



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

August 7, 1990

Robert Ibanez  
Assistant Treasurer  
Barnstable Community Federal Credit Union  
66 Falmouth Road  
Hyannis, Massachusetts 02601

Re: Massachusetts Tax Bill (Your June 22, 1990, Letter)

Dear Mr. Ibanez:

This is in response to your request for our opinion on a tax bill recently passed by the Massachusetts Senate. As a matter of policy, we do not review state laws unless there is an issue of conflict with the Federal Credit Union Act (12 U.S.C. §1751 et seq.) or the NCUA's Rules and Regulations (12 C.F.R. §700 et seq.). Moreover, your letter does not specify exactly what aspect of the bill you are concerned with. Nonetheless, we have made a brief review of the three bills you enclosed with your letter, and offer the following for your general guidance.

Background

The Massachusetts Senate recently passed a bill whose main purpose is to increase revenues by imposing additional taxes. Among other things, the bill extends the Massachusetts sales tax to services provided within the Commonwealth. You state in your letter that the bill will have a significant effect on your institution, and that services provided by credit unions, such as mortgage banking, trust services, ATM services, and account services, will be subject to a five percent sales tax.

The bill also calls for the institutions providing the taxable services to collect the required taxes. This raises collection and bookkeeping concerns.

FOIA

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### Analysis

We are not familiar with the current tax scheme in Massachusetts, and cannot say definitively that the bill will have the effect of imposing a sales tax on the services you list. However, from our limited review of the bills you provided, it does appear that credit union services would be covered by the proposed amendments to M.G.L. Chapter 64H, specifically C. 64H, §§1(12)(g), 1(13) and/or 1(14 1/2). Moreover, credit unions seem to come within the definition of "vendor" in the proposed amended C. 64H, §1(18), and would therefore be subject to the collection and recordkeeping requirements of proposed C. 64H, §§4A and 5.

As noted above, you do not specify your legal questions regarding the bill. If you question the bill's constitutionality under the Massachusetts constitution, we suggest that you contact local counsel and/or your state credit union league. We offer no opinion as to whether the bill is constitutional; local counsel would be better able than this Office to advise you on that issue. We expect that the Massachusetts League has been monitoring the bill, and has views as to its legality and effect. If the State League believes the bill to be unconstitutional, the League may be engaged in or considering lobbying efforts to prevent enactment of the bill into law, or to have the law repealed if it is enacted.

Even in the absence of a legal basis for challenging the bill or law, the League may have commenced, or be contemplating, such a lobbying effort. We assume from your letter that you are opposed to any law making the changes proposed in the bill, and would wish to assist in any effort to repeal it or prevent its enactment.

With regard to the proper methods of complying with the bill, should it become law, we again suggest that you contact local counsel and your State League. Local counsel should be able to advise you as to what the bill requires of credit unions, and the State League likely has ideas on how credit unions can best comply with the law if it is enacted.

The only opinion that this Office is able to offer is on whether the proposed law would be preempted by the Federal Credit Union Act. After reviewing the Act and the relevant

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regulations, we can only say that it appears the law proposed by Massachusetts is not preempted by the Act, and may be applied to federal credit unions.

I hope that we have been of assistance.

Sincerely,



Hattie M. Ulan  
Associate General Counsel

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