



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

June 4, 1990

Office of General Counsel

Mr. Robert S. Bascom
New York State Credit Union League
P.O. Box 15021
Albany, N.Y. 12212-5021

Re: Sales Tax on Share Drafts (Your February 7, 1990,
Letter)

Dear Mr. Bascom:

You have asked whether a federal credit union ("FCU") must pay sales tax on share drafts purchased on behalf of and resold to its members. The answer is yes.

BACKGROUND

A check printing company in New York has informed some NY FCU's that they will be charged sales tax when ordering share drafts on behalf of their members. The printing company states that this position is mandated by a legal interpretation of the sales tax regulation by the New York State Department of Tax and Finance. According to your information, the "reasoning behind this interpretation was that the federal credit union is only acting as intermediary for the member and the member is the ultimate purchaser and should therefore be charged sales tax." However, according to the N.Y. State Department of Tax and Finance, if the share drafts were given free of charge to the members or if they were for the FCU's own use, then the FCU would be exempt from the sales tax.

APPLICABLE LAW

N.Y. State Sales Tax Regulations (N.Y.C.R.R. Tax Regulation 55,606(h)) state, in part, that:

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- (1) Any sale or amusement charge to or any use or occupancy by an exempt organization to which an exempt organization certificate has been issued is exempt from sales and use tax.
- (2) In order to exercise its right to exemption the organization must be the direct purchaser, occupant or patron of record.

* * *

- (4) Sales to any member, officer or employee of an exempt organization are subject to the sales and use tax when the sales are for the personal use of the purchaser rather than the organization

ANALYSIS

Section 122 of the FCU Act (12 U.S.C. §1768) exempts FCU's from all taxation except nondiscriminatory taxes on real property and tangible personal property. In order for the exemption to apply to a particular tax, the legal incidence of that tax must fall on the FCU. Case law establishes that the legal incidence of a particular tax is determined by looking to the intent of the legislative body which established that tax as to how the tax is to operate in practice and by looking to the practical operation and effect of the entire scheme, United States v. California State Board of Equalization, 650 F.2d 1127 (9th Cir. 1981). In the situation where a tax, by its terms, must be passed on to a purchaser, the legal incidence of the tax is on the purchaser, First Agricultural National Bank v. State Tax Commission, 392 U.S. 339 (1968), United States v. Tax Commission, 421 U.S. 599 (1975). The question here is who is the purchaser of the share drafts, the FCU or the member.

Looking at the entire sales tax scheme, it is clear that if the share drafts were for the use of the FCU, the tax exemption would apply to the FCU. However, the ultimate purchaser of the share draft is the member, and under the regulatory scheme they are not exempt from sales tax. Our review leads us to the conclusion that the legal incidence of the tax falls on the members of the

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FCU. Therefore, in this situation, the FCU must pay the sales tax on the purchase of the share drafts or pass the tax on to its members. Section 122 of the FCU Act does not prevent an FCU from collecting the sales tax for the state.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

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