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AND  
CONSUMER ADVOCATE

# The State of South Carolina

## Department of Consumer Affairs

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May 10, 1979

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Administrative Interpretation No. 2.210-7907

REBATE OF UNEARNED FINANCE CHARGE ON PRECOMPUTED CONSUMER CREDIT TRANSACTION IS REQUIRED AS OF DATE PREPAID IN FULL OR DATE JUDGMENT IS ENTERED AFTER ACCELERATION OF MATURITY, INCLUDING TRANSACTION INVOLVING SELF-HELP REPOSSESSION.

You have asked when the rebate of unearned finance charge must be made in an instance of voluntary self-help repossession in connection with a consumer credit transaction. Your question concerns a disposition under the Uniform Commercial Code of collateral securing a precomputed consumer credit transaction in which the proceeds from the sale do not satisfy the unpaid balance of the transaction. Your question assumes a consumer credit transaction in which the creditor would not be precluded from obtaining a deficiency judgment by Consumer Protection Code §5.103, S.C. Code Ann. §37-5-103 (Cum. Supp. 1978), which limits that remedy of creditors in certain consumer credit transactions.

Consumer Protection Code §2.209, which concerns consumer credit sales and is substantially the same as §3.209 concerning consumer loans, S.C. Code Ann. §§37-2-209, 37-3-209 (1976), provides:

Subject to the provisions on rebate upon prepayment (Section 2.210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing or consolidation at any time without penalty. (Emphasis added)

This section is based on §2.209 of the Official 1968 Text of the Uniform Consumer Credit Code. The official Comment to that section reads:

...[T]his section [does not] give a buyer a right to make a partial prepayment; this can be done only with the consent of the creditor and the rebate provisions of Section 2.210 do not apply...

Consumer Protection Code §2.210, which concerns rebate upon prepayment of consumer credit sales and is substantially similar to §3.210 concerning consumer loans, S.C. Code Ann. §37-2-210, 37-3-210 (Cum. Supp. 1978), provides in pertinent part:

TELEPHONES [AREA CODE 803]

ADMINISTRATION  
758-3017

CONSUMER COMPLAINTS  
758-2040  
WATS 1-800-922-1594

PUBLIC INFORMATION  
758-7546

NOTIFICATION  
758-8587

CONSUMER ADVOCACY  
758-5864

- (1) ...[U]pon prepayment in full of a precomputed consumer credit sale, refinancing or consolidation entered into after September 28, 1976, the creditor shall rebate to the consumer an amount not less than the unearned portion of the credit service charge computed according to this section...

....

- (7) If the maturity is accelerated for any reason and judgment is entered, the consumer is entitled to the same rebate as if payment had been made on the date judgment is entered. (Emphasis added)

Reading Sections 2.209 and 2.210 of the Consumer Protection Code together, it is clear that only two events require a creditor to rebate the unearned portion of the finance charge: first, prepayment in full of a precomputed consumer credit transaction (including payment by the proceeds of consumer credit insurance) and, second, entry of judgment after acceleration of maturity of a precomputed consumer credit transaction. A creditor is not, of course, prohibited from rebating a portion of the finance charge at an earlier time or otherwise rebating more than Sections 2.210 and 3.210 require.

In your question, the consumer voluntarily surrendered possession of the collateral and the creditor disposed of the collateral by sale in compliance with the Uniform Commercial Code with a resulting deficiency. At the time of the sale of collateral, the consumer has not prepaid the obligation in full and neither is there a deficiency judgment. At that time, therefore, there is no requirement that the creditor rebate the unearned portion of the finance charge. However, if the creditor obtains a deficiency judgment which would, in effect, result from an acceleration of the maturity of the transaction, the creditor is required to rebate the unearned portion of the finance charge as of the date of entry of judgment.

If the sale of collateral had resulted in a prepayment in full of the consumer credit transaction, the creditor would be required to rebate the unearned portion of the finance charge on the date of the sale. Application of the proceeds of the sale, as well as other aspects of the sale, are governed by Uniform Commercial Code §36-9-504 which supplements the Consumer Protection Code under §1.103, S.C. Code Ann. §37-1-103 (1976).