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OPINION NO. 2017-05

FINANCIAL INSTITUTIONS; RETAIL
INSTALLMENT SALES CONTRACTS
(RISC); MOTOR VEHICLE DEALERS:

When a person purchases or takes an assignment of a RISC pursuant to the provisions of Chapter 97 of the NRS, the person's acceptance of the assignment does not subject the person to regulation or licensure under NRS Chapter 675.

George E. Burns, Commissioner
Financial Institutions Division
2786 E. Desert Inn Road, Suite 180
Las Vegas, Nevada 89121

Dear Mr. Burns:

On behalf of the Financial Institutions Division of the Department of Business and Industry (Division), you have requested a formal opinion from the Office of the Attorney General pursuant to NRS 228.150 regarding certain indirect vehicle financing transactions that use the form retail installment contract which you, as Commissioner of the Division (Commissioner), have prescribed for use in the sale of vehicles pursuant to NRS 97.299. First, you ask “[w]hether a financial institution that purchases Retail Installment Sales Contracts (“RISC[s]”) from motor vehicle dealers in the State of Nevada (i.e. indirect financing) is required to be licensed pursuant to Chapter 675 of the NRS[.]”¹ Second, you ask “[w]hether NRS Chapter 675 requires such a financial institution to have an in-state physical presence[.]”²

As stated in Attorney General Opinion 2017-01, a retail seller financing its own sales pursuant to the provisions of Chapter 97 of the NRS, but otherwise engaging in no

¹ Correspondence requesting opinion dated October 7, 2016.

² *Id.*

lending activity, is not required to secure a Chapter 675 license.³ This conclusion is consistent with the plain language of Chapter 97, which specifies that no other statutes “apply to retail installment transactions governed by this chapter.”⁴ For the reasons discussed below, a third party (including a financial institution) who purchases or takes an assignment of a retail installment contract issued in accordance with Chapter 97, and executed on the Commissioner-prescribed form retail installment sales contract (RISC) applicable to the retail sale of vehicles,⁵ is not subject to the Chapter 675 licensing requirement unless the third party is independently engaged in some form of lending activity that is regulated by NRS Chapter 675.⁶

QUESTION ONE

When a financial institution purchases or takes an assignment of a RISC from a vehicle dealer whose financing activities are governed exclusively by the provisions of Chapter 97 of the NRS, must the financial institution, by virtue of the assignment alone, be licensed under Chapter 675 of the NRS?

SUMMARY CONCLUSION

No. Under these circumstances, the assignment does not subject the assignee to licensure or regulation under Chapter 675. This conclusion applies to any person, including a financial institution.⁷

ANALYSIS

When a retail seller finances its own sales pursuant to the provisions of Chapter 97, but otherwise engages in no lending activity, the retailer’s business activity is governed exclusively by the provisions of Chapter 97.⁸ A RISC is one of the retail

³ Op. Nev. Att’y Gen. 2017-01 (January 27, 2017).

⁴ NRS 97.285; NRS 97.115 (defining “retail installment transaction” to include transactions involving “a retail installment contract or a retail charge agreement”).

⁵ NRS 97.297–.304.

⁶ The terms “retail seller” and “seller” are defined to include “[a] person engaged in the business of selling or leasing goods or services to retail buyers or [an] . . . assignee . . . of such a person.” NRS 97.125(1)(a).

⁷ See NRS 97.125(1)(a) (expressing, without limitation or exception, that assignees are retail sellers).

⁸ Op. Nev. Att’y Gen. 2017-01 (January 27, 2017). As explained therein, NRS 97.285 states, in relevant part, “the provisions of any other statute do not apply to retail installment transactions governed by this chapter.” *Id.* The opinion also notes that “Chapter 97 excludes from the definition of ‘retail seller’ a person ‘licensed pursuant to Chapter 675 of NRS.’” *Id.*, p. 4 (which should cite to NRS 97.125(1)(b-c) and (2)(b) in

installment transactions permitted under Chapter 97.⁹ Chapter 97 contemplates that a retail seller may sell or assign a RISC.¹⁰

Chapter 97 provides additional requirements for a RISC used by a vehicle dealer. In this regard, the Commissioner is statutorily required to “prescribe, *by regulation*, forms for the application for credit and contracts to be used in the sale of vehicles if[] . . . [t]he application for credit is made *to or through* the seller of the vehicle[.]”¹¹ (Emphasis added). Pursuant to this authority, the Commissioner has adopted a regulation by which form contracts are approved for use when posted to the Commissioner’s website.¹² The Commissioner has posted and has therefore approved a form RISC for use in connection with vehicle sales made pursuant to Chapter 97.¹³ Since it was approved in accordance with applicable statutes and regulations, the terms of the form RISC are presumptively valid and enforceable. The prescribed RISC terms permit a vehicle dealer to require that a buyer agree to the following provision:

