American Bankers Association
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March 10, 2011

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20004

Dear Commissioner Shulman:

The American Bankers Association (ABA)[1] is writing to you to request your attention to a matter relating to credit unions. A "common bond" among credit union members is required in order to have the privilege of tax exemption. However, some credit unions openly flaunt this common bond requirement by allowing anyone to join, an issue that should be of concern to the Internal Revenue Service (the Service), especially in this time of focus on the tax gap. In this regard, we suggest that the Service review whether Alliant Credit Union, a state-chartered credit union headquartered in Illinois, meets the "common bond" requirement for qualification as a credit union. An examination by the Service into the membership qualifications for Alliant Credit Union would reveal the lack of foundation for its claims of qualifying for tax-exempt status. An article appearing at CNNMoney.com states that "Alliant is one of the largest credit unions in the United States. And while it's located in Illinois, anyone can join, no matter where they live."[2] The credit union definitely turns the "common bond" requirement on its head by instituting a program that allows anyone in the United States – regardless of where they live – to become a member simply by making a charitable donation of at least $10 to a specific foundation. Bankers strongly support charities in both their local communities and nationwide. Thus, while we support the notion of encouraging citizens to donate to charities and applaud Alliant's efforts to do so, Alliant CU must do so while continuing to follow the law. Alliant must adhere to the "common bond requirement" in order to continue to enjoy the special tax benefit that it receives as a credit union. Its use of charitable donations to qualify all individuals for membership allows the credit union to have the public-at-large as members rather than those with a common bond. Thus, its tax exemption should be examined to determine whether its qualifications for tax exemption continue to be met.

A state-chartered credit union is a financial cooperative established for the purpose of providing credit to members. One of the essential features of a credit union is that its members share a "common bond." As the Service has recognized, it is this commonality of interests or close relationship among members that makes it possible for credit unions to offer its members unsecured loans – the primary purpose for which credit unions were created.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

[2] http://money.cnn.com/galleries/2011/pf/1101/gallery.least_evil_banks/5.html

Section 501(c)(14) of the Internal Revenue Code (the Code) exempts from taxation institutions that qualify for the status of "credit unions" within the meaning of the Code. To the extent that institutions call themselves (or are called by others) "credit unions" while operating in a fashion that does not resemble the requirements in the Code, any claim to exempt status under Section 501(c)(14) should be rejected by the Service.

Section 501(c)(14) of the Code provides a tax exemption for "credit unions without capital stock organized and operated for mutual purposes and without profit." The Code is administered by the Service (26 U.S.C. § 7803), not by the National Credit Union Administration (NCUA), and not by state legislatures or state credit union regulators. Consequently, a state's determination that a particular institution is a "credit union" is not binding upon the Service nor is a decision by the NCUA to treat an institution as a state-chartered credit union for other purposes (such as, for example, share insurance. See 12 U.S.C. § 1781(c)). Tax exemption is not an automatic incident to a state credit union charter. Within limits, the Service has the capacity to arrive at findings of federal tax law independent of state legislatures, state regulators, and even the NCUA.

In fact, during the 1970s, the Service challenged the tax exemption for some state-chartered "credit unions." One such challenge was in the case of La Caisse Populaire Ste. Marie v. United States. In this case, St. Mary's Bank was operating under a state charter that did not specify any limits upon whom the Bank could serve. The Service contended that this omission made the institution more akin to a mutual savings bank than a credit union, and that a mutual savings bank would have been subject to federal taxation. The U.S. Court of Appeals for the First Circuit agreed with the Service's analysis of the necessity for a common bond, but ruled in favor of St. Mary's Bank and restored the institution's tax exempt status based on a finding that the bank actually had a "de facto" common bond. However, the court warned that the "gross misuse" of the credit union name is a potential cause of action.

Following the St. Mary's decision, the Service's Employee Plans and Exempt Organizations Division issued a general counsel memorandum that concluded that state chartered credit unions must have a common bond of occupation, association, or residence, and for a state to authorize a credit union to organize and operate without a common bond would be a "gross misuse of the name… ."

Congress in 1998 reiterated the importance of a common bond for the fulfillment of the public mission of credit unions. Congress found that "a meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well-understood sense of cohesion or identity is essential to the fulfillment of the public mission of credit unions."[3] We strongly argue that a $10 donation by anyone anywhere in the United States to a foundation does not create a meaningful affinity and bond for purposes of the common bond required for membership in a credit union.

Moreover, Section 190.10(c)(2) of the Illinois Administrative Code governing a credit union's field of membership states: "The common bond must conform to the Act and include some unifying factor which links and distinguishes a field of membership from the general public."[4] If anyone can join by

[3] Public Law 105-219.

[4] http://www.ilga.gov/commission/jcar/admincode/038/038001900A00100R.html

making a charitable donation of $10, then Alliant Credit Union's field of membership does not contain any unique factor that distinguishes the members from the general public, since its members are in fact, the general public.
In conclusion, ABA believes there is sufficient evidence to revoke Alliant Credit Union's tax exemption. This veiled attempt to serve the public-at-large is a gross misuse of the term "credit union" because it flaunts the rules.

Please feel free to contact me at any time at fmordi@aba.com or 202.663.5317 to discuss these comments further or answer any questions you may have.

Sincerely,

Francisca N. Mordi

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