ORDER NO. 2020-036

IN THE MATTER OF:	§	**BEFORE THE BANKING**
	§	
	§	
APPLIED PAYROLL SOLUTIONS, LLC	§	**COMMISSIONER OF TEXAS**
	§	
	§	
LUBBOCK, TEXAS	§	**AUSTIN, TRAVIS COUNTY, TEXAS**

CONSENT ORDER

On this day, the matter of Applied Payroll Solutions, LLC 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 was organized in Texas on July 26, 2018. It offers payroll processing services to employers located in Texas and Colorado Springs, Colorado.
2. Respondent currently outsources its payroll processing services to a third party. However, between July 26, 2018, when it was founded, and June 9, 2020, Respondent received payroll tax funds from its Texas customers in exchange for a promise to make those funds available to the appropriate taxing authorities at a later time or different location. Respondent was directly compensated by its Texas customers for those tax payment services. Pursuant to Texas Finance Code (Finance Code) §§151.301(b)(4) and 151.302(b), Respondent was engaging in the business of money transmission in Texas during that period, but was not licensed by the Texas Department of Banking (Department) to conduct money transmission activities.
3. Pursuant to Finance Code, Chapter 151 (Chapter 151), the 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 representative of Respondent has 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 April 30, 2020, the Department learned that Respondent was engaging in payroll processing services in Texas. On May 12, 2020, the Department sent Respondent an inquiry letter requesting additional information. Respondent promptly responded to the Department's letter and acknowledged that the payroll tax portion of its payroll processing services in Texas was licensable. By June 9, 2020 Respondent transferred responsibility for the payment of payroll taxes for its Texas customers to its third-party payroll processor and ceased all money transmission activities in Texas. Per the Department's request, Respondent provided its Texas payroll tax transaction volume from July 26, 2018 through June 10, 2020.

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 received money from Texas 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 was 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 was compensated by its Texas customers for its money transmission activity. Therefore, Respondent was 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 July 2018 to June 2020. Therefore, it did not fulfilled its required licensee obligations. Respondent has no other history of violations. Upon becoming aware that it needed a money transmission license, Respondent ceased offering money transmission services in Texas 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 $17,814 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 not offer money transmission services to Texas customers unless and until it obtains a Texas money transmission license.
14. Respondent will pay $17,814 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 $1,776 as an initial payment.

b. Respondent will make additional payments of at least $1,458 each month for 11 months following the effective date of this Order until the total amount of the remaining penalty of $16,038 has been paid.

c. These additional payments will be due to the Department by the 20th 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.

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 28th day of September 2020.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ Martin Nowlin
Martin Nowlin
Chief Executive Officer
Applied Payroll Solutions, LLC

September 17, 2020
Date

APPROVED AS TO FORM:

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

September 24, 2020
Date