DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **201110013**
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Date: December 13, 2010

Contact Person:

Identification Number:

Telephone Number:

Employer Identification No.:

UIL No.: 501.06-00

Legend:

Taxpayer =
State A =

Dear :

This is in reply to Taxpayer's letter dated December 8, 2009, and subsequent correspondence, requesting a ruling that its proposed rebate of certain member assessments will not adversely affect its tax-exempt status under Section 501(c)(6) of the Internal Revenue Code ("Code.")

FACTS:

You, Taxpayer, were created by an act of the State A legislature in the 1960's. The Internal Revenue Service ("Service") has recognized your status as an organization exempt from federal income tax pursuant to Section 501(c)(6) of the Code. The determination was effective beginning with your taxable year ended September 30, 1996.

You were formed to create and maintain a fund to insure shares and deposits of state and federal credit unions doing business in State A. You currently have over 100 members, some of which are state credit unions and some of which are federal credit unions. Your principal function is to provide share and deposit insurance ("deposit insurance") to your members' customers, and you maintain a fund for that purpose (the "Reserve Fund"). You also review the financial condition of each member credit union and may take remedial action, such as making capital infusions to member credit unions, to strengthen financial condition or enhance liquidity in order to protect the member credit union's depositors.

Your deposit insurance is intended to supplement federal deposit insurance provided by the National Credit Union Administration (the "NCUA"). You insure the portion of a depositor's account in excess of the federal deposit insurance limit. Such excess amount is called the customer's "Excess Deposit."

Under your governing state statute, you are generally charged with maintaining the Reserve Fund at a level that is no less than 1.25% of your member credit unions' total insured deposits. However, because of the historic increase in the federal deposit insurance limit and the resulting decrease in your exposure to potential depositor losses, you no longer require the same level of assessments to maintain the Reserve Fund at a level that is keyed to 1.25% of insured deposits. You therefore propose to rebate to each member an amount equal to that member's Surplus Assessments, i.e., the amount by which the member's prior assessments, net of any amounts previously rebated to that member, exceed 1.25% of its Aggregate Excess Deposits calculated using the new $250,000 federal deposit insurance limit. You have maintained records that allow you to compute accurately the amount of each member credit union's Surplus Assessment.

Each of your members is subject to biannual insurance policy assessments based on financial information that the member reports to you regarding the aggregate amount of its customers' Excess Deposits (the member credit union's "Aggregate Excess Deposits"). The first time your member reports Aggregate Excess Deposits in any amount greater than zero, it must contribute an assessment to the Reserve Fund equal to 1.25% of the reported amount. So long as the amount of the member's Aggregate Excess Deposits does not exceed this first reported amount, which establishes an initial benchmark, the member need not make any further contribution to the Reserve Fund. By the same token, if the amount of a member's Aggregate Excess Deposits falls below the initial benchmark in a subsequent reporting period, there is generally no rebate or refund of any portion of the member's prior assessment. Members do not pay any annual fee or dues as such—only assessments based on the member's aggregate Excess Deposits.

If one of your members subsequently reports Aggregate Excess Deposits in excess of the initial benchmark, it must contribute an additional assessment equal to 1.25% of the amount by which the newly reported amount exceeds the initial benchmark. The higher figure for the member's Aggregate Excess Deposits then becomes its new benchmark for purposes of the rules outlined above. If and when the member reports Aggregate Excess Deposits in excess of this new benchmark, the member must contribute another assessment equal to 1.25% of this additional excess amount, and the benchmark is adjusted upward to equal the new, higher figure for the member's Aggregate Excess Deposits. This process of incremental assessments and upward adjustments of a member's benchmark can continue indefinitely.

The amount of a member's Aggregate Excess Deposits is affected not only by changes in the amount of its customers' deposits, but also by changes in the limit of federal deposit insurance applicable to those deposits. In 1970, the federal insurance limit was $20,000 per insured deposit account; this was increased to $40,000 in 1974 and $100,000 in 1980. On October 3, 2008, the limit was temporarily increased to $250,000 through December 31, 2009, pursuant to the Emergency Economic Stabilization Act of 2008. On May 20, 2009, the Helping Families Save Their Homes Act of 2009 extended the increase in the federal insurance limit through December 31, 2013.

