

(717)787-1471

June 26, 1997

Dear _____ :

This responds to your letter requesting various information regarding the financing of boat loans within the state of Pennsylvania. I apologize for the delay in responding to your request.

As a matter of background, [redacted] ("Company") is a [redacted] corporation with its principal office located in [redacted]. Company acts as a broker of marine finance loans and is considering operating within the state of Pennsylvania. You have requested information regarding any applicable Pennsylvania state law licensing requirements related to making direct and indirect loans secured by boats.

As set forth in your letter, the Company's loans are separated into two categories as follows:

1. Direct Loans: The direct loans will be made by Company to the borrower directly. All of the direct loans will be above \$25,000 and are secured by the boat. The loans are closed either by a representative in the state of Pennsylvania or through the mail. Shortly after closing, the loans are assigned to a financial institution within the United States.
2. Indirect Loans: The indirect loans will be generated through new and used boat dealers within the state of Pennsylvania. The loans will range from \$5,000 to in excess of \$100,000. The loan closings will take place at the seller's dealership and the dealer is typically responsible for originating the loans and for all the paperwork including the retail installment contract. Shortly after closing, the loans are assigned to various banks across the country.

With respect to the above two categories, you have requested the Department to provide the following information:

1. What licenses are required for these two types of loans?
2. Is a physical office presence necessary in the state of Pennsylvania?
3. If you have a change in corporate structure and officers but still continue to operate under

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[redacted], must you reapply for a license?

In addition you have requested the Department to provide to you copies of any applicable Pennsylvania laws.

Direct Loans:

With respect to loans which are made to the borrower directly by the Company, Pennsylvania's Consumer Discount Company Act ("CDCA"), 7 P.S. § 6201 et seq., provides:

...no person shall engage or continue to engage in this Commonwealth, either as a principal, employe, agent or broker in the business of negotiating or making loans or advances of money on credit, in the amount or value of twenty-five thousand dollars (\$25,000) or less, and charge, collect, contract for or receive interest, discount, bonus, fees, fines, commissions, charges, or other considerations which aggregate in excess of the interest that the lender would otherwise be permit by law to charge if not licensed under [the Consumer Discount Company Act]...

7 P.S. § 6203.A. Company is required to be licensed under the provisions of the CDCA in order to finance the sale of a boat unless Company either only makes loans which are in excess of \$50,000 or charges the rate of interest permitted in the Act No. 6 of 1974, 41 P.S. § 101 et seq., which is six percent per annum. 41 P.S. § 201. If Company becomes licensed under the CDCA, Company may charge the rate of interest permissible under the provisions of the CDCA on the first \$25,000 advanced. If the direct loan is for an amount between \$25,000 and \$50,000, Company is restricted to charging a six percent per annum rate authorized under Act No. 6 for the amount between \$25,000 and \$50,000. Direct loans in amounts greater than \$50,000 are excluded from the provisions of Act No. 6. See 41 P.S. § 301(f)(I). Copies of Act No. 6 and the Consumer Discount Company Act are enclosed for your review.

If Company makes direct marine finance loans through the mail exclusively and does not have a representative located in Pennsylvania for purposes of assisting Pennsylvania residents in obtaining financing for the boat, Company is not required to be licensed under the CDCA. However, if Company uses a representative in Pennsylvania to close loans or conduct other lending functions on behalf of Company, Company is required to be licensed under the CDCA.

Please be advised that a CDCA licensee is required to maintain an office in Pennsylvania. 7 P.S. § 6203.C. If Company becomes licensed under the CDCA, the licensee must notify the Department of a change in officers and directors. See 7 P.S. § 6204.

Furthermore, a CDCA licensee may not sell or otherwise dispose of contracts to a person or

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corporation not holding a license under the CDCA, unless prior written approval is obtained from the Department. See 10 Pa. Code § 41.6(a). However, an unlicensed purchaser of the CDCA loans may not collect the charges authorized by the CDCA. 10 Pa. Code § 41.6(a). A copy of section 41.6 of title 10 of the Pennsylvania Code is enclosed for your review.

Indirect Loans:

Please be advised that there is no licensing requirement under the laws and regulations administered by the Department that would apply to the business of originating retail installment sale contracts to finance boats. However, the financing of a boat trailer under a retail installment sales contract for the transportation of a boat on a public highway is subject to and requires licensing under the Motor Vehicle Sales Finance Act ("MVSFA"), 69 P.S. § 601 et seq. The MVSFA specifically includes boat trailers within its scope:

"Motor vehicle" shall mean any self-propelled device in which, upon which, or by which any person or property is or may be transported or drawn upon a public highway . . . and shall include trailers and semi-trailers.

69 P.S. § 603.1. A copy of the Motor Vehicle Sales Finance Act is enclosed for your review. If Company proposes to purchase the retail installment sales contract from the boat dealers, Company must be licensed as a sales finance company under the MVSFA. See 69 P.S. § 604.

An MVSFA licensee is required to maintain books, accounts and records of the business at a licensed office. 69 P.S. § 612.A. If Company becomes a licensee under the MVSFA, such licensee would be required to notify the Department of a change of officers and directors. See 69 P.S. § 605.B.

Certain credit sales of boats, boat motors and boat accessories may be covered under the provisions of Pennsylvania's Goods and Services Installment Sales Act ("GSISA"), 69 P.S. § 1101 et seq. The GSISA, which is not regulated by the Department, governs and regulates the terms and conditions of all extensions of credit by the means of credit cards and credit operations for the purchase of goods and services within the Commonwealth of Pennsylvania but excludes cash advances. 69 P.S. § 1104. For purposes of the GSISA, goods are defined as follows:

"Goods" means tangible chattels bought for use primarily of personal, family, or household purposes, including certificates or coupons exchangeable for such goods, but does not include . . . any vehicle covered by the Act of June 28, 1947 (P.L. 1110), known as the Motor Vehicle Sales Finance Act.

69 P.S. § 1201 et seq. A copy of the Goods and Services Installment Sales Act is enclosed for your review.

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In conclusion, an installment sale of a boat trailer is subject to the provisions of the MVSFA and is specifically excluded from the provisions of the GSISA. An installment sale of a boat, a boat motor and other boat accessories is subject to the provisions of the GSISA. Consequently, the requirements in such respective statutes must be met as to the items within the scope of each Act.

The Department's analysis is based upon the facts and conditions as stated in this letter. Any change in the facts could result in a reversal of the Department's position. This letter states the Department's position regarding the issues discussed herein and may not be relied upon or construed as constituting legal advice.

I trust this letter is responsive to your request.

Very truly yours,

Laurie S. Kennedy
Deputy Chief Counsel

Enclosures

cc: Betsy Hancock, Director
Licensing and Consumer Compliance
Reginald Evans, Chief Counsel
Victor Seesholtz, Manager
Cindy Wirt, Licensing