The Commonwealth of Massachusetts

Office of the Commissioner of Banks
One South Station
Boston, Massachusetts 02110

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

THOMAS J. CURRY
COMMISSIONER OF BANKS

BETH LINDSTROM
DIRECTOR
OFFICE OF CONSUMER AFFAIRS
AND BUSINESS REGULATION

March 3, 2003

Gregory D. Omer, Esq.
Stinson Morrison Hecker LLP
100 South Fourth Street
St. Louis, Missouri 63102-1823

Dear Mr. Omer:

This letter is in response to your correspondence to the Division of Banks (the "Division") of December 30, 2002 on behalf of your client, H & R Block ("Block"). Your letter provides additional material following a meeting held at the Division on December 16, 2002 to discuss a new refund anticipation loan program ("RAL Program"). That meeting followed up on a previous meeting and other communication relating to the refund anticipation loan program previously ("Previous Program") offered by Block.

General Laws chapter 140, section 96, as applicable herein, provides in essence that no person shall, directly or indirectly, engage in the business of making loans of six thousand dollars or less, if the amount to be paid for interest and expenses exceed in the aggregate an amount equivalent to twelve per cent without first obtaining a small loan agency license. Any person assisting the lender in obtaining such loans who receives a fee or other consideration would be required to be licensed.

Block had argued that the Previous Program did not require it to become licensed since it was not receiving consideration. The Division in its letter of November 18, 2002 noted that Block was receiving an electronic filing fee and a license fee and concluded that Block must either obtain a license or cease from offering such program. At the meeting of December 16, 2002 and in your letter of October 30, 2002, you indicate that the Previous Program has been changed. The new RAL Program does not provide for either the electronic filing fee or license fee.

Under the RAL Program a "Systems Administration Charge" (the "Charge") would be assessed to any Block customer who utilizes certain transmission systems established by Block. The Charge would be assessed to anyone who utilized the RAL

Program as well as customers of Block who utilize its Refund Anticipation Check ("RAC") program. You argue and believe that since the Charge is being assessed on the RAC program, a non-loan product, such fee is not a finance charge and therefore not consideration within the meaning of General Laws chapter 140, section 96. The Division has two concerns with this argument. First, the Division does not agree with your characterization of the RAC program as a "comparable cash transaction" to the RAL program. Second, under chapter 140, section 96, it does not make any difference whether the consideration to be received is a "finance charge" under chapter 140D or not. The important issue is whether consideration is in fact received and that a loan is made. Under our analysis of the RAL program, the Division has determined that a loan is made. Block directly or indirectly arranges or assists in the making of a loan and receives a fee as consideration in the transaction.

Accordingly, it remains the position of the Division that Block must either obtain a license under chapter 140, section 96 or agree to permanently cease from engaging in the business of negotiating, arranging or assisting in the making of small loans as described in section 96 through the RAL program.

You should also note the provisions of 209 CMR 26.06, the Small Loan Rate Order ("Rate Order"), in connection with charges that can be assessed form a small loan. Under the Rate Order the only fee that may be charged for a small loan is a single administrative fee of $20 which may be charged only once in any 12-month period.

Please notify the Division within 10 days of your receipt of your letter informing the Division of your decision.

Sincerely,

Joseph A. Leonard, Jr.
Deputy Commissioner of Banks and
General Counsel

JAL/gmb
F:legal/2002/O02143