

December 30, 1996

Donald R. Klesges  
Executive Vice President  
TRW Systems Federal Credit Union  
P.O. Box 10018  
Manhattan Beach, CA 90267

Re: Application of State of Arizona Transaction Privilege Tax  
(Your Letter of November 1, 1996)

Dear Mr. Klesges:

You requested an opinion regarding the application of the Arizona transaction privilege tax to federal credit unions ("FCUs"). As explained in the enclosed letter from Richard S. Schulman, Associate General Counsel, to Martha Shell, Treasury Department FCU, Washington, DC, Re: Tax Exemption for an FCU, dated January 3, 1996, where the legal incidence of the Arizona tax does not fall directly on the FCU but on the vendor, FCU tax exemptions do not apply even though the vendor may pass the cost on to the FCU. Since the time NCUA issued that opinion, the Ninth Circuit Court of Appeals has held that credit union employees on credit union business are immune from a city's transient occupancy tax. California Credit Union League v. City of Anaheim, 95 F.3d 30 (9th Cir. 1996), enclosed.

You believe that the California Credit Union League decision applies to the Arizona transaction privilege tax as well. You may be correct in your analysis, but NCUA does not have the authority to directly enforce the tax exemption provisions of §122 of the FCU Act and preempt state law. 12 U.S.C. §1768. However, in the past, NCUA has requested enforcement of §122 by the U.S. Attorney of a particular state. *See, United States of America v. State of Michigan*, 851 F.2d 803, 804 (6th Cir. 1988), enclosed, (FCUs were federal instrumentalities immune from state taxation under the Supremacy Clause of the U.S. Constitution). Since we believe that there may be merit in your position, we plan to ask the U.S. Attorney for the State of Arizona to review this matter and act accordingly. Thank you for bringing this to NCUA's attention.

Sincerely,

Michael J. McKenna  
Acting Associate General Counsel

GC/MSG:sg  
SSIC 3500  
96-1132

Enclosures

cc: Region V Director Phillip R. Crider