NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

August 20, 1991

Joseph Macala
US Air Federal Credit Union
Greater Pittsburgh
International Airport
Pittsburgh, PA 15231

Re: Sales Tax on Motor Vehicle Leases (Your June 10, 1991, Letter)

Dear Mr. Macala:

You have asked us the following questions: 1) Does a federal credit union (FCU) owe Maryland sales tax or any other state's sales tax on vehicles they are leasing to their members, if the leases are not "intended" as security? Under these circumstances, an FCU owns the vehicles and does not owe Maryland sales tax, but we can not provide a definitive answer on the application of the exemption to other states without an independent evaluation of each state's law. 2) Does an FCU owe personal property tax that various states require to be passed onto vehicle owners? If the personal property tax is nondiscriminatory, the FCU, as vehicle owner, would be liable for the tax.

APPLICABLE LAW

Under Maryland law, if a lease is not intended as security, the credit union owns the vehicle and need not pay the state excise tax. Section 11-1271.1(b) of the Transportation Article states:

> "Leases not intended as security" means a lease of a vehicle by an individual primarily for personal, family, or household purposes for more than 180 consecutive days, including renewal periods in which:

FOIA Vol. V.B.1 Sales Tax

(1) The lessee may return the motor vehicle at the end of the lease term with no financial obligations other than payments required under the lease for excess wear and tear and excess mileage charges; and
(2) The lessee is provided the option to purchase the leased vehicle for:
(i) In the case of a new vehicle, a consideration in excess of:
1. 20 percent of the "value at consummation" of the vehicle as that term is defined in 12 C.F.R. §213.2(a)(18); or
2. If the value or consummation is not stated in the lease, 20 percent of the Monroe sticker price for the vehicle; or
(ii) In the case of a used vehicle, a consideration in excess of the wholesale value of the vehicle as shown in the official used car guide of the National Automobile Dealer's Association (N.A.D.A.), taking into account accessories and mileage plus any costs incurred by the lessor in repairing and servicing the vehicle in anticipation of a lease.

BACKGROUND

The FCU offers a long-term motor vehicle leasing program to its members. All leases are closed-end with an option to purchase the vehicle at the end of the lease for a stated value. The value is the value assigned by the Automotive Lease Guide Publication (ALG) and so far no purchase option has ever been less than 20% of the original value at consummation. These leased vehicles are titled in the FCU's name. The FCU pays sales tax on the vehicles and passes the cost onto the lessees.

ANALYSIS

Section 122 of the Federal Credit Union Act, 12 U.S.C. §1768, exempts FCUs 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 owns the vehicle under Maryland law, the credit union or the member. The leases are not intended as security as defined under Maryland law, and thus the vehicles are the property of the FCU. Therefore, the tax exemption applies to the FCU. Similar sales tax schemes of other states must be evaluated independently to determine if the exemption applies to FCUs in those states.

As far as the personal property tax question is concerned, we can not provide a definitive answer since we are not able to review all of the applicable state statutes. It is important to remember, though, that FCUs are not exempt from nondiscriminatory personal property taxes and, as the vehicle owner, the FCU would be liable for such a tax. If the member/lessee were the owner, the personal property tax would be on the member not the FCU, and the tax exemption would not be an issue. If the tax scheme required the personal property tax to be passed on to the member, the FCU would pay the tax and pass it on to the member.

Sincerely,

James J. Engel
Deputy General Counsel

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SSIC 3320
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