



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

May 2, 2011

Re: Interpretive Request

Dear M

Your letter to Michael Larsen dated January 13, 2010 has been reviewed and discussed in detail. In connection with your inquiry, we provide the following.

Background - As noted in your letter, the credit counseling industry and more specifically, credit counseling agencies, "are, in fact, receiving money from the consumers, retaining it in trust account and then transmitting it to creditors for the purpose of paying the consumers' bills, invoices or accounts." Your letter further seeks to determine if a credit counseling agency that engages in the preceding activity is required to be licensed under the Idaho Money Transmitters Act¹.

Applicability of Idaho Money Transmitters Act (IMTA) -- The IMTA 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...by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer (Idaho Code §26-2901).

Based on the description of activities included in your letter and when considering the language of the IMTA, we agree that the activity in question constitutes money transmission as defined in Idaho law. As such, the question remains whether a money transmitter license is needed to engage in the aforementioned activities.

Issue of Licensure -- Idaho Code §26-2904 provides various exemptions from the provisions of the IMTA. However, there does not appear to be any exemption from licensure available under Idaho Code §26-2904 for credit counseling agencies regardless of whether these agencies have another license issued through the Department of Finance as credit counselors under the Idaho Collection Agency Act.

¹ As you are no doubt are aware, the Idaho Collection Agency Act also requires the licensure of anyone that would "engage or offer to engage in this state in the business of receiving money from debtors for application or payment to...any creditor or creditors of such debtor" (Idaho Code §26-2223).

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Based on the above criteria, it does appear that credit counseling agencies that receive money from consumers and then transmit it to creditors are money transmitter as defined in the IMTA.

Other Considerations – While the Department appreciates the complications that this opinion may present for industry, we do not see a ready solution that would eliminate the need for a money transmitter’s license. In this regard, there are perhaps three avenues that credit counseling agencies might explore.

First, the IMTA provides for an exemption from licensure for “authorized representatives of a licensee, acting within the scope of authority conferred by a written contract conforming to the requirements of...” the IMTA. This is exactly how “pay stops” such as gas stations can accept and forward customer funds for further payment to utility companies and others. It might be possible for credit counseling agencies to associate with a licensed money transmitter for the purpose transmitting the funds at the time of creditor payment.

Secondly, credit counseling agencies could obtain their own license as a money transmitter. While there certainly are licensing and bonding requirements under the IMTA, the process is not excessively difficult.

Finally, we are aware of some alternate statutory approaches used in other states. Apparently, some state laws provide discretion to the State Administrator to ascertain if other regulations or statutes govern the activity sufficiently to waive licensure requirements. Other states have preserved an exemption for certain classes of operators when the activity in question is solely incidental to their regular business. These types of solutions would require a statutory change and would need the support of both industry and its regulators.

Conclusion - As noted earlier, we believe that the fund transfer activities of certain credit counseling agencies constitute money transmission and are therefore regulated under the Idaho Money Transmitters Act. At present, we believe that licensure or appointment as a money transmitter agent would be the most expedient way to solve this problem for current credit counselors that engage in the enumerated activities.

Should you have any questions or comments, or wish to discuss this matter in greater detail, please feel free to contact me.

Sincerely,


James A. Burns
Investigations Chief