



Financial Crimes Enforcement Network Department of the Treasury

FinCEN Ruling 2003-4 – Definition of Money Transmitter/Stored Value (Gift Certificates/Gift Cards)

August 15, 2003

Dear []:

This letter responds to your letter dated November 21, 2002, requesting a determination with respect to whether [], a subsidiary of [], is a Money Services Business (“MSB”) for purposes of regulations implementing the Bank Secrecy Act (“BSA”) found at 31 CFR Part 103. [] is licensed with the state of New York as a money transmitter and seller of checks under New York law. During a recent examination of [], the New York Banking Department determined that [] is also a money transmitter under federal law as defined in 31 CFR 103.11(uu)(5) and thus required to register with FinCEN as an MSB pursuant to 31 CFR 103.41. The New York Banking Department instructed [] either to register with FinCEN, or to provide written documentation from FinCEN indicating that [] is not required to register as an MSB. FinCEN has determined, based on the representations in your letter, that [] is not a money transmitter under current BSA regulations and therefore not subject to the registration requirements.

According to your letter, [] issues mall wide gift certificates in paper form through authorized agents. When a customer wishes to purchase a gift certificate for use at stores located in a particular mall, the customer pays an amount equal to the face value of the gift certificate and, in some cases, a fee, to an authorized agent of []. The authorized agent provides a paper gift certificate to the customer, and then deposits the amount collected into the authorized agent’s own bank account. The money is then transferred by ACH debit from the authorized agent’s bank account to an [] bank account. When the recipient of the gift certificate purchases goods and services offered by a mall retailer and presents the gift certificate as payment, the mall retailer deposits the gift certificate into its own bank account. The gift certificate is ultimately presented to [] bank for payment. FinCEN has determined that the issuance of paper gift certificates as described in your letter does not constitute the “transfer of funds” for purposes of the definition of money transmitter found at 31 CFR 103.11(uu)(5). Because [] is not a money transmitter (or any other category of MSB) for purposes of BSA regulations, it is not required to register with FinCEN.

In addition to its paper gift certificate product, you indicate in your letter that [] is in the process of developing a mall-wide gift card, the value of which is represented in electronic format. You have asked for a determination whether a mall-wide electronic gift card is “stored value” for purposes of 31 CFR 103.11(vv). Issuers, sellers, and redeemers of stored value are defined as MSBs in 31 CFR 103.11(uu)(3) and (4). FinCEN does not currently interpret the definition of stored value to include closed system products such as a mall-wide gift card program.¹ However, please be advised that FinCEN intends to engage in further rulemaking relating to the definition of stored value. Therefore, nothing in this letter should be relied upon by [] as binding on FinCEN with respect to any changes to the current rules. Please note that to the extent that multiple gift cards can be sold to an individual in excess of \$10,000, [] is subject to the currency reporting requirement found at 31 CFR 103.30 requiring the filing of Form 8300 with FinCEN.

In arriving at our decision, FinCEN relied upon the accuracy and completeness of the representations made in your letter. Nothing precludes FinCEN from seeking further action should any of this information prove inaccurate or incomplete.

Sincerely,
//signed//
Judith R. Starr
Chief Counsel

cc: Michael Rosenberg, Deputy Director, Operations
Deborah Silberman, Supervisory Program Officer, MSB/Casinos/IRS Section

¹ The definition of an issuer, seller or redeemer of stored value is further limited in our regulations to only those persons that issue, sell or redeem more than \$1,000 in stored value per person per day in one or more transactions. For example, one customer’s simultaneous purchase of three stored value cards, each with a face amount of \$500, would reach this threshold.