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UCC MATERIAL
FOR YOUR INFORMATION

RE: Automobile Purchase/Leaseback

Dear Mr.:

Laura E. Udis, the Administrator of the Uniform Consumer Credit Code (Administrator), has referred to me for response your letter to the Uniform Consumer Credit Code regarding the above-referenced matter. Please be advised I am handling this matter on her behalf.

In your letter, you inquire as to the legality of your business, the nature of which you describe as engaging in automobile "purchase/leaseback" transactions. You give the example of a person who owns an unencumbered vehicle and is in need of a loan of \$1,000.00. For a number of reasons, the person is unable to get a loan for this amount from traditional lenders, such as banks. Your business proposes to "buy" the person's vehicle for \$1,000.00, and then "lease" it back to the person for a daily "rental" rate of about \$8.00. Pursuant to the lease, the person has the option to "buy" back the vehicle for the original \$1,000.00, plus any applicable sales tax. According to the lease, upon a default in making any of the "lease" payments, you are entitled to repossess the vehicle.

Similar types of transactions involve the consumer "selling" the vehicle to the "purchaser/lessor" for 50% of the vehicle's "blue book" value, or some lesser amount the consumer needs. The "purchaser/lessor" then "leases" the vehicle back to the consumer for a daily "rental" fee, paid in periodic installments. Typically, the consumer has the option to "repurchase" the vehicle by paying to the "purchaser/lessor" the original "sales" price, plus other fees. Further, the

"purchaser/lessor" typically has the right to repossess the vehicle upon any default by the consumer.

These transactions define the classic scenario commonly referred to as a "sale/leaseback" transaction. This device is used to disguise what are in substance loans. By so doing, the purported "purchaser/lessor" - in reality a lender - attempts to avoid application of various consumer credit protection laws, such as the UCCC, federal Truth in Lending (TILA), and the like.

The courts regularly have held these types of transactions to be loans subject to such laws. In doing so, the courts disregard the form of or the label the parties give to the transaction and instead examine its substance. See, e.g., Pendleton v. American Title Brokers, Inc., 754 F.Supp. 860 (S.D. Ala. 1991) (auto pawn sale/leaseback held subject to TILA); Halco Financial Services, Inc. v. Foster, 770 S.W.2d 554 (Tenn. Ct. App. 1989) (sale/leaseback transaction held usurious loan); see also Kuykendall v. Malernee, 516 P.2d 558 (Or. Ct. App. 1973) (sale of automobile with repurchase option was a loan subject to consumer credit laws); Administrative Interpretation No. 1.202-9401 (Colorado UCCC Administrator, Aug. 31, 1994) (pawnbrokers who do not take physical possession of automobiles are subject to the UCCC).¹

Accordingly, the Administrator concludes these types of transactions actually are loans subject to the UCCC. Your business also would be subject to supervised lender licensing if, as is likely, the annual percentage rate imposed exceeds 12% per annum. See UCCC §§ 5-3-501 and 5-3-502. In this regard, the \$8.00 daily "rental" fee is a finance charge. Using your example's loan amount of \$1,000.00, this equates to an annual percentage rate of 292%. This far exceeds any lawful rate under the UCCC, and is usurious under Colorado's criminal usury law. See § 18-15-104, C.R.S. 1999. The Administrator in the past has not hesitated to bring suit against people making similar disguised loans.

¹ I note these transactions also have features in common with consumer credit sales subject to UCCC §§ 5-2-101, et seq., as well as leases held to be disguised installment sales/secured transactions under Article 9 of the Uniform Commercial Code, §§ 4-9-101, et seq., C.R.S. 1999. See H.M.O. Systems, Inc. v. Choicecare Health Services, Inc., 665 P.2d 635 (Colo. App. 1983).

In sum, the only reason a person would "sell" his or her vehicle and then "lease" it back from the "purchaser" while paying "lease" payments and other charges is the person's need for money. This is an extension of credit. See UCCC § 5-1-301(7).

Thank you for your attention to this matter. If you have any questions, please do not hesitate to call.

Sincerely yours,

FOR THE ATTORNEY GENERAL



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