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March 3, 2020

The Honorable Donna Campbell, M.D.
Chair, Committee on Veteran Affairs & Border Security
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0289

Re: Whether a depreciation benefit product purchased solely with cash is regulated by Occupations Code chapter 1304 (RQ-0302-KP)

Dear Senator Campbell:

You ask about a depreciation benefit optional member program under Occupations Code chapter 1304.¹ You tell us that you seek clarification because of a “concern that a depreciation benefit optional program can only be purchased through a financed transaction, and not on a cash or lease transaction.” Request Letter at 1. We understand your request to relate to a particular depreciation benefit product that is purchased solely with cash.

Occupations Code subsection 1304.003(a)(3) defines a “depreciation benefit optional member program” as

a service contract financed under Chapter 348 or 353, Finance Code, that pays to the buyer, as a credit toward the purchase of a replacement vehicle at a participating dealer, an amount less than or equal to the difference between the purchase price and actual cash value for a total constructive loss.

TEX. OCC. CODE § 1304.003(a)(3). In considering subsection 1304.003(a)(3), we look to the rules of statutory construction. The primary “objective in statutory construction is to give effect to the Legislature’s intent, which [is ascertained] from the plain meaning of the words used in the statute because the best indicator of what the Legislature intended is what it enacted.” *Brazos Elec. Power Coop., Inc. v. Tex. Comm’n on Env’tl. Quality*, 576 S.W.3d 374, 383–84 (Tex. 2019)

¹See Letter from Honorable Donna Campbell, M.D., Chair, Senate Comm. on Veteran Affairs & Border Sec., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (rec’d Sept. 3, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

(quotation marks omitted). Where the text is clear, it is “determinative of that intent.” *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009).

By the express terms of subsection 1304.003(a)(3), a depreciation benefit optional member program is one that is “financed under chapters 348 or 353 of the Finance Code.”² TEX. OCC. CODE § 1304.003(a)(3); *see Sullivan v. Abraham*, 488 S.W.3d 294, 299 (Tex. 2016) (“[T]he statute’s plain language is the surest guide to the Legislature’s intent.” (quotation marks omitted)). A depreciation benefit product that is leased or purchased solely with cash³ and not on an installment basis, is not “financed under chapter 348 or chapter 353” and does not satisfy the definition of a depreciation benefit optional member program in subsection 1304.003(a)(3). TEX. OCC. CODE § 1304.003(a)(3); *see Centerpoint Builders GP, LLC v. Trussway, Ltd.*, 496 S.W.3d 33, 43 (Tex. 2016) (“We may not ignore the Legislature’s prudently selected words . . .”). Thus, the product you describe is distinct from the product regulated by chapter 1304.⁴

²Finance Code chapters 348 and 353, respectively, govern installment sales of motor vehicles and commercial motor vehicles. *See generally* TEX. FIN. CODE §§ 348.001–.518 (“Motor Vehicle Installment Sales”), 353.001–.515 (“Commercial Motor Vehicle Installment Sales”).

³A “cash” sale “is one in which the contract calls for payment of the price in cash when the contract is made or the goods delivered.” *Allstate Ins. Co. v. Dykes*, 461 S.W.2d 519, 521 (Tex. App.—Tyler 1970, writ ref’d n.r.e.).

⁴The scope of this opinion is limited to whether the product described is regulated by chapter 1304. This opinion does not determine that sale of the product is precluded by Texas law, nor does it address whether the product is governed by other Texas law.

S U M M A R Y

Occupations Code chapter 1304 defines a depreciation benefit optional member program, in part, as a service contract financed under Chapters 348 and 353, Finance Code. A depreciation benefit product that is leased or purchased solely with cash and not on an installment basis is not "financed under chapter 348 or chapter 353" and does not satisfy the definition in subsection 1304.003(a)(3). The product you describe, therefore, is distinct from the one regulated by chapter 1304.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

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