



TUCKER ELLIS & WEST LLP
ATTORNEYS AT LAW

CLIENT ALERT

APRIL 2008

**NOTATIONS ON INVOICES AND ACCOUNT STATEMENTS
NO LONGER CAN BE USED TO MODIFY STATUTORY
INTEREST RATE THAT MAY BE CHARGED ON BOOK ACCOUNTS**

Interest Rate Notations on Account Invoices

The amount of interest creditors ordinarily may charge on *book accounts*¹ is set forth by statute – Ohio Revised Code § 1343.03(A).² A creditor is permitted to charge a higher rate, but only if a “written contract provides a different rate of interest in relation to the money that becomes due and payable” on the book account. Because of a recent decision of the Ohio Supreme Court, *as of March 26, 2008 (and going forward from that date)*, simply noting an interest rate that is higher than the statutorily-prescribed rate on an invoice, account statement, or other similar document will no longer satisfy the written contract requirement and will be legally insufficient to allow the creditor to enforce the higher interest rate.

Minster Farmers Coop. Exchange Co., Inc. v. Meyer

In *Minster Farmers Coop. Exchange Co., Inc. v. Meyer* (“*Minster Farmers*”) two Ohio farmers purchased various supplies using a credit account. The accounts became delinquent and the creditor sued for payment. Included in the demand was interest calculated at a rate that had been set forth on invoices each farmer received. Neither customer ever signed any invoice or any other document that reflected the new interest

rate or in any way indicated their agreement to pay the new interest rate.

Ohio Supreme Court Decision

When the issue reached the Ohio Supreme Court, the Court construed R.C. § 1343.03(A) according to the plain language of the statute: to charge a rate higher than the one set forth in the statute it is necessary to have a “written contract.” The Court analyzed the creditor’s invoices and the circumstances surrounding the book accounts and concluded the invoices did not reflect any promise by the customers to pay the higher interest rates and did not manifest any meeting of the minds between the creditor and the customers on the interest rate being charged by the creditor – there was no “written contract” that would satisfy the requirements of R.C. § 1343.03(A).

Application of *Minster Farmers*

After *Minster Farmers*, in order to charge an interest rate that exceeds the statutorily-prescribed rate, there must be a true “written contract” – as that term is construed in a strict legal sense – between the merchant and the customer setting forth the interest rate and reflecting agreement by the customer to pay the higher interest rate. Written contracts take many forms but certain basic elements are required – offer, acceptance, contractual capacity, consideration, manifestation of mutual assent, legality, and a meeting of the minds as to the essential contract terms. Absent those elements, a merchant may not be able to enforce an interest rate that is higher than the statutory rate.

¹ A “book account” effectively is an open credit account between the seller (creditor) and the customer (debtor). These relationships are common in various industries in Ohio and often are crucial to the creditor and the debtor.

² R.C. § 1343.03(A) refers to the Federal Short Term Rate as determined each year under in R.C. § 5703.47.

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Practical Effects of *Minster Farmers*

If you have been charging interest on book accounts at a rate that is higher (or different) than the rate permitted by R.C. § 1343.03(A), you need to examine the circumstances under which the account came into existence and/or has been managed. At some point in the life of the account there must be a written contract reflecting the customer's agreement to pay the higher interest rate.

If you entered into a written agreement when the account was created (or at some point thereafter) where the customer expressly acknowledged and agreed to pay the higher interest rate, you should be in compliance with the requirements of R.C. § 1343.03(A).

Where contracts need to be executed, the contract need not be overly complex. The essential terms of a contract – offer, acceptance, consideration, and mutuality – must be in place and must be in writing. The easiest and most direct way to accomplish this would be to condition acceptance of orders from the customer on the customer's agreement to your interest rate terms. Have the customer expressly acknowledge and sign the document and keep a copy in the customer's account file.

For new customers, a contract should be executed at the time the account is opened. For those merchants who use credit applications, an easy way to accomplish that would be to identify the interest rate and have the customer acknowledge it in the credit application process.

If existing customers are being charged interest at higher than the statutory rate and have not expressly acknowledged the rate and agreed to pay it – *in writing* – you should get a written agreement from the customer as quickly as possible. Even if you think the customer will continue to pay the higher interest rate without objection, you should present a written contract reflecting that agreement to the customer so you can enforce the rate if the customer defaults on the account – you will not be able to enforce any

interest rate that is higher than the statutory rate until you secure the customer's written agreement to pay the higher rate.

The contract can be sent to customers the same way you ordinarily communicate with them – if invoices are typically sent via e-mail, the contract can be sent electronically, although we recommend that you ask the customer to mail the original signed contract back to you or at least fax a copy of the signed agreement to you. Someone should be assigned responsibility for monitoring distribution, execution, and return of the contracts. Customers who do not timely execute and submit the contracts should be reminded to do so and, based on business judgment with respect to the customer and the volume of the account, you might consider suspending account purchases until the customer executes the agreement.

If you need assistance drafting and/or presenting written contracts that will satisfy the requirements of Ohio Revised Code § 1343.03(A), or if you need any assistance determining whether you currently are in compliance with the statute, please contact Tucker Ellis & West LLP and we will be happy to assist you.

For more information please contact:

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