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SC TECHNICAL ADVICE MEMORANDUM #88-16

TO: Mr. C. Norwood Gayle, Jr., Acting Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: August 10, 1988

SUBJECT: Abandoned Property: Service Charge on Inactive or Dormant Accounts

REFERENCE: S.C. Code Ann. Section 27-17-310 (Supp. 1987)

AUTHORITY: S.C. Code Ann. Section 12-3-170
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

Does inactivity or dormancy for purposes of Section 27-17-310 start at the time the bank makes the determination of inactivity or at the end of the 5 year dormancy period? Does this statute limit the service charge to \$1.00 between years 1 and 5 when there is no written contract?

Facts:

S.C. Code Ann. Section 27-17-310 limits the service charge on inactive or dormant accounts to \$1.00 unless there is an enforceable written contract. XYZ Savings & Loan charges \$3.00 per month on accounts with balances below \$100 regardless of whether the account is active or inactive. Their charge is based on the minimum balance as opposed to the inactivity of the account.

Discussion:

S.C. Code of Laws Section 27-17-310 provides:

A holder may not impose with respect to property described in Section 27-17-30 any charge in excess of one dollar a month due to dormancy or inactivity or cease payment of interest unless there is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest.

Section 27-17-310 only addresses the circumstance of inactive or dormant accounts. The provision limits the service charge in such an instance to \$1.00 in the absence of an enforceable written contract. In order to make this section operative, it is necessary to construe the statute as allowing the bank to make the determination of inactivity between the years one through five. After the fifth year the property becomes "abandoned" pursuant to 27-17-30(1) and should be remitted to the South Carolina Tax Commission. At this point, the \$1.00 service charge should cease.

The bank's ability to charge customers a \$3.00 service charge when their balance falls below a specified level is not covered within the purview of Section 27-17-310. This section deals with charges due to dormancy or in-activity and not with charges due to failure to maintain a minimum balances.

Conclusion:

Inactivity or dormancy for purposes of the \$1 service charge in Section 27-17-310 should be determined by the bank. This statute limits the service charge for inactive or dormant accounts to \$1 in years one through five when there is no written contract. It does not address the bank's ability to service charge accounts which fall below a minimum balance.