

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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April 12, 2006

Opinion No. 06-068

Application of minimum time price differential

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**QUESTIONS**

1. What is the correct interpretation of the last sentence of Tenn. Code Ann. § 47-11-103(d)(2)? Does it mean that the minimum time price differential of \$12.50 may be charged not only regardless of how small the price, but also regardless of how short the time of the transaction?

2. The \$12.50 charge permitted by Tenn. Code Ann. § 47-11-103(d)(2) is described in the section as a “minimum” time price differential. Is it correct to interpret the use of the word “minimum” in that context to mean that the seller has the option to charge a flat minimum time price differential of \$12.50 *or less*, regardless of the amount, and, if your answer to Question 1 is affirmative, the duration of the contract, so long as the time price differential would not be more than \$12.50 if computed according to the other provisions of Tenn. Code Ann. § 47-11-103(d)?

3. If your answer to Question 2 is affirmative, does the seller have the option to vary the minimum charge at or below \$12.50 for Tennessee contracts for which the time price differential would not be more than \$12.50 if computed using the other provisions of Tenn. Code Ann. § 47-11-103(d), rather than charging the same minimum (at some amount at or below \$12.50) on all contracts in Tennessee? For purposes of this question, you may assume that the charge would vary according to objective criteria that would not discriminate on any illegal basis.

**OPINIONS**

1. Assuming that a particular transaction otherwise meets the definition of a retail installment sales contract, then the plain language of Tenn. Code Ann. § 47-11-103(d)(2) provides that the minimum time price differential would apply, regardless of the amount or duration of the transaction.

2. Tenn. Code Ann. § 47-11-103(d)(2) does not restrict the ability of a seller to charge a flat time price differential less than the \$12.50 minimum.

3. As long as the time price differential charged does not exceed the \$12.50 minimum, a seller may vary the rate of the time price differential charged, provided that the variation in rate is based upon legitimate, objective criteria.

## ANALYSIS

1. You have asked several questions relative to the calculation and application of the time price differential within the context of certain retail installment sales contracts. “Time price differential” is defined as the “amount, however denominated or expressed, which the retail buyer contracts to pay or pays for the privilege of purchasing goods or services to be paid for by the buyer in installments.” Tenn. Code Ann. § 47-11-102(10). It does not, however, include any amounts charged for insurance premiums, delinquency charges, attorney’s fees, court costs, or official fees. *Id.* Tenn. Code Ann. § 47-11-103(d) establishes a maximum amount for the time price differential and how it is to be calculated.

(1) Notwithstanding the provisions of any other law, the seller or other holder under a retail installment contract may charge, receive, and collect a time price differential which shall not exceed eleven dollars and seventy-five cents (\$11.75) per one hundred dollars (\$100) per year on the principal balance of each transaction.

(2) The time price differential under this subsection shall be computed on the principal balance of each transaction, as determined under this section, on contracts payable in successive monthly payments substantially equal in amount from the date of the contract to the maturity of the final payment, notwithstanding that the total time balance thereof is required to be paid in one (1) or more deferred payments. When a retail installment contract provides for payment other than in substantially equal successive monthly payments, the time price differential shall not exceed the amount which will provide the same return as is permitted on substantially equal monthly payments contracts, having due regard for the schedule of payments. This time price differential may be computed on the basis of a full month for any fractional portion of a month in excess of fifteen (15) days. A minimum time price differential of twelve dollars and fifty cents (\$12.50) may be charged, received and collected on each such contract.

Subsection (d)(1) of this statute establishes a maximum time price differential of \$11.75 per \$100 per year. Subsection (d)(2) establishes the preferred method for calculating the time price differential as being successive monthly payments substantially equal in amount. It further provides that if the time price differential is calculated utilizing a different method, then it cannot exceed what the return would be under the preferred method. However, subsection (d)(2) does contain two exceptions to this limitation. First, it allows the time price differential to be computed on the basis of a full month for any fraction of a month in excess of fifteen days, which could result in a higher rate of return. Second, it permits the charging of a minimum time price differential of \$12.50. With this exception, a small transaction will almost certainly result in a higher rate of return.

Your first question asks what is the correct interpretation of the last sentence of Tenn. Code Ann. § 47-11-103(d)(2). Specifically, does this provision allow the minimum time price differential of \$12.50 to be charged, regardless of the size of the transaction, as well as the length of time of the transaction? One of the most basic principles of statutory construction requires the interpreter to ascertain and give effect to the intention and purpose of the legislature. That intent and purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, eschewing any forced or subtle constructions that might artificially limit or extend the meaning of the language. See, e.g., *Tuggle v. Allright Parking Systems, Inc.*, 922 S.W.2d 105, 107 (Tenn. 1996); *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991); *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977). Where the statutory language is plain, clear, and unambiguous, one must avoid any interpretation or construction that departs from the words of the statute, *Tuggle v. Allright Parking Systems, Inc.*, 922 S.W.2d at 107, and without applying other statutory rules of construction. See *Kradel v. Piper Indus.*, 60 S.W.3d 744, 749 (Tenn. 2001); *Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 802-803 (Tenn. 2000) (courts are “not at liberty to depart from the words of [a] statute . . . [and must] presume that the legislature says in a statute what it means and means in a statute what it says there”).

There is nothing in the language of Tenn. Code Ann. § 47-11-103(d)(2) to suggest that the minimum time price differential is limited only to transactions of a certain amount or duration. The statute simply states that “[a] minimum time price differential of twelve dollars and fifty cents (\$12.50) may be charged, received and collected on each such contract,” referring to a retail installment sales contract. Thus, assuming that a particular transaction otherwise meets the definition of a retail installment sales contract<sup>1</sup>, then the plain language of the statute provides that the minimum time price differential would apply, regardless of the amount or duration of the transaction. Additionally, our Office has previously opined that Tenn. Code Ann. § 47-11-103(d)(2) permits the charging of a minimum time price differential of \$12.50 for a transaction regardless of how small the price of the transaction. See Op. Tenn. Att’y Gen. 90-79 (August 17, 1990).

Your next question asks whether a seller may charge a flat minimum time price differential of \$12.50 or less, so long as the time price differential would not be more than \$12.50, if computed according to the preferred method set forth in Tenn. Code Ann. § 47-11-103(d)(2). Again, the plain language of the statute controls. Subsection (d)(2) states that the \$12.50 minimum time price differential “may be charged, received and collected . . .” By using the permissive directive “may,” rather than the mandatory directive of “shall,” the statute does not restrict the ability of a seller to charge a flat time price differential less than the \$12.50 minimum. See *Robinson v. Fulliton*, 140 S.W.3d 312, 320 (Tenn. Ct. App. 2003), *p.t.a. denied* (2003).

Your last question asks whether a seller may vary the minimum charge at or below the \$12.50 time price differential, based upon objective criteria that would not discriminate on any illegal basis. There is nothing in the language of Tenn. Code Ann. § 47-11-103(d)(2) that requires

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<sup>1</sup>A retail installment sales contract is defined as “an instrument or instruments evidencing one (1) or more retail installment transactions entered into in this state pursuant to which a buyer promises to pay in installments for goods or services.” Tenn. Code Ann. § 47-11-102(6).

a seller to charge the same time price differential on all of its retail installment sales contracts. As noted above, the statute simply authorizes a minimum time price differential of \$12.50. Thus, as long as the time price differential charged does not exceed the \$12.50 minimum, a seller may vary the rate of the time price differential charged, provided that the variation in rate is based upon legitimate, objective criteria.

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