

ORDER NO. 2020-033

IN THE MATTER OF:

**GMS SERVICES, INC. d/b/a
FASTPAY PAYROLL**

LUBBOCK, TEXAS

§
§
§
§
§
§

BEFORE THE BANKING

COMMISSIONER OF TEXAS

AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of GMS Services, Inc. d/b/a FastPay Payroll of Lubbock, Texas (Respondent) was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. Respondent offers payroll processing services to employers throughout the United States.
Respondent has been operating in Texas since January 6, 1995.
2. Respondent outsources the majority of its payroll processing services to a third party, but receives funds for the payment of payroll taxes from its Texas customers. Respondent makes those funds available to the appropriate taxing authorities at a later time or different location. Respondent is directly compensated by its Texas customers for its tax payment services. Pursuant to Texas Finance Code (Finance Code) §§151.301(b)(4) and 151.302(b), Respondent is engaging in the business of money transmission in Texas due to these activities.
3. Pursuant to Finance Code, Chapter 151 (Chapter 151), the Texas Department of Banking (Department) has jurisdiction over Respondent and the subject matter of this proceeding. The Commissioner has the authority to issue this Consent Order (Order) pursuant to Finance Code §151.706 and assess an administrative penalty pursuant to Finance Code §151.707.
4. Respondent has been properly notified of its right to an administrative hearing under Chapter 151.

5. Respondent and the Commissioner agree to this Order solely for the purpose of this proceeding and without Respondent admitting to or denying any violations of law or regulations. This Order does not constitute an admission by Respondent that Chapter 151 or a rule adopted, or order issued under Chapter 151 has been violated.
6. The undersigned representatives of Respondent have full authority to enter into and bind Respondent to the terms and conditions of this Order.
7. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a. service upon Respondent of this Order;
 - b. the right to present defenses to the allegations in this proceeding;
 - c. notice and hearing prior to imposition of this Order;
 - d. the filing of proposed findings of fact and conclusions of law;
 - e. the issuance of a proposal for decision by an administrative law judge;
 - f. the filing of exceptions and briefs with respect to such proposal for decision;
 - g. any review of this Order by the Finance Commission of Texas (Finance Commission); and
 - h. judicial review of this Order as provided by Texas Government Code §2001.171 et seq., and any other challenge to the validity of this Order.
8. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by Chapter 151 and other provisions of Texas law. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission under Chapter 151 or other applicable law.
9. The Commissioner has considered this matter and finds as follows:
 - a. On March 18, 2020, the Department learned that Respondent was engaging in payroll processing services in Texas. On March 20, 2020, the Department sent Respondent an

inquiry letter requesting additional information. Respondent promptly responded to the Department's letter and acknowledged that it needed a money transmission license for the payroll tax portion of its payroll processing services in Texas. On June 23, 2020, Respondent obtained a temporary money transmission license from the Department. Per the Department's request, Respondent provided its Texas payroll tax transaction volume from January 1, 2015 through June 30, 2019.

- b. Under Finance Code §151.301(b)(4), money transmission means “the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location.” Respondent receives money from customers in exchange for a promise to make an equivalent amount of money in the form of tax filings available at a later time or different location. Therefore, Respondent is engaging in money transmission.
- c. Under Finance Code §151.302(b), a person engages in the business of money transmission if the person receives compensation or expects to receive compensation, directly or indirectly, for conducting money transmission. Respondent is compensated by its customers for its money transmission activity. Therefore, Respondent is engaging in the business of money transmission.
- d. As required by Finance Code §151.707(d), the Commissioner has considered the seriousness of the violation, Respondent's compliance history, and Respondent's good faith in attempting to comply with Chapter 151. Respondent engaged in the business of money transmission in Texas without a license from January 6, 1995 to June 23, 2020. Therefore, it has not fulfilled its required licensee obligations. Respondent has no other history of violations. Upon becoming aware that it needed a money transmission license,

Respondent obtained a temporary license and disclosed its Texas payroll tax transaction volume to the Department. Based on these findings and the representations made by Respondent as to its transaction volume, the Commissioner finds that a penalty of \$68,366 is appropriate.

10. Respondent agrees to comply with the terms that are set out in the Order below.
11. Nothing in this Order shall prohibit Respondent from obtaining a money transmission license from the Department in the future.
12. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any past, current, or future violations by Respondent that come to the attention of the Department. In addition, nothing herein will be construed to limit Respondent's right to contest any future finding or determination of non-compliance.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED that:

13. Respondent will pay \$68,366 to the Department as an administrative penalty under Finance Code §151.707 in accordance with the following terms:
 - a. Within 10 days of the effective date of this Order, Respondent will cause to be delivered to the Department a check made payable to the Texas Department of Banking in the amount of \$6,841 as an initial payment.
 - b. Respondent will make additional payments of at least \$2,675 each month for 23 months following the effective date of this Order until the total amount of the remaining penalty of \$61,525 has been paid.

- c. These additional payments will be due to the Department by the 20th day of each month and shall be made payable to the Texas Department of Banking. These payments represent the minimum amounts due. Respondent may make greater or more frequent payments.
 - d. Failure to pay the minimum amount due within 10 days of any due date constitutes a violation of this Order. In the event of such a violation of this Order, any remaining penalty amount becomes immediately due.
14. Respondent will fulfill all of the requirements to obtain a license to conduct money transmission in Texas as detailed in Chapter 151. In the event that Respondent elects to withdraw its license application, or Respondent's license application is suspended pursuant to Finance Code §151.204, determined abandoned pursuant to 7 Texas Administrative Code §33.13(g)(1), or denied pursuant to Finance Code §151.205, Respondent will do the following:
- a. Within 15 days of the Department's notification to Respondent of said withdrawal, suspension, abandonment or denial, Respondent will notify its existing Texas-based customers that it will cease providing money transmission to them. This notification must be made in writing and a copy of the notice must be sent contemporaneously to the Department.
 - b. Within 60 days of the Department's notification to Respondent of said withdrawal, suspension, abandonment or denial, Respondent will cease and desist from engaging in the unauthorized business of money transmission in Texas and will have returned to its Texas-based customers all funds held by Respondent.
 - c. Within seven days of achieving full compliance with this paragraph, Respondent must confirm to the Department in writing that it has ceased all unlicensed activities in Texas.

EFFECTIVE DATE

This Order against Respondent is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

It is so ORDERED.

Signed on this 24th day of August 2020.

/s/ Charles G. Cooper
Charles G. Cooper, Commissioner
Texas Department of Banking

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ Jerred C. Hurst
Jerred C. Hurst
Co-Owner
GMS Services, Inc. d/b/a FastPay Payroll

August 13, 2020
Date

/s/ Kade Wilcox
Kade Wilcox
Co-Owner
GMS Services, Inc. d/b/a FastPay Payroll

August 13, 2020
Date

APPROVED AS TO FORM:

/s/ Catherine Reyer for
Alice E. Geyer
Assistant General Counsel
Texas Department of Banking

August 24, 2020
Date