

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 72-72
April 13, 1972

INTERPRETATION OF REGULATION T
(Tax Shelter Programs)

To All Banks, Broker/Dealers, and Others Concerned
in the Eleventh Federal Reserve District:

The Board of Governors of the Federal Reserve System announced on March 23, 1972, the adoption of an interpretation of Regulation T prohibiting a broker/dealer from making installment sales of certain tax shelter programs that provide for payment in installments.

The interpretation is printed on the reverse of this circular.

Yours very truly,

P. E. Coldwell

President

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

CREDIT BY BROKERS AND DEALERS

INTERPRETATION OF REGULATION T

SECTION 220.124 — INSTALMENT SALE OF TAX-SHELTER PROGRAMS AS “ARRANGING” FOR CREDIT.

(a) The Board has been asked whether the sale by brokers and dealers of tax-shelter programs containing a provision that payment for the program may be made in instalments would constitute “arranging” for credit in violation of Part 220. For the purposes of this interpretation, the term “tax-shelter program” means a program which is required to be registered pursuant to section 5 of the Securities Act of 1933 (15 U.S.C. § 77e), in which tax benefits, such as the ability to deduct substantial amounts of depreciation or oil exploration expenses, are made available to a person investing in the program. The programs may take various legal forms and can relate to a variety of industries including, but not limited to, oil and gas exploration programs, real estate syndications (except real estate investment trusts), citrus grove developments and cattle programs.

(b) The most common type of tax-shelter program takes the form of a limited partnership. In the case of the programs under consideration, the investor would commit himself to purchase and the partnership would commit itself to sell the interests. The investor would be entitled to the benefits, and become subject to the risks of ownership at the time the contract is made, although the full purchase price is not then required to be paid. The balance of the purchase price after the down payment usually is payable in instalments which range from one to ten years depending on the program. Thus, the partnership would be extending credit to the purchaser until the time when the latter’s contractual obligation has been fulfilled and the final payment made.

(c) With an exception not applicable here, § 220.7(a) of Regulation T provides that:

“A creditor [broker or dealer] may arrange for the extension or maintenance of credit to or for any customer of such creditor by any person upon the same terms and conditions as those upon which the creditor, under the provisions of this part, may himself extend or maintain such credit to such customer, but *only* such terms and conditions (emphasis supplied) . . .”

(d) In the case of credit for the purpose of purchasing or carrying securities (purpose credit), § 220.8 of the regulation (the Supplement to Regulation T) does not permit any loan value to be given securities that are not registered on a national securities exchange, included on the Board’s OTC Margin List, or exempted by statute from the regulation.

(e) The courts have consistently held investment programs such as those described above to be “securities” for purpose of both the Securities Act of 1933 and the Securities Exchange Act of 1934. The courts have also held that the two statutes are to be construed together. Tax-shelter programs, accordingly, are securities for purposes of Regulation T. They also are not registered on a national securities exchange, included on the Board’s OTC Margin List, or exempted by statute from the regulation.

(f) Accordingly, the Board concludes that the sale by a broker/dealer of tax-shelter programs containing a provision that payment for the program may be made in instalments would constitute “arranging” for the extension of credit to purchase or carry securities in violation of the prohibitions of §§ 220.7(a) and 220.8 of Regulation T.

3/23/72