



STATE OF TEXAS

# OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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December 30, 1981 No. 81-35

Mr. Dennis Swift  
Law, Snakard, Brown & Gambill  
2600 Fort Worth National Bank Bldg.  
Fort Worth, Texas 76102

Dear Mr. Swift:

This is to acknowledge receipt of your letter dated October 7, 1981 wherein you pose two questions which I will quote as follows:

- "1. Since Chapters 6 and 7 now permit the time price differential to be computed at a rate authorized by Art. 1.04, can the time price differential also be computed on a fixed rate, interest bearing basis as opposed to a precomputed basis?
- "2. Since Chapters 6 and 7 now permit the time price differential to be computed at a rate authorized by Art. 1.04, can the time price differential also be computed on a variable rate, interest bearing basis as opposed to a precomputed basis?"

As you know, since their enactment in 1967, Article 6.02 (Retail Installment Contracts) and Chapter 7, Article 5069, V.T.C.S., have always provided for a time price differential charge to be assessed on a precomputed basis, and those statutes have never provided for simple rate (time price differential) transactions nor have variable rate transactions been authorized on those transactions covered by those statutes. Virtually all of the statutory language relating to Article 6.02, Retail Installment Contracts, and to Chapter 7, Motor Vehicle Sales Contracts, remains in the terminology of precomputed time price differential credit sales.

H.B. 1228 which became effective last May 8, and much of which is now codified in Article 1.04, Article 5069, provided for the first time that the charges authorized in Chapters 6 and 7 may be computed on a simple rate basis. Article 1.04(n)(3) and (4) provide that in contracts subject to Chapters 6 and 7 the rate contracted for pursuant to the provisions of Article 1.04 is to be considered the rate or amount of time price differential as that term is used in those Chapters and that on transactions subject to those Chapters the parties may contract for any simple rate

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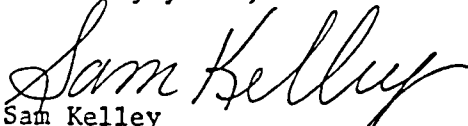
or amount not exceeding those authorized by Article 1.04. Also, Article 1.04(f) authorizes the parties to any contract to agree to a variable rate formula or index which produces a rate that does not exceed the applicable ceiling. Finally, Articles 6.02(15) and 7.03(7) provide that the parties to referenced contracts may agree to any rate or amount of time price differential not exceeding the rates authorized by Article 1.04.

Therefore, in response to your questions, it is our opinion that on credit transactions subject to Article 6.02 or Chapter 7 the time price differential may be computed on either a precomputed or simple interest (time price differential) basis. We are also of the opinion that those transactions may be structured as variable-rate, interest-bearing (time price differential) transactions, as well as precomputed. I realize that these types of transactions are somewhat at odds with the historical concept of time price differential, but the various sections of H.B. 1228 (now Article 1.04) seem to clearly indicate the intent was to afford interest-bearing (time price differential) as well as variable-rate transactions in the areas here discussed.

I would mention that Regulation Z, Section 226.18(f) requires certain disclosures in variable-rate contracts, and it is our position that the notice provided for in Article 1.04(f)(1) need not be given if the federal variable-rate disclosure is given. Also, in the Federal Reserve Board Official Staff Commentary, Comment 18(j)-1, Subpart C, p. 23, is set out the method for disclosure of the total sale price in a variable-rate sales transaction.

Articles 6.02(11) and 7.03(6) provide for delinquency charges. It would be our position that if a transaction subject to Article 6.02 or Chapter 7 is structured so as to be a true interest (time price differential) bearing transaction in which the creditor would continue to earn interest (time price differential) daily on the unpaid principal amount in the event of late payment, it would not be appropriate to assess a delinquency charge in addition to the daily time price differential earnings. Our views on this are more fully set out in Letter Interpretations Nos. 81-5 and 81-29, which of course pertain to Chapter 5 transactions, but our reasoning would be the same with regard to similar transactions subject to Chapters 6 or 7.

Sincerely yours,

  
Sam Kelley  
Consumer Credit Commissioner