STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 14-82

Loan Charges Under the Industrial Loan and Thrift Companies Act

QUESTION

When a registrant under the Industrial Loan and Thrift Companies Act makes a loan to a borrower pursuant to Tenn. Code Ann. § 45-5-403(b), can the registrant include the acquisition charge as part of the "principal" when computing the borrower's loan charges?

OPINION

No.

ANALYSIS

Industrial loan and thrift companies, industrial banks, and industrial investment companies in Tennessee are regulated by the Industrial Loan and Thrift Companies Act ("Act"), Tenn. Code Ann. §§ 45-5-101 to -612, and such an entity desiring to do business in this State must obtain a certificate of registration from the Commissioner of Financial Institutions, Tenn. Code Ann. § 45-5-103. Entities registering under the Act are described as "registrants." Tenn. Code Ann. § 45-5-102(20).

Registrants have the power to "[l]end money with or without security and to take as security real or personal property, or both." Tenn. Code Ann. § 45-5-301(1). They also have the power to charge interest, as well as loan charges. Tenn. Code Ann. § 45-5-301(2) and (3). Loan charges, though, are subject to the limitations set forth in Tenn. Code Ann. § 45-5-403. Tenn. Code Ann. § 45-5-301(3).

There are two sets of permissible loan charges under Tenn. Code Ann. § 45-5-403—one set is contained in subsection (a) and the other is contained in subsection (b). The set contained in subsection (a) can be traced to 1979,[1] the year the Act was substantially rewritten.[2] The set contained in subsection (b) was added by the

[1] *See* 1979 Tenn. Pub. Acts, ch. 204.

[2] In response to the 1978 amendment to Art. XI, § 7, of the Tennessee Constitution, the General Assembly enacted legislation reforming the statutes on interest and usury. Included in the package

General Assembly in 2000 "for the sole purpose" of providing an "alternative set of charges." 2000 Tenn. Pub. Acts, ch. 684, Preamble. *See* Tenn. Code Ann. § 45-5-403(b) ("As an alternative to the loan charges permitted under subsection (a) and interest permitted under § 45-5-301, a registrant may charge loan charges in amounts no greater than, the following: . . . .").

When subsection (b) was originally enacted, it established an alternative set of charges for loans up to $1,000. The registrant was allowed an "acquisition charge" in an amount "not in excess of seven and one half percent (7.5 %) of the amount of the principal." The registrant was also allowed a monthly installment-account handling charge that varied depending on the amount of the loan. Tenn. Code Ann. § 45-5-403(b)(1) (2000). The minimum term of a loan under subsection (b) was three months; the maximum term was 12 months. Tenn. Code Ann. § 45-5-403(b)(2) (2000). All of these figures have since been increased.[3]

The Act's definition of "principal" includes certain loan changes.

> "Principal" means the total of money paid to, received by, or paid or credited to the account of the borrower, including loan charges as provided in Tenn. Code Ann. § 45-5-403(1), (2) and (3), as applicable, and including insurance charges for which the borrower contracts to pay pursuant to Tenn. Code Ann. § 45-5-305.

Tenn. Code Ann. § 45-5-102(19). If the phrase "loan charges as provided in Tenn. Code Ann. § 45-5-403(1), (2), and (3)" in this definition were to refer to the loan charges set forth in § 45-5-403(b), then a registrant would arguably be able to include the acquisition charge described in subsection (b) as part of the principal when computing a borrower's loan charges under subsection (b). But it does not.

The phrase "loan charges as provided in § 45-5-403(1), (2) and (3), as applicable" refers only to the loan charges set forth in Tenn. Code Ann. § 45-5-403(a). When the Act was rewritten in 1979, "principal" was defined as "the total of money paid to, received by, or paid or credited to the account of the borrower, including loan charges as provided in Section 11(1), (2) and (3) hereof, as applicable, and including insurance charges for which the borrower contracts to pay pursuant to Section 12

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of reform legislation enacted in 1979 was the Industrial Loan and Thrift Companies Act. *Hathaway v. First Family Financial Servs., Inc.*, 1 S.W.3d 634, 638 (Tenn. 1999) (citing *Pacific E. Corp. v. Gulf Life Holding Co.*, 902 S.W.2d 946, 953-54 (Tenn. Ct. App. 1995)).

[3] In 2012, subsection (b) was amended to allow loans up to $2000. The acquisition charge was increased to an amount "not in excess of ten percent (10%) of the amount of principal." The monthly installment-account handling charge was also increased. Tenn. Code Ann. § 45-5-403(b)(1). And the permissible term of a loan under subsection (b) was lengthened to 25 months. Tenn. Code Ann. § 45-5-403(b)(2).

hereof." 1979 Tenn. Pub. Acts, ch. 204, § 1. Section 11(1), (2), and (3) of Chapter 204 was codified in Tenn. Code Ann. § 45-5-403(1), (2) and (3) (1980). It was not until the Act was amended in 2000 that Tenn. Code Ann. § 45-5-403 came to have a subsection (a) and a subsection (b). The 2000 amendment designated the existing language of Tenn. Code Ann. § 45-5-403 as subsection (a) and added a new subsection (b). 2000 Tenn. Pub. Acts, ch. 694, § 1.

The Tennessee Supreme Court has held that the adoption of a statute by reference is an adoption of the law as it existed at the time the adopting statute was passed. *Roddy Mfg. Co. v. Olsen*, 661 S.W.2d 868, 871 (Tenn. 1983). Subsequent modifications of the adopted statute do not affect the adopting statute unless clear legislative intent to do so is manifested. *Id.* There is no such intent in this instance. When the General Assembly amended Tenn. Code Ann. § 45-5-403 in 2000, it made clear that the new set of loan charges in subsection (b) was an "alternative set" of loan charges. Therefore, the loan charges in subsection (b) should not be construed to be "loan charges as provided in § 45-5-403(1), (2) and (3)." *See Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 420 (Tenn. 2013) (statute should be read "without any forced or subtle construction which would extend or limit its meaning"); *Houghton v. Aramark Educ. Resources, Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002) (statute is not to be construed in manner that unduly expands or restricts the statute's intended scope). Consequently, a registrant making a loan to a borrower pursuant to Tenn. Code Ann. § 45-5-403(b) cannot include the acquisition charge as part of the principal when it computes the borrower's loan charges.

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