitters Act, as currently written, applies to _____ service. If you have any questions regarding the above, please do not hesitate to contact me at _____. I look forward to receiving a response from your office regarding this matter.

Thanking you in advance for your prompt attention to this matter, I am,

Very truly yours,