STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

September 25, 2019

Opinion No. 19-17

Collection of Notes - Clarification of Definition of Notes

Question 1

What is the meaning of "notes" in Tenn. Code Ann. § 62-20-102(3), which exempts from the definition of "collection service" any person that engages in the "collection of notes or guarantees"?

Opinion 1

Read in the context of § 62-20-102(3), "notes" is best understood as encompassing only written promissory notes, i.e., unconditional written promises, signed by the maker, to pay absolutely and in any event a certain sum of money either to, or to the order of, the bearer or a designated person.

Question 2

When the Collection Services Board receives a complaint against a collection service licensee, does it have a duty to investigate whether the underlying debt constitutes a note or guarantee that would exempt the collector from the licensing requirements of the Tennessee Collection Services Act?

Opinion 2

In reviewing written complaints, the Board should inquire as to the nature of the underlying debt to make sure that it is covered by the Act.

ANALYSIS

The Tennessee Collection Service Act (the "Act") governs the licensure of collection service businesses in the State. See Tenn. Code Ann. § 62-20-101 et seq. Any person (i.e., any individual, firm, corporation, association, or other legal entity) that operates a collection service business in Tennessee must be licensed by the Collection Services Board and must comply with its rules and regulations. See id. §§ 62-20-104(g), -105(a), -115(b); see also Tenn. Att'y Gen. Op. 99-224 (Dec. 1, 1999). The Act applies only to persons that collect or attempt to collect delinquent debts acquired from other creditors, whether by assignment or purchase. See Tenn. Code Ann. § 62-20-102(3). The Act does not apply to persons that collect their own accounts, see id. § 62-20-103(b), unless they use a fictitious name to indicate that a third party is collecting the debt, see id. § 62-20-102(3)(B).

In 2014, the General Assembly amended the Act and, among other changes, modified the definition of "collection service." The amending legislation indicated that its provisions were remedial and were "intended to clarify the statute and policies of the collection services board." 2014 Tenn. Pub. Acts, ch. 996, § 5.

The Act defines "collection service" to mean "any person that engages in, or attempts to engage in, the collection of delinquent accounts, bills or other forms of indebtedness irrespective of whether the person engaging in or attempting to engage in collection activity has received the indebtedness by assignment or whether the indebtedness was purchased" by that person. *Id.* § 62-20-102(3). But it also provides that "'[c]ollection service' does not include any person that engages in, or attempts to engage in, the collection of notes or guarantees." *Id.* Thus, a person that collects only notes or guarantees would not be a "collection service" subject to the licensing requirements of the Act.

The Act does not define "note." "Note" must therefore be given "its natural and ordinary meaning, without forced or subtle construction that would limit or extend [its] meaning, except when a contrary intention is clearly manifest." *Id.* § 1-3-105(b). "In seeking to determine the 'natural and ordinary meaning' of statutory language, the usual and accepted source for determining such information is a dictionary." *English Mtn. Spring Water v. Chumley*, 196 S.W.3d 144, 148 (Tenn. Ct. App. 2005). Black's Law Dictionary (11th ed. 2019) defines "Note" generally as

> [a] written promise by one party (the *maker*) to pay money to another party (the *payee*) or to bearer. A note is a two-party negotiable instrument, unlike a draft (which is a three-party instrument). – Also termed *promissory note*.

And a "promissory note" is "[a]n unconditional written promise, signed by the maker, to pay absolutely and in any event a certain sum of money either to, or to the order of, the bearer or a designated person." Black's Law Dictionary (11th ed. 2019).

Given its ordinary meaning, "notes" as used in § 62-20-102(3) could be read broadly to refer to any written promise by the maker of the instrument to pay a certain sum of money to the bearer of the instrument. Or it could be read more narrowly—consistent with its most commonly understood meaning—to refer only to promissory notes. Indeed, as the definition in Black's Law Dictionary indicates, "note" and "promissory note" are often viewed as synonyms. To determine whether "notes" should be read broadly or narrowly, the term should be considered in the context "in which [it] appear[s] and in light of the statute's general purpose." *Coffee Cty. Bd. of Educ. v. City of Tullahoma,* 576 S.W.3d 832, 839 (Tenn. 2019).

The statutory context indicates that "notes" should be limited to its narrower and more commonly understood meaning of written promissory notes. Courts presume that every word in a statute has meaning and purpose and should not be treated as surplusage, but should be given full effect if the obvious intent of the legislature is not violated by doing so. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). Courts also presume that the legislature neither intended to enact a useless statute, *State v. Jackson,* 60 S.W.3d 738, 742 (Tenn. 2001), nor intended to create "an absurdity," *Fletcher v. State*, 951 S.W.2d 378, 382 (Tenn. 1997). A broad construction of the exemption for "notes" to include any written promise to pay would swallow an entire portion of the Act's

definition of "collection service," which expressly includes any person that collects "delinquent accounts, bills or other forms of indebtedness." It would make little sense for the legislature to define "collection service" to cover particular entities and then exempt those same entities in the very next sentence.

This construction is consistent with a prior opinion of this Office that applied the same principles of statutory construction to conclude that another exemption in the Act should not be read broadly in a manner that would contradict the express statutory definition of "collection service." That opinion narrowly construed the exemption for a person that "collects only his or its own unpaid accounts" to exclude an entity that purchased debts for collection. Tenn. Att'y Gen. Op. 97-131 (Sept. 23, 1997). A broad reading of the exemption would have swallowed the statutory definition of "collection service," which expressly included persons who offer the service of "purchasing" debts "for collection." *Id.*

In investigating complaints filed under the Act, the Collection Service Board should inquire as to the nature of the underlying debt to determine whether it falls within the scope of the Act. If the nature of the underlying debt remains unclear, the person collecting the debt should be able to show whether the debt arises from a promissory note or a guarantee that would exclude the person's collection from the scope of the Act.

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