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December 29, 1983

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Administrative Interpretation No. 3.210-8205 (Reconsideration)

IN CALCULATING A REBATE FOR A CONSUMER LOAN WITH AN EXTENDED FIRST PAYMENT, THE LENDER MAY NOT TREAT ANY PERIOD OF TIME LESS THAN THE PERIOD FROM THE TRANSACTION DATE TO THE FIRST DUE DATE AS THE FIRST COMPUTATIONAL PERIOD FOR THE LOAN.

We have reconsidered Administrative Interpretation No. 3.210-8205 issued December 30, 1982 in response to your request of March 21, 1983 and conclude that the interpretation is correct. We reach this conclusion after an extended comment period and consultation with various knowledgeable persons. Discussion of the views of various commenters is set forth below.

South Carolina Code Ann. § 37-3-210 (1976 as amended) provides, in pertinent part:

(1) Except as otherwise provided in this section, upon prepayment in full of a precomputed consumer loan entered into after September 28, 1976, the creditor shall rebate to the debtor an amount not less than the unearned portion of the loan finance charge computed according to this section. . . .

(3) In the following subsections these terms have the meanings ascribed to them in subsection (1) of § 37-3-204; computational period, deferral, deferral period, periodic balance, standard deferral, sum of the balances method, and transaction.

(4) If, with respect to a transaction payable according to its original terms in no more than sixty-one installments, the creditor has made either:

(a) No deferral or deferral charge, the unearned portion of the loan finance charge is no less than the portion thereof attributable according to the sum of the balances method to the period from the first day of the computational period following that in which prepayment occurs to the scheduled due date of the final installment of the transaction; or

(b) A standard deferral and a deferral charge pursuant to the provisions on a standard deferral, the

unpaid balance of the transaction includes any unpaid portions of the deferral charge and any appropriate additional charges incident to the deferral, and the unearned portion of the loan finance charge is no less than the portion thereof attributable according to the sum of the balances method to the period from the first day of the computational period following that in which prepayment occurs. . . . (Emphasis added)

Section 37-3-204 defines "periodic balance" and "sum of the balances method" as follows:

(e) "Periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the installment, if any, scheduled to be paid on that day.

(g) "Sum of the balances method," also known as the "Rule of 78," means a method employed with respect to a transaction to determine the portion of the loan finance charge attributable to a period of time before the scheduled due date of the final installment of the transaction. The amount so attributable is determined by multiplying the finance charge by a fraction the numerator of which is the sum of the periodic balances included within the period and the denominator of which is the sum of all periodic balances under the transaction. According to the sum of the balances method the portion of the finance charge attributable to a specified computational period is the difference between the portions of the finance charge attributable to the periods of time including and excluding, respectively, the computational period, both determined according to the sum of the balances method. (Emphasis added)

Clearly, to calculate the sum of the periodic balances, or to determine any particular periodic balance, one must determine the amount scheduled to be due on the last day of the computational period. Where intervals between scheduled due dates are substantially equal, the computational period necessarily ends on due dates of installments.

A commenter pointed out that the definition of "interval" in Section 37-2-204 (1)(d) indicated that the creditor "may" consider the interval between the transaction date and the first due date as one computational period where that interval does not exceed one month by more than fifteen days. It was suggested that this implied that the creditor need not treat that interval as one computational period if it so chose. We disagree. The Consumer Protection Code provides for that reading but for no alternative. As all other computational periods must end on a due date, there is no way the first computational period can coincide with the others unless the extended period is regarded as one computational period. The period to the first due date cannot be ignored.

See Regulation 28-60-3.210. Thus, periodic balances, as the name implies, expresses fractions determined by amounts of money due at particular times, and not simply by fractions of periods of time.

Several commenters also asserted that this interpretation would work certain inequities. Primarily it was asserted 1) the interpretation would give the extended payment customer a windfall upon prepayment, by essentially putting him in the same position as one who had the same contract but no extended first payment and 2) the truncated method has become normal usage for the industry, and that a change would unnecessarily burden the industry with readjusting its procedures and computers to comply. While these arguments may have initial appeal, they do not withstand careful scrutiny. First, neither the customer nor the lender are required to enter a contract extending the first payment for no additional finance charge. The "free" period of up to fifteen days can be a useful selling tool to a lender with a prospective customer. Indeed, the "free" aspect of that period is somewhat questionable, inasmuch as one commenter pointed out that a majority of its loans were rebated prior to their scheduled maturity for one reason or another. Under this interpretation, a lender is not penalized for giving the free period. A customer who bargains for an extended first period and is told that the extra days are "free" has a very reasonable expectation that he or she will be treated no differently than customers with similar loans without extended first periods.

A further evidence of the untenability of the truncated rebating method is that the use of that method necessarily treats the finance charge as fully earned as much as fifteen days prior to the next to last installment due date in transactions payable in monthly installments.

One commenter stated frankly that the truncated method was a means of increasing its return, a means of recouping the costs of putting the loan on the books. The General Assembly specifically provided for this cost by providing for a minimum charge upon prepayment in S. C. Code Ann. § 37-3-210(2) (1976 as amended).

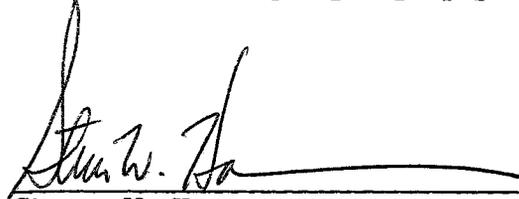
Several commenters stated that if the Department finally adopted this interpretation, consumer finance companies would cease making loans with extended first payment periods or would make a costly switch to interest bearing transactions, both to consumers' detriment. No data was submitted to indicate the number of such loans that were being made or the extent consumers need such a payment arrangement. Nor are we persuaded that such predicted results would justify the strained reading of the Code necessary to reach the conclusion suggested by only portions of the industry. Moreover, many consumer protections and credit regulations reduce the range of possible transactions and directly or indirectly affect the costs of credit. Most importantly, however, the General Assembly has already considered the matter and given whatever weight it considered necessary to the public policy questions involved. A specific procedure was set up for the rebate of unearned finance charge. Any method by which a lender calculates a rebate which is less than that provided

for in Section 37-3-210 creates an excess charge. As the statute is clear and unambiguous, we are not at liberty to take such arguments into consideration. While the comments state that this interpretation penalizes lenders and that the required rebate method would give certain borrowers "unfair" advantages vis-a-vis other borrowers, no commenter set forth a justification for the truncated method which remains internally consistent when prepayment at any point during the loan is considered.

One commenter opined that the interpretation was not sufficiently clear to indicate what a lender may do to insure that it is in compliance. A lender will be in compliance by treating the entire extended first period to the first due date as the first computational period for the transaction when the loan is prepaid.

Pursuant to S. C. Code Ann. § 37-1-102(2)(g) (1976), the issues presented by this interpretation were raised at a recent meeting of the American Conference of Uniform Consumer Credit Code States. Representatives of other Uniform Consumer Credit Code Administrators in attendance uniformly agreed with the interpretation as written.

In conclusion, it is the opinion of this Department that the interpretation dated December 30, 1982 is correct and that use of a period of time of less than a period from the transaction due date to the first installment due date as the first computational period creates an excess charge upon prepayment.



Steven W. Hamm
Administrator