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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

January 18, 1989

Office of General Counsel

Robert J. Dethlefsen
President/CEO
Island Federal Credit Union
4820 Sunrise Highway
Sayville, NY 11782

Re: Electronic Filing of Individual Tax Returns
(Your November 21, 1988, Letter)

Dear Mr. Dethlefsen:

You have asked if the Island Federal Credit Union ("Island FCU") may provide a program offered by the Tax Centers of America ("TCA") to electronically process members' Federal income tax returns. The electronic processing is a pilot program of the Internal Revenue Service (IRS) offered by IRS-approved tax preparers. The program also authorizes financial institutions to extend loans to members using the electronic filing service who are awaiting IRS refunds. An FCU is permitted to offer income tax filing services through an outside vendor such as TCA. An FCU is permitted to grant loans within the restrictions found in the FCU Act, the NCUA's Rules and Regulations, the FCU's lending policies and other applicable law.

BACKGROUND

Tax Centers of America has approached Island FCU with a program to offer Island FCU members an electronic tax filing service. Members participating in the TCA program will file IRS Form 8453 - "U.S. Individual Income Tax Declaration for

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Electronic Filing."¹ Their Federal tax refunds will be deposited in Island FCU electronically. To participate in the TCA program, members will be charged a \$20 fee, \$15 of which goes to TCA and \$5 of which will be retained by Island FCU for mailing and handling costs. According to your letter, the IRS permits participating credit unions to extend zero percent interest loans to members while they are awaiting the direct deposit of their tax refund. The loan will be automatically paid-off upon the direct deposit of the refund in the credit union. The IRS does not permit a finance charge in connection with the loan, but will allow the credit union to charge a discretionary service fee. Island FCU is considering a \$15 fee.

ANALYSIS

Section 721.1 of the NCUA's Rules and Regulations (12 C.F.R. Part 721.1) provides:

A Federal credit union may make insurance and group purchasing plans involving outside vendors available to the membership (including endorsement), and may perform administrative functions on behalf of the vendors.

Section 721.2 provides, in part:

(a)(2) "Cost amount" shall mean the total of the direct and indirect costs to the Federal credit union of any administrative functions performed on behalf of the vendor. The Federal credit union must be able to justify this amount using standard accounting procedures.

(b) A Federal credit union may be reimbursed or compensated by a vendor for activities performed under 721.1 as follows:

* * *

(3) For group purchasing plans other than insurance, a Federal credit union may receive an amount not exceeding the cost amount.

¹ We note that the Form 8453 you submitted to us is for the 1987, rather than 1988, tax year.

Section 721.1 of the NCUA's Rules and Regulations authorizes FCU's to offer outside vendor services such as TCA's electronic tax filing service. The FCU may be reimbursed for administrative functions it provides for TCA. The FCU is responsible for determining that the amount it receives from TCA does not exceed the cost amount as defined in Section 721.2(a)(2).

As an alternative, an FCU could utilize a credit union service organization ("CUSO") to offer the tax filing service to FCU members. Section 701.27(d)(5)(ii) of the NCUA Rules and Regulations (12 C.F.R. §701.27(d)(5)(ii)) authorizes a CUSO to offer income tax preparation services. Of course, all aspects of the CUSO regulation (Section 701.27) must be complied with. The CUSO regulation does not limit fees that a CUSO can receive for providing services.

Section 107(5) of the FCU Act (12 U.S.C. §1757(5)) and Section 701.21 of the NCUA Rules and Regulations (12 C.F.R. §701.21) authorize and govern FCU lending. An FCU may extend a zero percent loan with a service fee to a member provided it is in compliance with the above noted provisions, FCU board policy and any other applicable law. We do not render an opinion as to compliance with the Internal Revenue Code or IRS regulations issued thereunder. We have not addressed the issue of how the service fee is to be disclosed for purposes of Regulation Z (12 C.F.R. Part 226). You may wish to contact the Federal Reserve Board on this issue.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Acting Assistant General Counsel

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