

**SUMMARY**

**QUESTION:** Will the corporation have tax immunity as a result of the federal student loan program or will the receivables be considered accounts receivable for an exemption from tax?

**ANSWER - Based on Facts Below.** No, the private entity does not have tax immunity as a result of the Florida student loan program nor are the receivables considered accounts receivable and are not exempt tax.

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Sep 25, 2002

Re: Technical Assistance Advisement No. 02C2-007  
Intangible Tax-Federal Student Loan Program  
Sections 199.052(1), 199.023(13), 199.023(14),  
199.185(1)(d) and (1)(1), F.S.,  
Rule 12C-2.0062(5), F.A.C.  
XXX (hereinafter Taxpayer)

Dear :

Your letter requesting a Technical Assistance Advisement has been referred to this office for response. The specific scenario for which advice has been requested is summarized below.

**Facts as Presented by Petitioner**

The Taxpayer is organized under the laws of a state other than Florida. It administers a federally created, regulated and insured federal student loan program. In order to participate in the program as an administering agent and in accordance with requirements of federal law, the Taxpayer services federal student loans through a trust agreement with an out-of-state bank. The Taxpayer's involvement is directly through the Federal Family Education Loan ("FFEL") Program, enacted by the

U.S. Congress, and authorized by the U.S., Department of Education under the Federal Higher Education Act of 1965, as amended ("Act").

### **Federal Family Education Loan Program**

The FFEL program, created by the U.S. Congress, was developed to encourage lenders to act as program administering agents and to make federal loans to vocational, undergraduate, and graduate students enrolled at eligible postsecondary institutions.

The material aspects of the FFEL program are regulated by the federal government. The U.S. Department of Education is responsible for the FFEL Program under Title IV of the Federal Higher Education Act of 1965, as amended. An institution that does not fall within the Act's definition of "eligible lender" must operate this program only through a trust or similar arrangement with an eligible lender. The Taxpayer has a trust agreement with a state-regulated bank, which qualifies as an eligible lender under the Act.

The types of student loans under the FFEL Program which the Taxpayer is currently authorized to make are Stafford loans, Parent Loans to undergraduate Students ("PLUS") and federal consolidation loans. The PLUS loans are made to parents of dependents students. The consolidation loan program allows multiple FFEL, Federal Direct Student Loans and other federal student loan programs to be combined into one single aggregate federal insured student loan with an extended repayment term. The FFEL Program involves strict requirements and eligibility for both the administering agents and the borrowing participants. An institution must be a two or four-year college/university or proprietary school. Among other criteria, the school's eligibility is regulated by the default rate on guaranteed loan to its students. The Act restricts eligible administering lenders in who it may or may not deny participation to, defined by school type, geographic location or default experience.

The application and eligibility process for participation

by a student or school is strictly controlled by the federal government, including the application information, to whom the application is to be sent, the manner and process of review, approval or disapproval, the loan amount, payment terms and conditions. By requirement of the program, approved loans are disbursed by the Taxpayer directly to the institution. The student receives only a disclosure statement.

### **Collection of FFEL Program Loans and Guaranty Agencies**

The student loans in this program are substantially guaranteed as to principal and interest by certain authorized state or non-profit guaranty agencies, which are directly reinsured by the federal government. There are federal requirements which must be met in order to maintain guaranteed coverage.

In October 1998 the Act was reauthorized to include new and more stringent requirements for determining when a FFEL Program loan is considered to be in default. Under the reauthorized Act, loans which are 270 days past due are considered to be in default. The delinquency claims must then be filed with the guarantor no later than the 360th day of delinquency or loss of guarantee could occur. The guarantors in the program have the backing of the full faith and credit of the federal government. If a guarantor's administrative or financial condition falls below specified levels or the Federal Secretary of Education concludes that the Department of Education is in danger of financial collapse, the Secretary is allowed to take actions to assure the continued payment of claims, including the transfer of guarantees to another agency or paying claims directly to lenders. The lenders in this program do not pursue FFEL Program borrowers in federal or state courts due to the requirement that defaulted loans be presented to the applicable guaranty agency, which then collects on behalf of the federal Department of Education or directly subrogates the claim to the Department of Education.

### **Mandated Quality and Regulatory Reviews**

The Taxpayer is required to implement policies and

procedures to monitor and review ongoing processes that have and impact on the loans in order to maintain compliance accountability with the Federal Department of Education's restrictions, regulations and reporting requirements.

### **Subject Federal Student Loan Portfolio**

The portfolio is comprised primarily of receivables in the form of loans originated through the FFEL Program. The Taxpayer also administers a portfolio of Health Professions Education loans ("HEAL"), which consists of guaranteed student loans in designated health professions under a federally insured loan program administered by the U.S. Department of Health and Human Services. These loans are subject to federal government review in the same way as the FFEL Program.

### **Request for Advise ment**

Did the Florida legislature intend to tax or exempt, under Chapter 199, Florida Statutes, certain intangibles directly resulting from a U.S. Government enacted, regulated, enforced, insured, and maintained, federal student loan program? Are the loans exempt receivables under Florida Statutes?