You acknowledge that it may take a few days for the Seller to verify your credit and assign the contract. In

FN 18 instead of NRS 97.026). For purposes of this opinion, we clarify that only subsections (1)(b) and (1)(c) of NRS 97.125 exclude a financial institution; whereas subsection (1)(a), which defines “retail seller” to include an “assignee,” does not exclude a financial institution. NRS 97.125(1). This infers that the Legislature intended that a financial institution not be excluded from the definition of a “retail seller” in subsection (1)(a). *See In re Walter’s Estate*, 60 Nev. 172, 179, 104 P.2d 968, 971 (1940) (expressing that when the Legislature has previously used similar language to reach a desired end it would have similarly done so had it intended to reach the same outcome); *See Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) (explaining that Nevada follows the maxim “*expressio unius est exclusio alterius*,” which means that the expression of one thing has the effect of excluding another, *i.e.* by expressly including all assignees, the statute cannot exclude assignees that are financial institutions).

⁹ NRS 97.115.

¹⁰ *See* NRS 97.125(1)(a) (defining “retail seller” and “seller” to include “[a] person engaged in the business of selling or leasing goods or services to retail buyers or [an] . . . assignee . . . of such a person.” (emphasis added)).

¹¹ NRS 97.299(1).

¹² NAC 97.050. *See* NRS 97.299(4) (“If a change in state or federal law requires the Commissioner to amend the forms prescribed pursuant to subsection 1, the Commissioner need not comply with the provisions of chapter 233B of NRS when making those amendments.”); *cf.* NRS 233B.040(3) (authorizing an administrative agency’s regulation to adopt material by reference so long as it states where a copy of the material may be obtained).

¹³ Commissioner’s Order dated March 1, 2012; Commissioner’s Order dated May 24, 2012; Commissioner’s Order dated August 30, 2012.

consideration of the Seller agreeing to deliver the vehicle, you agree that if the Seller is unable to assign the contract to a Financial Institution with whom the Seller regularly does business pursuant to terms of assignment acceptable to the Seller, the Seller may elect to rescind the contract.

According to the form contractual provision, as approved by the Commissioner pursuant to NRS 97.299(1), the dealer's obligation to sell a vehicle at retail may be made contingent upon the dealer's ability to assign the RISC to a financial institution. This contingency is a valid and enforceable term of the RISC, and once the contingency is removed, the purchaser of the RISC becomes an "assignee" under the terms of the form contract.¹⁴ Because the definition of "retail seller" set forth in NRS 97.125(1) includes an "assignee," the purchaser of the RISC is governed by Chapter 97 the same as the retail seller; the assignee stands in the shoes of the retail seller. Therefore, Chapter 97 is the exclusive regulatory scheme for retail sellers and their assignees.

In summary, when a person purchases or takes an assignment of a RISC pursuant to the provisions of Chapter 97 of the NRS, the person's acceptance of the assignment does not subject the person to regulation or licensure under NRS Chapter 675. Assuming that the person is not independently engaged in lending activity subject to licensure and regulation under NRS Chapter 675, the person's financing activity is governed exclusively by the provisions of NRS Chapter 97. To the extent that a vehicle dealer adopts the contractual terms of the form RISC as prescribed by the Commissioner in accordance with Chapter 97, the vehicle dealer is permitted to assign the RISC to a financial institution. Although it applies in general terms to certain types of lending activity, NRS Chapter 675 does not specifically abrogate the exclusive provisions of Chapter 97 that govern the parties to a RISC made and assigned pursuant to Chapter 97.¹⁵

QUESTION TWO

Whether a financial institution that purchases or is assigned a RISC in accordance with Chapter 97 is subject to NRS 675.090?

¹⁴ NRS 675.035 states that NRS Chapter 675 applies to "any person who . . . [s]eeks to evade its application by any device, subterfuge or pretense, including, without limitation . . . [c]alling a loan by any other name" Insofar as the Commissioner has approved an assignment in this context, the assignment may not fairly be characterized as a "device, subterfuge or pretense."

¹⁵ NRS 97.285 ("Except as otherwise provided by specific statute, the provisions of this chapter governing retail installment transactions are exclusive, and the provisions of any other statute do not apply to retail installment transactions governed by this chapter.").

SUMMARY CONCLUSION


No, Chapter 675 is not applicable.

ANALYSIS

NRS 675.090 is only applicable to persons who engage in business activities that are subject to Chapter 675. When a person purchases or takes an assignment of a RISC from a vehicle dealer in Nevada pursuant to the provisions of Chapter 97, the provisions of that chapter are exclusive to the transaction. Accordingly, NRS 675.090 is not applicable.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:  _____
David J. Rope
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