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Opinion No. 09-155

Calculation of interest and fees under Tennessee Title Pledge Act

QUESTION

Does a pledgor's payment made pursuant to Tenn. Code Ann. § 45-15-113(d) of the Tennessee Title Pledge Act reduce the principal amount upon which interest and fees are calculated with respect to the particular renewal period in which such payment is made?

OPINION

No.

ANALYSIS

The Tennessee Title Pledge Act, codified at Tenn. Code Ann. §§ 45-15-101, *et seq.*, governs the making of title pledge loans in this state. Pursuant to Tenn. Code Ann. § 45-15-104, licensed title pledge lenders have the power to make loans of money on pledges of personal property certificates of title or on pledges of titled personal property. Title pledge agreements and property pledge agreements made pursuant to the Act are not to exceed thirty days in length; however, the agreements may provide for renewals for additional thirty-day periods, which may occur automatically, if certain events outlined in the statute have not occurred. Tenn. Code Ann. § 45-15-113(a). The amount of interest and fees for which a title pledge lender may contract is addressed in Tenn. Code Ann. § 45-15-111(a). This statutory provision also addresses when the interest and fees accrue. "The interest and fees shall be deemed to be earned, due and owing as of the date of the title pledge agreement or property pledge agreement and a like sum shall be deemed earned, due and owing on the same day of each subsequent thirty-day period." Tenn. Code Ann. § 45-15-111(a).

We turn now to your specific question concerning the calculation of interest and fees under Tenn. Code Ann. § 45-15-113(d). This statutory provision states:

Notwithstanding any provision of this chapter to the contrary, beginning with the third renewal or continuation and at each successive renewal or continuation thereafter, the pledgor shall be required to make a payment of at least five percent

(5%) of the original principal amount of the title pledge transaction, in addition to interest and fees authorized by this chapter. Interest and fees authorized by this chapter at each successive renewal or continuation shall be calculated on the outstanding principal balance. Principal payments in excess of the five percent (5%) required principal reduction shall be credited to the outstanding principal on the day received. If, at the maturity of any renewal requiring a principal reduction, the pledgor has not made previous principal reductions adequate to satisfy the current required principal reduction, and the pledgor cannot repay at least five percent (5%) of the original principal balance and any outstanding interest and fees authorized by this chapter, the title pledge lender may, but shall not be obligated to, defer any required principal payment until the end of the title pledge agreement or property pledge agreement. No further interest or fees may accrue on a principal amount thus deferred.

Tenn. Code Ann. § 45-15-113(d).

You ask whether a pledgor's payment made pursuant to Tenn. Code Ann. § 45-15-113(d) reduces the principal amount upon which interest and fees are calculated with respect to the particular renewal period in which such payment is made. For the reasons explained below, we believe interest and fees are to be calculated without taking into account a pledgor's payment made pursuant to this provision.

First, Tenn. Code Ann. § 45-15-113(d) states that the pledgor is obligated to make a payment of at least five percent of the original principal amount of the title pledge transaction "beginning with the third renewal or continuation and at each successive renewal or continuation thereafter." Subsection (d) ends by providing that the title pledge lender may defer any required principal payment "at the maturity of any renewal requiring a principal reduction" if the pledgor has not made previous principal reductions adequate to satisfy the current required principal reduction, and the pledgor cannot repay at least five percent (5%) of the original principal balance and any outstanding interest and fees. Based on the plain language of the statute, the pledgor is obliged to make a principal reduction of at least five percent of the original principal amount beginning with the pledgor's third renewal or continuation and at each successive renewal or continuation thereafter. Once this obligation arises, the pledgor has until "the maturity of" the renewal period to make the payment required by Tenn. Code Ann. § 45-15-113(d). In short, the pledgor can fulfill his or her obligation under Tenn. Code Ann. § 45-15-113(d) by making the required principal reduction at any point up until the renewal period "matures" or ends.

In contrast, interest and fees are due and owing on the first day of a renewal period because Tenn. Code Ann. § 45-15-111(a) states that interest and fees are "deemed to be earned, due and owing as of the date of the title pledge agreement or property pledge agreement and a like sum shall be deemed earned, due and owing *on the same day of each subsequent thirty-day period.*" Tenn. Code Ann. § 45-15-111(a) (emphasis added). Tenn. Code Ann. § 45-15-113(d) does not alter when interest and fees are due and owing because it simply provides that "[i]nterest and fees authorized by this chapter at each successive renewal or continuation shall be

calculated on the outstanding principal balance.” Accordingly, the “outstanding principal balance” upon which interest and fees are calculated under Tenn. Code Ann. § 45-15-113(d) is the principal balance that exists on the first day of a renewal period. *See* Tenn. Code Ann. § 45-15-111(a).

We believe the contrasting time frames for the accrual of interest and fees under Tenn. Code Ann. § 45-15-111(a) and a pledgor’s obligation to make the required principal reduction under Tenn. Code Ann. § 45-15-113(d) point to the conclusion that interest and fees are to be calculated without taking into account a pledgor’s payment made pursuant to this provision since interest and fees are due and owing the first day of a renewal period, whereas a pledgor’s payment under Tenn. Code Ann. § 45-15-113(d) is not due and owing until the maturity of the renewal period. Other provisions of Tenn. Code Ann. § 45-15-113(d) bolster our opinion. As referenced above, Tenn. Code Ann. § 45-15-113(d) states that interest and fees “shall be calculated on the outstanding principal balance.” If the General Assembly had wanted a pledgor’s payment under Tenn. Code Ann. § 45-15-113(d) to be taken into account before interest and fees were calculated, it would have so stated. Similarly, Tenn. Code Ann. § 45-15-113(d) provides that the pledgor is to make the required principal reduction “*in addition to* interest and fees authorized by this chapter.” (emphasis added). This provision, as well, indicates that the pledgor is to pay the interest and fees that are due and owing on the first day of the renewal period without taking into account any payment the pledgor may make pursuant to Tenn. Code Ann. § 45-15-113(d).

For all of the reasons above, we believe a pledgor’s payment made pursuant to Tenn. Code Ann. § 45-15-113(d) does not reduce the principal amount upon which interest and fees are calculated with respect to the particular renewal period in which such payment is made.

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Page 4

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