

USURY: Still A Potential Pitfall In Certain Narrow Cir- cumstances

PART II

Outside of the consumer credit context, usury is generally not considered a problem by creditors any longer. There is still at least one situation, however, where an extender of commercial credit in Kentucky might run afoul of the usury statute unawares.

It has been common practice for quite some time for suppliers selling on open account to include an interest rate of 1.5% to 2% per month on past due balances. The customer learns of the interest charge when he looks at the bottom of his supplier's invoice, and this charge becomes a part of the contract under KRS 355.2-207 unless the customer protests the interest charge within a reasonable time after the invoice's receipt.

KRS 360.010 provides that on obligations of \$15,000 or more parties may agree in writing to any interest rate. Thus, if the open account customer has purchased an item with a value in excess of \$15,000 (or several items for an invoice total of more than \$15,000), the notation on the invoice in regard to a 2% per month finance charge is perfectly legal and collectible.

The same statute, however, limits written agreements for interest on obligations under \$15,000 to a per-annum rate not to exceed 4% in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District where the transaction is consummated, or 19%, whichever is less.

Of course, the defense of usury is not available to corporations, limited partnerships or most business trusts, but the open account customer may be a sole proprietorship. In such cases, if the open account finance charge exceeds 19% or a lesser return based upon 4% over the current discount rate, the supplier could be confronted with the usury statute by a knowledgeable attorney representing the account customer.

On the other hand, the penalty for usury is not significant. KRS 360.020 sets that penalty at the forfeiture of all interest, and in the event any such interest was paid, the debtor can recover twice the amount thus paid.

Since interest charges on open account invoices are frequently ignored or forgiven, this threat to open account suppliers does not appear a significant one. A sophisticated computer programmer could probably equip the supplier's accounting system to avoid non-compliance with the usury statute, but such a preventive measure would probably be more costly than it is worth.

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