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May 11, 1988

RE: Tax liabilities as debts

This letter is in response to your request for an opinion as to whether tax obligations are "debts" for purposes of the Colorado Fair Debt Collection Practices Act ("the Act"). It should not be construed as an official advisory opinion of the Colorado Collection Agency Board ("the Board") pursuant to section 12-14-113(5), C.R.S. (1985).

My conclusion, after consultation with the Board, is that under Colorado law a tax liability is a "debt" and the debtor is entitled to the protections of the Act. Any agency attempting to collect tax obligations from consumers must therefore be licensed and is subject to the Board's supervision. My reasons for this opinion follow.

The Colorado Fair Debt Collection Practices Act defines "debt" as follows:

12-14-103. Definitions.

(6) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.

Section 12-14-103(6), C.R.S. (1985). The federal Fair Debt Collection Practices Act defines "debt" in more detail as follows:

The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, ...

15 U.S.C. sec. 1692a(5) (1982), (emphasis added). A governmental or taxing entity which collects its own debts is exempt from both acts. Section 12-14-103(2)(b)(I) and (III), C.R.S. (1985); 15 U.S.C. sec. 1692a(6)(A) and (C) (1982). The question is whether third party collections of tax obligations fall within the purview of the Act.

Two federal court cases have concluded that tax liabilities and obligations are not consumer transactions and therefore not debts under the federal act. Staub v. Harris, 626 F.2d 275 (3d Cir. 1980) held that a per capita tax was not a debt because a debt under the federal act results from a verbal or written contract transaction between a consumer and another creating a debt obligation in return for goods or services for personal, family, and household use. In addition to the lack of a contract for a consumer transaction in tax obligations, the court in Staub noted that consumers derive no specific, individualized benefit from payment of taxes. Taxes primarily finance governmental operations (such as schools, police and fire departments) and provide general societal, as opposed to individual, benefits.

In Zimmerman v. HBO Affiliate Group, 834 F.2d 1163 (3d Cir. 1987), a cable TV company sent letters to individuals who may have illegally obtained ("stolen") its cable signals without paying for the services. The letters were heavy handed, threatened immediate suit, asserted legal claims, and demanded payment of \$300 each as settlement for the claims. The court held that potential tort or criminal liability is not a debt as there is no consensual exchange whereby the consumer obtains goods or services in exchange for a promise of payment. See also, Proposed FTC Official Staff Commentary on the FDCPA, 51 Fed. Reg. 8019-8022 (1986) (taxes and fines are not debts involving consumer transactions).

The Colorado Act's definition of debt is much broader than that in the federal act upon which Staub and Zimmerman were based. It requires that a debt obligation be incurred from a consumer

transaction. It does not limit the transaction to direct exchanges of goods or services for personal, family, or household purposes. While a tax is not a direct exchange of goods for payment, it certainly creates a consumer (of governmental services) obligation to make payment. In addition a strong, if indirect, transaction exists whereby the consumer's taxes "purchase," at least in part, governmental services. The consumer does receive benefits from the provision of these services. Only a difference in degree delineates the situation of a repairman patching a roof from that of the government worker "repairmen" patching the street. The consumer is required to pay for either service and the creditor may institute either litigation or collection practices to obtain its money.

When a governmental taxing entity uses the services of a third-party collection agency, it loses direct control of the collection procedures. There may be a need for the protections of the Act to extend to consumers who are alleged to owe taxes. Because the Act's definition of "debt" is broader than its federal counterpart and because a state may interpret its act to provide greater protections than does analogous federal law, it is my opinion that tax obligations are "debts" in Colorado. Collection of such debts is subject to the licensing and regulatory requirements of the Act.

FOR THE ATTORNEY GENERAL



LAURA E. UDIS
Executive Director

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