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CONSUMER CREDIT DIVISION
ADMINISTRATIVE INTERPRETATION 2018-01
April 2, 2018

**A PURPORTED LEASE TO OWN TRANSACTION WHERE THE SUBJECT PROPERTY DEEMS
THE TRANSACTION TO BE A CREDIT SALE**

This Administrative Interpretation is being issued by the Consumer Credit Division of the Indiana Department of Financial Institutions (“the Department”). Certain examination findings and trends have raised concerns that companies (“Lessors”) that are Registrants subject to Indiana’s Uniform Consumer Credit Code (“IUCCC”) who are engaging in purported lease transactions as a method of providing financing for the sale of property for which the consumer does not contemplate its return to the Lessor may be engaging in disguised credit sales, either knowingly or unknowingly, by utilizing a Lease-to-Own business model. All comments outlined in this Administrative Interpretation pertain only to consumer transactions for a personal, family, or household purpose.¹

Background

A long-standing practice of many companies seeking to finance the sale of goods or services with consumers includes engaging in consumer credit sales.² In the typical transaction, a consumer enters into a retail installment contract with a company whereby the consumer is obligated to make more than four payments or to pay a finance charge in order to pay for the purchase of the goods or services over time. Such transactions are subject to the IUCCC, specifically Ind. Code §24-4.5-2. Significant provisions that a creditor must comply with include but are not limited to: maximum rate of finance charge (or credit service charge)³; permitted additional charges⁴; delinquency charges⁵; rebate upon prepayment of a precomputed transaction⁶; and restrictions on deficiency judgments in consumer credit sales⁷.

During recent routine examinations of Registrants (companies registered with the Department), the Department has observed an increased prevalence of a business model where the transactions are structured as leases. In these transactions, a consumer does not obtain ownership of the goods at consummation. Rather, the seller/creditor retains ownership of the goods until such time that the consumer exercises either an early purchase option or end of term purchase option, if provided for in the contract.

¹ The IUCCC does not apply to transactions for a purpose other than a personal, family, or household purpose; extensions of credit primarily for a business, a commercial, or an agricultural purpose are exempt. See Ind. Code § 24-4.5-1-202(b).

² Ind. Code §24-4.5-1-301.5(8)

³ Ind. Code §24-4.5-2-201

⁴ Ind. Code §24-4.5-2-202

⁵ Ind. Code §24-4.5-2-203.5

⁶ Ind. Code §24-4.5-2-210

⁷ Ind. Code §24-4.5-5-103

Analysis of Applicable Statutes

Ind. Code §24-4.5-1-301.5(8) states in pertinent part, “‘Consumer credit sale’ is a *sale of goods*, services, or an interest in land...” (*emphasis added*).

Further, the IUCCC states,

“Sale of goods” includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement⁸.

The Commentary to Ind. Code §24-4.5-2-106 derived from the 1968 Uniform Consumer Credit Code states in pertinent part,

Leasing has become a popular alternative to credit sales as a means of distributing goods to consumers and merits inclusion in a comprehensive consumer credit code... If the transaction, though in form a lease, is in substance a sale within the meaning of Section 2.105(4), it is treated as a sale for all purposes in this Act and the provisions on consumer leases are inapplicable.

In addition, Registrants/Lessors are advised that Ind. Code §24-4.5-1-102(5) states,

This article applies to a transaction if the director determines that the transaction:

- (a) is in substance a disguised consumer credit transaction; or
- (b) involves the application of subterfuge for the purpose of avoiding this article.

A determination by the director under this subsection must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this subsection.

As a general legal principle, a defining characteristic of a lease is that a lessor may take back and re-market the underlying asset. Further, a consumer must reasonably contemplate that he or she may or will return the property subject to the agreement; a question to be considered is whether the goods are of a kind and type not contemplated by a consumer to be returned to the Lessor. A reasonable legal analysis will consider the substance of the transaction, rather than the transaction’s form, i.e., is the agreement denominated as a “lease.” An additional indication of a violation of such principle would include the lack of a reasonable standard of wear and tear as to the item in question. The existence (or non-existence) of a reasonable resale market will also be taken into account.

⁸ Ind. Code §24-4.5-2-105(4)

The following is a non-exclusive list of types and kinds of property that the Department may determine to be in violation of Ind. Code §24-4.5-1-102(5) when included on a purported lease transaction:

- live animals, such as household pets;
- essential items of repair for a home or motor vehicle, including but not limited to:
 - glass (windows and/or windshields);
 - engine or transmission parts or components;
 - flooring or carpet;
- clothing, including but not limited to wedding dresses;
- highly consumable medical products, such as contact lenses;
- services performed.

In addition to the above, the Department will consider other highly consumable consumer goods, with little to no residual value other than emotional or practical value specific to the consumer, to be in substance credit sales when such property is the subject of a purported lease transaction. Further, any portion of a leased cost that has a service, repair, delivery or labor component is considered intangible property that cannot be leased.

As a result of the above, this Administrative Interpretation serves as general notice that such activity will in most instances be considered a disguised consumer credit sale under the IUCCC. During examinations, such transactions will be reviewed for compliance with all IUCCC provisions pertaining to credit sales. The Department may conform the fees and charges assessed to the limitations under Ind. Code §24-4.5-2. The Department may require refunds of overcharges, impose civil penalties not greater than \$10,000 per violation⁹, or take other enforcement actions including but not limited to issuing cease and desist orders¹⁰.

Recommended Action

Lessors should review current practices and make any changes necessary to ensure compliance with Ind. Code §24-4.5 *et seq.* Lessors may wish to seek the advice of legal counsel regarding their business model.

This Administrative Interpretation is in effect unless later amended or withdrawn. It is not a substitute for advice from a Lessor's legal counsel.

If you have questions regarding this publication, please contact the Department.

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⁹ Ind. Code §24-4.5-6-113(3)

¹⁰ Ind. Code §24-4.5-6-108

