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The State of South Carolina
Department of Consumer Affairs

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September 9, 1980

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Administrative Interpretation No. 3.203-8012

SUBSECTION (3) OF THE DELINQUENCY CHARGE SECTIONS GOVERNS
THE APPLICATION OF PARTIAL AS WELL AS FULL PAYMENTS TO
INSTALMENTS.

You have asked whether the rule stated in subsection (3) of both Consumer Protection Code Sections 2.203 (sales) and 3.203 (loans) [S. C. Code Ann. §§37-2-203, 37-3-203 (1976 as amended)] applies only to payments constituting a full instalment amount. Subsection (3) states:

No delinquency charge may be collected on an instalment which is paid in full within 10 days after its scheduled instalment due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments. (Emphasis added)

Administrative Interpretation No. 3.203-7906 issued May 7, 1979 and reconsidered August 19, 1980, headed "'Current installment' means an unpaid installment which has or will become due within the length of one computational period but which is not delinquent" stated our interpretation of the rule concerning how payments are applied for delinquency charge purposes in certain circumstances.

Your hypothetical transaction involved an instalment amount of \$50. It is not disputed that if the consumer makes a \$50 payment within the designated period when a previous instalment or delinquency charge remains unpaid, the entire \$50 is applied according to subsection (3). Your question arises when the consumer pays, for instance, \$35 toward a \$50 instalment while owing \$10 on a previous instalment. Your opinion is that the creditor should be able to apply \$10 from that payment to the amount owed on the previous instalment before applying the remaining \$25 to the "current" instalment. We disagree.

The language prohibiting collecting a delinquency charge when an instalment has been "paid in full" does not mean that if the instalment is not paid in full it need not be applied in accordance with subsection (3). Instead, in our opinion, it means that when a payment is made equal to or exceeding the instalment amount, there is no amount on which to calculate a delinquency charge and thus no delinquency charge is earned. However, if the payment is less than the instalment amount (such as \$35 toward a \$50 instalment), a delinquency charge may be collected on that portion of the instalment amount which remains delinquent (e.g., \$15) but not on that amount which is not delinquent (e.g., \$35). This is consistent with the general rule in subsection (1) which provides that:

TELEPHONES (AREA CODE 803)

ADMINISTRATION
758-3017

CONSUMER COMPLAINTS
758-2040

PUBLIC INFORMATION
758-7548

NOTIFICATION
758-8587

CONSUMER ADVOCACY
758-8996

WATS 1-800-922-1594

With respect to a precomputed consumer [credit transaction], the parties may contract for a delinquency charge on any instalment not paid in full within 10 days after its scheduled due date in...

(a) an amount not exceeding [\$6.50 as of July 1, 1980: Emergency Regulations 28-61-1.109 and 28-63-1.109], which is 5% of the unpaid amount of the instalment.... (Emphasis added)

Just as making a partial payment before an instalment is considered delinquent results in a delinquency charge only on the portion of the instalment that remains unpaid in subsection (1), making a partial payment for purposes of subsection (3) also results in a delinquency charge only on the unpaid portion of the "current" instalment when previous instalments or charges remain unpaid.

In support of your opinion, you referred to the final sentence in subsection (2) which says, "[a] delinquency charge may be collected at the time it accrues or at any time thereafter and may be deducted before applying payments to instalments as provided in subsection (3)." (Emphasis added) The underlined phrase is a non-uniform addition to otherwise uniform language taken from 1968 Uniform Consumer Credit Code Section 3.203. Although that language is admittedly ambiguous, by its very terms it appears to reaffirm the method of applying payments to instalments "as provided in subsection (3)" and therefore in our opinion is not meant to change the meaning of subsection (3). Instead of changing the meaning of subsection (3), apparently the General Assembly was attempting to clarify the fact that while payments must be applied a certain way for determining when a delinquency charge is earned, a creditor is not prohibited from deducting amounts equal to earned delinquency charges at any time so long as doing so does not defeat the purpose of the delinquency charge provisions when payments are made within 10 days after an instalment due date. Interpreting the phrase otherwise would do violence to subsection (3) which is a uniform provision and should be interpreted "to make uniform the law... among the various jurisdictions" unless inconsistent with the South Carolina version of the Code. Consumer Protection Code §§1.102(2)(g), 6.104(3); S. C. Code Ann. §§ 37-1-102, 37-6-104 (1976). Because there is no clear intention expressed in the non-uniform phrase in subsection (2) to defeat the uniform language in subsection (3), in our opinion subsection (3) stands on its own and requires all payments --full or partial-- made in the designated period to be applied in the manner prescribed.

Administrative Interpretation 3.209-8012

September 9, 1980.

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In summary, it is the opinion of this Department that subsection (3) of Sections 2.203 and 3.203 states the rule governing application of partial payments, as well as full or overpayments, to instalments.

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Administrator

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