

May 22, 1997

Jimmy O. Junkin, Vice President Finance
Randolph-Brooks Federal Credit Union
P.O. Box 2097
Universal City, TX 78148-2097

Re: Sales and Hotel Occupancy Tax
(Your Letter of May 2, 1997)

Dear Mr. Junkin:

You have written asking the National Credit Union Administration (NCUA) to continue to assist federal credit unions (FCUs) in tax disputes with local taxing authorities.

Whether or not an FCU is exempt from taxation depends upon the specific statute or ordinance involved. Where states have attempted to levy sales or excise taxes on federal instrumentalities such as FCUs, courts have held that such taxes may be imposed only when the legal incidence of the tax falls on the retailer, rather than on the federal instrumentality purchasing the goods. Using this analysis, we have encountered several situations where immunity is not applicable. The size of our legal staff does not permit the Office of General Counsel to undertake the research and analysis required for the numerous state and municipal tax ordinances in dispute. This is why we advise FCUs to have local counsel, who will be better able to deal with local and state law, review the statute at issue.

You also suggest that NCUA enlist the Department of Justice (DOJ) to litigate tax disputes on behalf of FCUs. We do consult with and request DOJ assistance on various tax matters. Recently, NCUA, with DOJ's assistance, successfully participated in litigation involving the California Credit Union League and the City of Anaheim. That case, California Credit Union League v. City of Anaheim, 95 F.3d 30 (9th Cir. 1996) was cited in our March 17th letter to you.

DOJ will not automatically get involved each time an FCU has a problem with a local taxing authority. First, the FCU should consult with local counsel to ensure that the exemption is applicable to the particular statute or ordinance. Second, the FCU should attempt to resolve the matter with the state or municipality. If the FCU is unable to resolve the matter, it may be appropriate for NCUA to request assistance from DOJ. This decision is made on a case-by-case basis.

Enclosed is a copy of the response from the Illinois Department of Revenue to General Counsel Robert Fenner's letter dated October 3, 1996. The letter explains that immunity is not applicable to the Illinois Hotel Operators' Occupation Tax because the legal incidence of the tax falls on the hotel.

We share your concern that local taxing authorities sometimes ignore the tax exempt provisions of the FCU Act and illegally tax FCUs. We will continue to assist FCUs and request assistance from DOJ when the appropriate factors are present.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MFR:bhs

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Enclosure