

# **Bond Case Briefs**

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## **Examiners Given Guidance on State-Chartered Credit Unions and UBIT.**

The IRS's Tax-Exempt and Government Entities Division, in light of two court decisions, has issued a memorandum (TEGE-04-0314-0005) on how examiners should process unrelated business income tax issues of state-chartered credit unions. The memorandum is limited to UBIT issues identified during the examinations of section 501(c)(14) credit unions and does not apply to section 501(c)(1) federal credit unions, nor any other organization exempt from tax.

Generally, to determine whether an activity of a credit union is substantially related for purposes of UBIT, each activity and all the facts and circumstances surrounding that activity must be examined to determine the activity's relation to the organization's exempt purpose. According to the memorandum, two district court decisions have held that activities the IRS has previously regarded as subject to UBIT should not be subject to it.

The government has not appealed these decisions. Consequently, the memorandum provides guidance to examiners working cases involving these, and similar, activities.

March 24, 2014

Affected IRM: IRM 4.76.22 and 7.25.14

Expiration Date: March 24, 2015

### MEMORANDUM FOR ALL EXEMPT ORGANIZATIONS EMPLOYEES

#### FROM:

Tamera L Ripperda  
Director, Exempt Organizations

#### SUBJECT:

Applicability of Unrelated Business Income Tax (UBIT) to State  
Chartered Credit Unions Described in IRC § 501(c)(14)(A)

This memorandum provides direction to Exempt Organization examiners in the processing of unrelated business income tax (UBIT) issues of organizations described in section 501(c)(14)(A) of the Internal Revenue Code (IRC). This directive is not an official pronouncement of law, and cannot be used, cited, or relied on as such. In addition, nothing in this directive should be construed as affecting the operation of any other provision of the IRC, regulations, or guidance thereunder.

#### **Background:**

There are two types of credit unions:

- Federal credit unions, which are administered by the National Credit Union Administration and described in IRC § 501(c)(1) as federal instrumentalities.
- State-chartered credit unions, which are described in IRC § 501(c)(14)(A) and are “without capital stock organized and operated for mutual purposes and without profit.”

Tax-exempt state-chartered credit unions provide savings accounts and loans to their members who may not be served by banks, without profit and for the mutual benefit of their members. Mutuality refers to the fact that a credit union’s members are both borrowers and lenders of the credit union. Under IRC § 511(a)(2)(A), the two types of credit unions are treated differently for UBIT purposes:

- Federal credit unions described in IRC § 501(c)(1) are not subject to UBIT.
- State-chartered credit unions described in IRC § 501(c)(14)(A) are subject to UBIT.

Under Treas. Reg. § 1.513-1(d)(2), for the conduct of a trade or business from which gross income is derived to be substantially related to the entity’s exempt purposes, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those exempt purposes. Whether activities that produce gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved. To determine whether an activity of a credit union is substantially related for purposes of UBIT, each activity and all the facts and circumstances surrounding that activity must be examined to determine the activity’s relation to the organization’s exempt purpose. Two district court decisions have held that activities the IRS has previously regarded as subject to UBIT should not be subject to UBIT. See *Bellco Credit Union v. United States*, 735 F.Supp. 2d 1286 (2010), and *Community First Credit Union v. United States*, No. 08-cv-0057 (E.D. Wis. May 15, 2009), ECF No. 84.

Both *Bellco* and *Community First* found that the sale of credit life and credit disability insurance to members was not subject to UBIT. Additionally, *Bellco* found that the sale of accidental death and dismemberment insurance was not subject to UBIT (excluded from UBI as royalty income). Also, *Community First* found that the sale of Guaranteed Auto Protection (GAP) insurance was not subject to UBIT.

The government has not appealed these decisions. Consequently, this directive provides guidance to examiners working cases involving these, and similar, activities.

### **Planning and Examination Guidance:**

Examiners examining original or amended Forms 990-T or claims for refund by State-chartered credit unions described in IRC § 501(c)(14)(A) should:

- 1. Treat income from the following income-producing activities as substantially related income not subject to UBIT:
  - Sale of checks/fees from a check printing company
  - Debit card program’s interchange fees
  - Credit card program’s interchange fees
  - Interest from credit card loans
  - Sale of collateral protection insurance
- 2. Treat income from the marketing of the following insurance products as well as certain ATM fees as subject to UBIT:
  - Automobile warranties

- Dental insurance
  - Cancer insurance
  - Accidental death and dismemberment insurance
  - Life insurance
  - Health insurance
  - ATM “per-transaction” fees from nonmembers
- 3. Treat income from the following products if sold to members as not subject to UBIT:
    - Credit life and credit disability insurance
    - GAP auto insurance
  - If these two insurance products are sold to non-members, treat the income from these products as subject to UBIT.

4. Unless there is a royalty arrangement (rather than payments for a credit union’s services), treat all other insurance products including accidental death and dismemberment insurance as generally subject to UBIT.

**Scope of the Directive:**

This directive is limited to UBIT issues identified during the examinations of section 501(c)(14) credit unions. This directive does not apply to section 501(c)(1) Federal credit unions, nor any other organization exempt from tax.

Internal Revenue Manual section 4.76.22 will be updated to reflect the content of this directive, and IRM section 7.25.14 will be updated to the extent that the information contained herein impacts rulings.

Please contact the 501(c)(14) subject matter expert in EO Technical Group 3 with any questions regarding the application of this directive, or issues relating to income on a product other than those mentioned above.

cc:

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