The increased federal insurance limit has eliminated or significantly reduced customers' Excess Deposits. For example, if a customer had a deposit balance of $270,000 before October 3, 2008, its Excess Deposit would have been $170,000 ($270,000 minus $100,000). Following the increase in the insurance limit, the customer's Excess Deposit would have been reduced to $20,000 ($270,000 minus $250,000).

This federal increase has also significantly reduced your potential exposure to claims for customer losses in excess of the federal insurance limit. As of June 30, 2009, you insured Excess Deposits at member credit unions in an aggregate amount of approximately $400 million, determined using the $250,000 federal deposit insurance limit. If the old $100,000 federal deposit insurance limit had applied on that date you would have insured aggregate Excess Deposits of approximately $1.5 billion.

All of the assessments paid by the member credit unions that joined you on or after October 3, 2008 have been calculated using the new $250,000 federal deposit insurance limit to determine each member's Aggregate Excess Deposits. But each of the remaining members has paid assessments equal to 1.25% of their respective Aggregate Excess Deposits determined under the old $100,000 federal deposit insurance limit as of June 30, 2008. As a consequence you have received assessments that are approximately over $10 million in excess of the amount that your member credit unions would have been required to contribute if they had all calculated their Aggregate Excess Deposits using the $250,000 federal deposit insurance limit.

You have obtained the approval of the State A Commissioner of Banks to pay the rebates. Any rebate of Surplus Assessments paid will be paid to a member credit union from funds representing prior assessments paid by that member (or its predecessor in interest), and no "dividend" will require the distribution of amounts that could be considered income earned with respect to such assessments. Each member has paid assessments that exceed the amount proposed to be rebated to such member. In no case will a current member's rebate be funded by contributions of a former member (except to the extent that the current member is a former member's successor in interest.)

Four of your members are indebted to you for infusions of capital. In those cases, the Commissioner has said that you could not require, only urge, each indebted member to apply all or a portion of its rebate to repayment of your advance to it.

RULING REQUESTED:

The rebates to your members described herein will not adversely affect your tax-exempt status under section 501(c)(6) of the Code.

LAW:

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.

Rev. Rul. 77-206, 1977-1 C.B. 19, held that cash rebates made by an exempt business association to member and nonmember exhibitors who participate in the association's annual industry trade show, that represent a portion of an advance floor deposit paid by each exhibitor to insure the show against financial loss, and which are made to all exhibitors on the same basis, and which may not exceed the amount of the deposit, do not adversely affect the association's exempt status under section 501(c)(6) of the Code.

Rev. Rul. 81-60, 1981-1 C.B 335, relied on well established principles under Section 501(c)(6) of the Code to hold that a refund of excess dues to members of an exempt agricultural organization in the same proportion as the dues are paid does not constitute inurement, and therefore does not disqualify an organization from exemption under section 501(c)(5) or 501(c)(6) of the Code.

King County Insurance Association, 37 B.T.A. 258 (1938) stated that pro rata refunds of excess dues to members do not affect an association's status as an exempt business league.

ANALYSIS:

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. It is well settled that a nondiscriminatory pro rata refund of dues is not inurement to members of a tax exempt business league. The Service has ruled that an exempt business league may generally make cash distributions to its members without loss of exemption where such distributions represent no more than a reduction in dues or contributions previously paid to the league to support its activities. Rev. Rul. 77-206, supra; see Rev. Rul. 81-60, supra; King County Insurance Association, supra.

Here the rise in the federal insurance deposit limit from $100,000 to $250,000 creates a substantial surplus in your Reserve Fund and results in a substantial overpayment to the Reserve Fund by most member credit unions. Moreover, each of your current members has paid assessments that exceed the amount that you propose to rebate to that member. The rebate of Surplus Assessments can be paid entirely out of each recipient's net assessments. As such, these payments represent a permissible nondiscriminatory, pro rata refund of prior contributions, and will not adversely affect your Section 501(c)(6) exemption.

RULING:

The rebates to your members described herein will not adversely affect your tax-exempt status under section 501(c)(6) of the Code.

This ruling only relates to the issue of your tax exempt status. For example, it does not relate to whether any or all of the rebates may be subject to unrelated business tax, nor does it relate to the tax treatment of the rebates when received by the credit unions.

This ruling will be made available for public inspection under action 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we

intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon your tax status should be reported to the Service. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney and Declaration of Representative currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure: Notice 437