



# The State of South Carolina

## Department of Consumer Affairs

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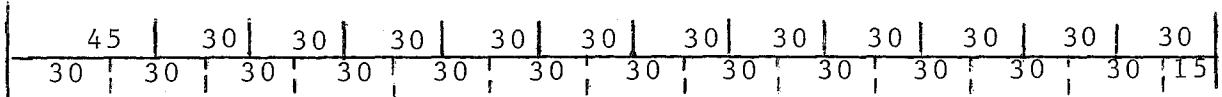
December 30, 1982

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### Administrative Interpretation No. 3.210-8205

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.

The question has arisen as to whether a precomputed loan, with an extended first computational period may have the computational period structured to a standard thirty day (one month) computational period if prepayment occurs. The factual situation presented is this: the loan is made with an extended first computational period. Although a finance charge is authorized for the additional days in the first computational period [see Administrative Interpretation 3.511-7610 of November 3, 1976] none is made. Upon prepayment the lender restructures the computational periods by starting on the transaction date and counting thirty day (monthly) intervals to the end of the contract. The additional days in the first computational period are relegated to the beginning of the second period, and so on, and the last computational period has fewer than thirty days. The method has two results: the contract period acquires one additional, albeit shortened, computational period and the Rule of 78's (sum of the digits) rebate method allows the lender to retain the finance charge for an additional computational period if prepayment occurs thirty one or more days into the contract. The chart below illustrates the restructuring process for a twelve month loan with an extended first payment period.



If the consumer does not prepay the loan in the above illustrated situation there is no finance charge for the additional days in the first computational period. If he does prepay, however, the restructuring of the loan provides a charge for the additional days in the first computational period.

The application of a pure Rule of 78's rebate method, based on the number of computational periods contracted for, also produces an incorrect rebate if applied to this hypothetical restructured loan. The restructured loan has thirteen computational periods and that revised number would have to be utilized in calculating the sum of the digits to be applied in the rebate calculation. A thirteen computational period base would provide a smaller

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 758-8996
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charge for the additional days in the first computational period. The twelve computational period base does not provide a rebate amount for the last (thirteenth) in the restructured loan but provides an increased retained amount in the first twelve periods.

The South Carolina Department of Consumer Affairs has previously stated, in Section B of Regulation No. 28-60-3.210 "Unearned Finance Charge in 'Extended First Payment' Transaction," of April 11, 1980, that the creditor "may not exclude the extra days in the first interval or the charge for such extra days, in computing the unearned finance charge when a rebate is required. . . ." The regulation was issued to stop two practices: (1) the retention of the finance charge for the extra days as a separable fee and the exclusion of that amount from the finance charge amount used to calculate the rebate and (2) the manipulation of the number of days considered to be in the first computational period so that the Rule of 78's yield to the lender would be improperly increased.

The method in question clearly excludes the extra days in the first interval when computing the unearned finance charge. It relegates them to the second and subsequent computational periods and results in a revised number of computational periods, and an excess charge. Because the original contract did not provide for a finance charge on the additional days in the first computational period the result is a prepayment penalty in violation of S.C. Code Ann. §37-3-209 (1976) subject to the provisions of S.C. Code Ann. §37-5-202 (1976 as amended). Only consumers who prepay the loan are subjected to the recalculation.

In summary, it is the opinion of the Department that restructuring of the computational periods as described in the application of the Rule of 78's (sum of the digits) rebate method, based on the contractual number of computational periods, results in a violation of Regulation 28-60-3.210 producing a prepayment penalty and an excess charge.

  
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Administrator

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