

TEMP THORNE
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

November 7, 2001

Re: Letter of Notification

Dear _____:

Your communication of September 28, 2001 has been referred to me for review and response. In connection with your letter, we provide the following:

Your letter seeks to confirm that Idaho does not regulate the _____ model as outlined in the documents provided. However, based solely on the limited information contained in your communication, there appear to be several Idaho laws that might apply to the _____ business model.

Money Transmitter 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..." Additionally, the statute defines a payment instrument to include any check, draft, money order, traveler's check or other instrument for the transmission or payment of money (Idaho Code §26-2902(13)).

Based solely on the limited facts presented in your letter, it would appear that the debit cards may constitute payment instruments. The issuance of such payment instruments would likely invoke the licensing requirements of the Idaho Money Transmitters Act.

Idaho Bank Act Issues

Your letter raises a number of interesting questions. It is not clear from the materials submitted whether the purchaser of the prepaid ATM card has a separate account with the bank or whether that account belongs to the merchant or to _____. In either event, it may be necessary for the bank to have a branch in this state in order to receive such deposits.

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

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).

For your information, Idaho’s Bank Act defines deposit to include the act of placing or lodging money in the custody of a person, for safety or convenience whether interest-bearing or not, to be withdrawn at the will of the depositor or under rules, terms and regulations agreed upon by the depositor and the depository.

Again, based on the limited information contained in your communication, the Idaho Bank Act may apply to your business model.

Idaho Securities Act Issues

Finally, without more detailed information regarding the [REDACTED] business model, we cannot ascertain whether the company faces any regulatory restrictions pursuant to the Idaho Securities Act. Depending on the facts in question, these pre-paid debit cards may constitute an “evidence of indebtedness” and be regulated under this Idaho law.

Conclusion

As noted herein, your communication does not contain sufficient detail for us to identify which, if any, Idaho statutes apply to the [REDACTED] business model. As such, we would request that you provide more detailed information regarding your business plan before conducting any business in the State of Idaho or with Idaho residents.

Your prompt attention to this matter is greatly appreciated. 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

September 28, 2001

Idaho Department of Finance
700 West Street, 2nd Floor
PO Box 83720
Boise, ID 83720-0031

RECEIVED
OCT 05 2001
DEPARTMENT OF FINANCE

We have changed our business plan and enclosed is a one-page summary regarding our business model we intend to conduct in your state. In reviewing with other states, it has come to our attention that a license is not needed for the business that my cooperation is conducting throughout the United States. Please find enclosed the information regarding our business plan that the other states have determined whether or not we needed to be licensed.

If you determine by reading the business plan that we do not need to be licensed, please provide a letter stating so.

Should you have previously contacted [REDACTED] requiring a license, please note the following part of our business plan may not have been clearly explained and your required license request may not apply.

- a) The money on the cards will be held in a FDIC insured bank which the cardholder will only have access to the account through their PIN number. Each cardholder will have an account number assigned to them by the bank.
- b) The cash value of the card is not loaded with the money from the cardholder. It is loaded from the store's card loading account in the name of the merchant that is held in a FDIC insured bank account with the merchant only having control over the funds. The money that the cardholder gives to the merchant to load on the card is deposited into the cash register and the load or value requested for the card is directly provided from the merchant's bank account in which the merchant cannot take the money off the card once loaded unless approved by the cardholder. The money received by the store during the day from the cardholder is then deposited into the merchant's card loading store account at the bank at the end of each day to reimburse the store's card loading account for loading the cardholder's money on the card. At no time is the money received from the cardholder to load on the card on behalf of the cardholder in jeopardy. The money loaded on the card is the same value of the money given to the store employee and is immediately available on the card through our processing system from the merchant's store loading account. (4 second activation) At no time should any bond be needed by [REDACTED] since employees of [REDACTED] will not have any control over any third party funds. The merchant would have ordinary theft or bond coverage for the store worker stealing the cash from their cash register. If the store's card loading account is not replenished, no cards with any value can be loaded and the merchant cannot take in any funds from customers.
- c) Lost or stolen cards are treated under the banking guidelines set forth as most other instruments of the banking industry.

If you determine by reading the business plan that we require a license, please provide the proper documents to process a license. We will send our application for processing filing fee.

Sincerely,

██████████ is planning to distribute through independent retail stores prepaid ATM debit cards with no Visa or MasterCard logo. The card is sponsored by a United States bank in which the funds on the card will be FDIC insured. The card will be sold in the retail store for \$7.50 in which the card will have no value. (This is a similar product to the prepaid phone and prepaid cellular card presently being sold.) A buyers prepaid funds (maximum of \$500.00 per card) that are to be accessible in the future to such buyer when using the card will be handed over by the buyer to the selling store. For instant activation the value loaded on the card through a POS machine or the cash register will come from the retail stores bank account with ██████████. The buyers' funds at the end of the business day will then be deposited into the business account of the retail store in order to have funds available for reloading additional cards the next day. At no time will the buyer's funds be held since the store is instant issuing the same value of the cash received on the card as the money taken in less a load fee of \$ 5.00.

The buyer will have an ATM bank account assigned to them (cards are pre-coded) with all the protection of a regular bank account. The cardholder is made aware through our terms and conditions to safeguard the card as if cash. A card buyer will be able to use the card at ATM machines terminals and participating point of sales terminals throughout the world that accept the card to make purchases and/or withdraw stored value funds until all such stored value has been spent or withdrawn by using a personal identification number (PIN). A card buyer will also be able to "reload" the card with additional stored value funds at any of the participating retail locations where the card is sold.