Opinion No. 59-203

December 14, 1959

BY: OPINION OF HILTON A. DICKSON, JR., Attorney General

TO: Mr. H. Leslie Williams Assistant District Attorney Second Judicial District County Court House Albuquerque, New Mexico

QUESTION

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1. Does Ch. 149, Laws of 1959 (codified as § 618-15, et seq. 1953 Comp. P.S.) more particularly the provisions therein relating to the rebate of unearned portions of the finance charges apply to notes given for the repair, alteration or improvement of real property?

2. Do refunds required under § 2 of the aforementioned chapter include such sums as total an amount less than $ 1.00?

3. When a debtor adds on to his existing contract by making additional purchases and consolidates the new purchase price into the original contract, is the corporation permitted to calculate a refund or credit on the outstanding balance?

4. Do the provisions of the aforementioned Ch. 148 apply to notes and/or contracts executed prior to the effective date of the legislation, that is, June 12, 1959, but which notes and contracts will be prepaid on or after that date?

CONCLUSIONS

1. No.

2. Yes.

3. See opinion.

4. No.

OPINION

*{*314}* **ANALYSIS**

In answering your first question, we feel it necessary to point out that the language of the first section to the chapter in question, codified as § 61-8-15, N.M.S.A. 1953 Comp. (P.S.) specifically relates to those circumstances which involve the sale of personal

property only and wherein the seller retains the title to the personal property sold by virtue of a conditional sales contract or other instrument as security for the purchase price or any part thereof. Reading the remaining provisions of the chapter in **pari materia** with the first section and the title to the act would lead us to the conclusion that the provisions of the act apply only to security instruments arising out of the sale of personal property. Therefore, our response to your first question is in the negative.

In answer to your second question, we merely point out that the statute makes no provision or exemption for the rebate of sums less than $ 1.00. Section 61-8-16, N.M.S.A. 1953 Comp. (P.S.) obligates the seller to refund or credit the unearned portion of the finance charges. Since the obligation is set forth in mandatory language by the use of the word "shall" and in the absence of any exemption in the legislation, we are of the opinion that all rebates must be made, no matter how small.

We are unable to furnish a conclusive answer to your third question. It involves factors in the contractual relationship which are not disclosed by the question. I am sure you realize that it is most difficult to answer a question of this nature unless a specific factual situation is presented. However, it appears to the writer that under certain circumstances, a credit in the amount of the refund may be clearly permitted on the outstanding balance. It would appear that this is true when a complete new loan is negotiated and the two sums are merged into one new mortgage, sales contract or other instrument. Certainly, the old obligation has been cancelled and it appears that the debtor is entitled to a credit or refund for the unaccrued earnings on the unpaid balance.

In answer to your fourth question, we point out that the language of Ch. 148 is silent as to whether it shall operate prospectively only or retrospectively as well. Therefore, we must resort to general rules of construction as related to statutes of this nature. Generally speaking, the law in force at the time a contract is entered governs the validity and construction of such contract. 17 CJS Contracts, Section 22. Further, the general rule is that statutes are presumed to have only prospective effect. They are not given retroactive or retrospective effect unless such intention on the part of the legislature is clearly apparent which cannot otherwise be satisfied. **Gallegos v. A.T. *& {*315}* S.F. Railway Co.,** 28 N.M. 472; **Board of Education v. Boarman,** 52 N.M. 382. It is a general principle of law that courts will not in the absence of clear legislative intent give a statute a retroactive effect, if to do so will impair existing contractual rights. **Horner v. Pierce,** 191 P. 396.

In view of the above considerations and since there is clearly no legislative mandate to make the effect of the above statute retroactive, it is our opinion that the provisions of Ch. 148, Laws of 1959, apply only to those instruments coming within the purview of the chapter and executed after June 12, 1959.

By: Thomas O. Olson

First Assistant Attorney General