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May 2, 1975

Administrative Interpretation No. 2.104-7508

"CONSUMER CREDIT SALE" INCLUDES A LAY-AWAY IF PAY-
ABLE IN INSTALMENTS AND CANCELING CONSUMER FORFEITS
A PORTION OF DEPOSITS.

Some sellers of consumer goods operate lay-away plans under which a consumer pays a deposit toward the cash price and agrees to pay the balance in periodic payments. The consumer can cancel the agreement only by forfeiture of some amount paid toward the cash price. The question has arisen as to whether such a lay-away transaction is a "consumer credit sale" within the purview of Section 2.104 of the South Carolina Consumer Protection Code (Act 1241 of 1974).

Section 2.104 provides, in pertinent part, that a

"consumer credit sale" is a sale of goods . . .
in which (a) credit is granted . . . and . . . (d)
either the debt is payable in instalments or a
credit service charge is made . . .

"'Credit' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer payment." [Section 1.301(7)].

When a person by agreement, becomes obligated to pay money to another person he has incurred a debt. Such person is then a debtor and the person to whom he is obligated is a creditor.

In a lay-away transaction a customer indicates his intent to purchase a specific item. He binds the seller to hold that specific item in the store by paying a part of the cash price. The understanding is that the customer will over a period of time pay the full purchase price and receive actual possession of the item. Whether or not the customer incurs an obligation to the seller in such event depends upon the intent of the parties. If a seller retains a part of the canceling customer's deposit toward the cash price, it must be assumed that the customer did not have a right to cancel but instead has an obligation to pay for the goods pursuant to the agreement.

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Accordingly, it is the opinion of this office that a lay-away transaction is a credit transaction if, under the agreement, a canceling buyer will forfeit a portion of his deposits toward the cash price. If such credit is extended to an individual primarily for personal, family or household purposes and is payable in four or more instalments, such a transaction is a consumer credit sale for all purposes of the Consumer Protection Code.

In arriving at this interpretation we have, in accordance with Sections 1.102(2)(f) and 6.104(3) of the South Carolina Consumer Protection Code, considered, and are in accord, with the Federal Reserve Board's interpretation of Regulation Z. See F.R.B. Letter, September 25, 1972, CCH. Consumer Credit Guide ¶30.884.



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