

## Explanations of the Tax Exemption Letter

The NCUA is providing a revised Tax Exemption Letter for immediate use by all federal credit unions. Federal credit unions can obtain the revised Tax Exemption Letter by accessing the NCUA's website, or by specifically requesting it from the NCUA's Office of General Counsel. The revised Tax Exemption Letter replaces the previous letter provided to federal credit unions.

### *Why has the Tax Exemption Letter been revised?*

The need for the new letter stems from consultations with the Department of Justice following complaints by several state tax authorities.

The state tax authorities have primarily taken issue with the previous exemption letter in connection with employee travel. The states are ruling that a credit union employee is not exempt from sales and/or use tax if he pays for travel lodging directly, even though the employee is on official business and will be receiving reimbursement. The states will allow for the exemption only when the credit union makes direct payment.

The rationale behind not allowing the exemption is that the legal incidence of the tax falls on the employee. That is, when the employee procures a hotel room while traveling on official business it is the employee that is incurring the tax, not the credit union. The credit union is not a party to the transaction. The fact that the credit union reimburses the employee for the expenses, and thereby assumes the economic burden of the total cost of the lodging, including the tax, does not mean that the credit union is being taxed.

The states' position is in line with long standing treatment of U.S. Government employees traveling on official business. In fact, both DOJ, and the Comptroller General have found that purchases of lodgings by a federal employee traveling on government business are exempt from tax only when payment is made directly by the federal government pursuant to direct billing. Consequently, since credit unions are federal instrumentalities and are exempt from taxation in much the same fashion as the federal government, it is appropriate for a state to deny a tax exemption to a credit union employee paying for his lodgings.

Accordingly, to more accurately reflect the government-wide interpretation regarding the availability of tax exemptions for federal instrumentalities, the NCUA is issuing the revised tax exemption letter.

### *When can a federal credit union use the Tax Exemption Letter?*

The revised Tax Exemption Letter can only be used when a federal credit union is making payment by direct billing, or payment is made via a credit card issued in the credit union's name. For example, an employee staying in a hotel may not use the revised Tax Exemption Letter if that employee is paying for the lodging and then subsequently receiving reimbursement for payment. This prohibition even includes situations where an employee utilizes a corporate credit card, if that card is billed directly to the employee. The federal credit union must make direct payment to receive the exemption.

*Are employees ever entitled to an exemption from hotel or occupancy taxes when payment is not made directly by a credit union?*

Yes. Several states and cities have specifically exempted federal employees from paying a hotel occupancy tax. As such, federal credit union employees may be entitled to a tax exemption, because federal credit unions are viewed as federal instrumentalities. These specific exemptions usually apply regardless of the payment method. Thus, employees should continue to inquire whether they are entitled to a tax exemption when paying for lodging.



Credit Union: \_\_\_\_\_

Charter Number: \_\_\_\_\_

Date: \_\_\_\_\_

### LETTER OF EXEMPTION

This Letter of Exemption certifies that federal credit unions are exempt from all taxes imposed by the United States or by any state, territorial, or local taxing authority, except for local real or personal property tax. Specifically, Section 122 of the Federal Credit Union Act (12 U.S.C. § 1768) states:

*The Federal credit unions organized hereunder, their property, their franchises, capital reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority: except that any real property and any tangible personal property of Federal Credit unions shall be subject to Federal, State, Territorial and local taxation to the same extent as other similar property is taxed. Nothing herein contained shall prevent holdings in any Federal credit union organized hereunder from being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the State or political subdivision thereof in which the Federal credit union is located; but the duty or burden of collecting or enforcing the payment of such a tax shall not be imposed upon any such Federal credit union and the tax shall not exceed the rate of taxes imposed upon holdings in domestic credit unions.*

This exemption from taxation includes municipal taxes such as hotel taxes and night occupancy taxes where the obligation of paying the tax falls on the federal credit union. As such, no tax will apply if a federal credit union employee or official is traveling on credit union business and payment for meals and lodging is made directly by the federal credit union by direct billing or use of a credit card in the name of the federal credit union. If expressly provided by state or local law, this exemption from taxation may also apply to credit union employees or officials traveling on credit union business, regardless of the method of billing or payment. Credit Unions may wish to consult legal counsel to determine the availability of this latter exemption.

Sincerely,

A handwritten signature in black ink, reading 'Robert M. Fenner'.

Robert M. Fenner  
General Counsel