



The State of Colorado

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Re: Licensing for Support Collections

This letter is written in response to your request for an opinion as to whether organizations which only collect child and/or maintenance support, established by court order ("Support Collection Agencies"), are required to comply with the licensing requirements of the Colorado Fair Debt Collection Practices Act (the "Colorado Act").¹ This letter reflects the current enforcement position of the Executive Director of the Colorado Collection Agency Board (the "Executive Director").

In order to answer your request, the provisions and definitions found in the Colorado Act must be examined in detail. The main provision to be examined provides:

Any person, firm, corporation, or partnership **acting as a collection agency** must possess a valid license issued by the executive director in accordance with this article and any rules and regulations adopted pursuant thereto.

Section 12-14-118, C.R.S. (1991) (Emphasis Added). Any person or organization engaging in any business, the principal purpose of which is the collection of any debts, is acting as a collection

¹ This opinion also applies to agencies which collect child and/or maintenance support as well as other third party debts.

agency. Section 12-14-103(2), C.R.S. (1991).

Support Collection Agencies are clearly engaged in a business, the principal purpose of which is "collections". However, it is not clear that such collections are the "collection of any debts" as required by section 12-14-103(2). Therefore, to determine that Support Collection Agencies act as collection agencies it is necessary to establish that the items collected by such organizations, maintenance and child support, are included in the scope and application of the term "debt".

The Colorado Act was enacted following the language, purpose, and interpretations of the Federal Fair Debt Collection Practices Act (the "Federal Act"). The Federal Act preempts inconsistent Colorado laws which do not provide greater consumer protection than the Federal Act. 15 U.S.C. section 1692n. As a result, when determining what is included in the definition of "debt", the term must be examined as applied under the Colorado Act, the Federal Act, and interpretations of both.

The Colorado Act defines "debt" as follows:

"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. (1991). The Federal Act defines "debt" 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. section 1692a(5) (1982).

Unlike its Colorado counterpart, the Federal Act is very specific in setting forth the type of transaction necessary in the making of a "debt". Whereas the Federal Act limits the scope and application of the term to transactions primarily for personal, family, or household purposes, the Colorado Act broadly assigns the term to any obligation to pay money arising out of any transaction. This disparity results in the Federal Act's exclusion and the Colorado Act's inclusion of tax liabilities as "debt". See Executive Director's Opinion Letter re: Tax Liabilities as Debt (May 11, 1988) (citing Staub v. Harris, 626 F.2d 275 (3d Cir. 1980)). Here, the disparity produces similar results.

In its discussion of "transactions" necessary for the making of "debt" the FTC Official Staff Commentary specifically excludes all "unpaid taxes, fines, alimony, and tort claims." FTC Official Staff Commentary, 53 Fed.Reg. 50102 (1988). These are not debts incurred from transactions primarily for personal, family, or household purposes. An Informal FTC Staff Letter concludes that the obligation to pay alimony and/or child support is not "debt" under the Federal Act because such obligation does not arise from a "transaction" but rather from a spousal or parental duty. Hollman, FTC Informal Staff Letter (May 29, 1987).

The narrow construction of the term "transaction" is apparently used by the FTC Staff and the Federal Courts to limit application of the Federal Act to preventing abuses by third party debt collectors for debts arising from consensual events. See Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1168 (3rd Cir. 1987). However, nothing in the Federal Act itself exempts spousal and/or parental duties from being considered "transactions" or "debts". Moreover, nothing limits the scope and application of the term "transaction" to consensual events.

"Transaction" is defined as any act or agreement involving more than one person in which the legal relations between such persons are altered. BLACK'S LAW DICTIONARY 1341 (5th Ed. 1979). "Transaction" is a much broader term than contract. Id. As such, any act or duty to act, whether spousal, parental, taxpayer, or tortfeasor, should be considered a "transaction" and hence any obligation to pay money arising therefrom considered a "debt". The Executive Director adopted this broad construction.

As stated above, the Colorado Act defines as "debt" any obligation to pay money arising out of any transaction. As such, the Executive Director opined that "debt" is not limited to "transactions" resulting from direct exchanges of goods or services for personal, family, or household purposes. Executive Director's Opinion Letter (May 11, 1988). Indirect, non-consensual transactions, such as the obligation to pay taxes for governmental services, are within the scope of the Executive Director's broad construction of the term "transaction". Id. Note, the Executive Director's broad construction serves to regulate a larger area of collection activity, thereby providing Colorado consumers with more protection than the Federal Act.

The Executive Director opined that, under the Colorado Act, the scope and application of the term "debt" must be construed broadly to include obligations arising out of direct and indirect, consensual and non-consensual "transactions". The obligation to pay spousal maintenance or alimony arises out of the consensual act and agreement of marriage or dissolution thereof. Section 14-10-114, C.R.S. (1987). The obligation to

pay child support arises out of the consensual act of child conception. Section 14-10-115, C.R.S. (1987). Therefore, under the Colorado Act both maintenance and child support arise out of "transactions" and hence are "debts". Thus, Support Collection Agencies must comply with the Colorado Act's licensing requirements before collecting court ordered maintenance and child support payments.² There is no reason to assume that Support Collection Agencies are less likely to engage in abusive collection practices than other regulated collection agencies.

Applications for collection agency licenses may be obtained by calling (303) 866-5304 or writing the Colorado Collection Agency Board at the above address.

FOR THE ATTORNEY GENERAL



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² The requirements of the Colorado Act apply to all collection agencies, solicitors, and debt collectors that: (a) are located in Colorado; (b) collect or attempt to collect from Colorado consumers for a Colorado creditor; (c) regularly collect or attempt to collect from Colorado consumers for a creditor outside of Colorado; or (d) are located outside of Colorado but soliciting or attempting to solicit claims from a Colorado creditor. Section 12-14-102, C.R.S. (1991).