Does the "Supremacy Clause" of the U.S. Constitution and well established principals of intergovernmental immunity prohibit the state of Florida from taxing student loan receivables arising directly out of a U.S. Government enacted, regulated, enforced, insured and maintained, federal student loan program, when that program is administered by a third party contractor acting as a direct agent of the U.S. Government?

### **Provisions of Law and Discussion**

Section 199.052(1), F.S., provides:

An annual intangible tax return must be filed with the department by every corporation authorized to do business in this state or doing business in this state and by every person, regardless of domicile, who on January 1 owns, controls, or manages intangible personal property which has

a taxable situs in this state. For purposes of this chapter, "control" or "manage" does not include any ministerial function or any processing activity. The return shall be due on June 30 of each year. It shall list separately the character, description, and just valuation of all such property.

Section 199.023(13), F.S., states:

"Ministerial function" means an act the performance of which does not involve the use of discretion or judgment.

Section 199.023(14), F.S., provides:

"Processing activity" means an activity undertaken to administer or service intangible personal property in accordance with such terms, guidelines, criteria, or directions as are provided solely by the owner of the property. Methods, systems, or techniques chosen by the processor to implement such terms, guideline, criteria, or direction are not considered the exercise of management or control.

Regarding Servicing agreements, Rule 12C-2.0062(5), F.A.C., provides:

Servicing agreements. A servicing agreement, whereby the servicing agent performs ministerial functions or processing activities regarding intangible personal property, does not confer management or control over the intangible personal property on the servicing agent.

Section 199.185(1)(d), F.S., also exempts from intangible personal property tax notes, bonds and other obligations issued by the U.S. Government and its agencies.

Regarding property exempt from annual and nonrecurring tax, s. 199.185(1)(l), F.S., provides:

All accounts receivable arising or acquired in the ordinary course of a trade or business which are owned, controlled,

or managed by a taxpayer. This exemption does not apply to accounts receivable that arise outside the taxpayer's ordinary course of trade or business. The purposes of this chapter, the term "accounts receivable" means a business debt that is owned by another to the taxpayer or the taxpayer's assignee in the ordinary course of trade or business and is not supported by negotiable instruments. Accounts receivable include, but are not limited to, credit card receivables, charge card receivables, credit receivables, margin receivables, inventory or other floor plan financing, lease payments past due, conditional sales contracts, retail installment sales agreements, financing lease contracts, and a claim against a debtor usually arising from sales or services rendered and which is not necessarily due or past due. The examples specified in this paragraph shall be deemed not to be supported by negotiable instruments. The term "negotiable instrument" means a written document that is legally capable of being transferred by endorsement or delivery. The term "endorsement" means the act of a payee or holder in writing his or her name on the back of an instrument without further qualifying words other than "pay to the order of" or "pay to" whereby the property is assigned and transferred to another.

The receivables generated as a result of the Taxpayer's involvement in the loan program are supported by a note. The transfer of such note is subject to strict restrictions of the federal government under the Act. 34CFR 682.401(17), which states the terms of assignment of the loans, provides that the guaranty agency must allow a loan to be assigned only if the loan is fully disbursed and then is assigned to an eligible lender, a guaranty agency, an educational institution, a federal or state agency or an organization or corporation acting on behalf of such an agency, or the secretary. The loans or loan portfolio may be transferred to a non-eligible lender but will lose its insurance protection under the program upon such transfer.

The United States Code 20 USC s. 1076, indicates that loans may be issued directly from funds fully owned by the eligible

lender or from funds held by the lender in a trust. 34CFR 682.100(a) provides that the four programs, collectively referred to in the regulations as "the Federal Family Education Loan, FFEL programs", which are programs the taxpayer administers, are programs in which the lender uses their own funds to make loans to enable a student or his or her parents to pay the cost of the student's attendance in a postsecondary school. The federal government insures against default on repayment of the loans to the eligible lender.

### **Position of the Department**

Section 199.185(1)(d), F.S., provides that intangible personal property that is directly issued by the U.S. Government is exempt from the Florida intangible tax. Therefore, notes receivable or other receivables arising from loans directly issued by the U.S. Government would not be subject to tax.

One question to be answered here is whether the Taxpayer is an instrumentality or agency of the federal government.

Although the program is a government sponsored program, the Taxpayer was formed and created as a private corporation. The Taxpayer, as a private corporation is not a tax immune body and would not be entitled to the tax exemption granted to the federal government and its agencies. While the federal government insures the loans, the loans are issued from the private funds of the Taxpayer. The receivables created as a result of the loans are backed by a note. The note is negotiable, although several restrictions apply to the manner in which the transfer is made. Since the receivables are backed by notes, the receivables do not qualify as accounts receivables for an exemption under s. 199.185(1)(l), F.S.

Additionally, the note can be transferred to non-eligible lenders outside the program. Neither the loans nor the receivables are directly issued or owned by the federal government and, therefore, intangible personal property tax would apply to the receivables.

This response constitutes a Technical Assistance Advisement

under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Celestine Grantham  
Senior Tax Specialist  
Technical Assistance and Dispute Resolution  
Office of General Counsel

CG/mh