

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of
xxxxxxxxxxxxxx

Docket No. 95-001

as claimant against
Self Reliance (JC) Federal Credit Union

Decision and Order on Appeal

Decision

This matter comes before the National Credit Union Administration Board ("Board") pursuant to 12 CFR §709.8(c)(1) as an administrative appeal of the initial determination by the Liquidating Agent of Self Reliance (JC) Federal Credit Union denying xxxxx xxxxxxxx creditor claim.

Background

On November 1, 1991, the Self Reliance (JC) FCU (hereinafter "JC FCU") wrote to xxx xxxxxxxxxxxx, one of its members, concerning the Individual Retirement Account (IRA) he held at the credit union. JC FCU was the trustee for xxxxxxxxxxxx IRA account. The credit union stated that in accordance with Internal Revenue Service (IRS) regulations, xxxxxxxxxxxx should have made withdrawals in the amount of xxxxxxxx from his IRA account. Since the credit union failed to notify xxxxxxxxxxxx to make the required withdrawals, the credit union stated it would pay the IRS penalty (50% of required withdrawal - xxxxxxxx) once imposed by the IRS. The IRS regulation authorizing the 50% penalty is found at 26 CFR 1.408-6(d)(4)(iii)(B)(7). Neither the IRS Code nor the IRS regulations require that an IRA trustee notify an IRA account holder when withdrawals must be made. However, it is customary for IRA trustees to make such notifications.

JC FCU records reflect that xxxxxxxxxxxx held two accounts there, a savings account and an IRA account. On November 1, 1991, xxxxxxxxxxxx transferred xxxxxxxx from his IRA account to his savings account. Additional transfers xxxxxx made from his IRA account to his savings account in 1991 brought total transfers to xxxxxxxxxxxx. Once funds are transferred out of an IRA account, they are considered income to the account holder. This is true even if the funds are placed in a different type of account in the same institution. The JC FCU reported xxxxxxxxxxxx 1991 IRA income of xxxxxxxxxxxx to xxx xxxxxx and to the IRS on a 1099-R form. On January 5, 1993, xxxxxxxxxxxx transferred all funds from his IRA account into his savings account at the credit union, thus closing his IRA account. On the same day, xxxxxxxxxxxx closed his savings account at the FCU. xxx xxxxxx ceased being a credit union member on January 5, 1993, upon the closing of his accounts.

The JC FCU was placed into liquidation in September of 1993 and a liquidating agent was appointed. The notice of liquidation was published in the Jersey Journal on October 26, November 26, and December 27, 1993, and stated that claims not filed by January 26, 1994 may be time barred. The notice of liquidation was also sent out to all known creditors. Claimant was not sent the notice in that he was not a known creditor at the time of the liquidation. Share accounts and loans of the

now defunct JC FCU were transferred to the Self Reliance Ukrainian FCU (hereinafter "Ukrainian FCU"), with its main office in Chicago. A notice was sent out to all JC FCU shareholders informing them that their accounts had been taken over by the Ukrainian FCU. xxxxxxxxxx was not sent the notice to shareholders since he was no longer a member of the JC FCU at the time of its liquidation.

On August 3, 1994, the IRS sent xxxxxxxxxx a Notice of Deficiency for the tax year ending December 31, 1991. The Notice shows that claimant failed to report xxxxxx in taxable pensions and annuities for 1991. In addition, the Notice shows a xxx decrease in claimant's medical deduction. The net tax increase is xxxx. The IRS added interest of xxxx from April 15, 1992 until fifteen days after the date of the Notice of Deficiency. This brings the amount due the IRS to xxxx. The IRS never imposed the 50% penalty for failure to withdraw from an IRA account. It only charged xxxxxxxxxx 1991 income taxes due, plus interest. xxxxxxxxxx paid the IRS xxxx on August 12, 1994.

On August 12, 1994, xxxxxxxxxx wrote to the (now defunct) JC FCU requesting reimbursement for the xxxx. On August 31, 1994, the Ukrainian FCU responded, explaining that the JC FCU had been liquidated in 1993, after xxxxxxxxxx closed his accounts and that his request should be directed to the NCUA's Asset Liquidation Management Center. On September 20, 1994, claimant wrote to the ALMC requesting reimbursement for the xxxx. The liquidating agent for JC FCU responded on October 4, 1994, disallowing xxxxxxxxxx claim since it was filed after the statutory deadline of January 26, 1994. The response also stated that claimant had an obligation to know when IRA withdrawals were required. xxxxxxxxxx was given his appeal rights pursuant to Part 709 of the NCUA Rules and Regulations (12 CFR 709) in this letter.

On October 21, 1994, xxxxxxxxxx appealed the ALMC's decision. In his appeal, claimant states that JC FCU acknowledged responsibility for his claim in their November 1, 1991 letter and that his claim did not have to be reasserted after the JC FCU was liquidated. In a January 6, 1995 supplement to his appeal, xxxxxxxxxx states that he did not receive the notice to creditors required by statute.

Analysis

The ALMC denied xxxxxxxxxx claim because it was not filed within the statutory deadline. Section 207(b)(3) of the FCU Act (12 USC 1787(b)(3)) requires that the liquidating agent publish and republish at 1 and 2 months, a notice to creditors to present their claims, by a date specified not less than 90 days after the publication of such notice. The notice shall also be mailed to any creditor shown on the credit union's books. These publication requirements are also set forth in Section 709.4(b) of the NCUA Rules and Regulations. Notice of the liquidation was published pursuant to the statutory requirements in October, November and December of 1993. All claims were due by January 26, 1994. The notice was not sent to xxxxxxxxxx since he was not a known creditor.

Upon review of the claim, the Board finds it must be denied: it does not constitute a valid claim. xxxxxxxxxx appears to have confused the JC FCU's offer to pay a penalty for failure to make a required withdrawal from an IRA account with the overdue income tax plus interest due to xxxxxxxxxx not reporting income resulting from an IRA account withdrawal. In its November 1, 1991 letter, the JC FCU

offered to pay a 50% penalty (when imposed by the IRS) for claimant's failure to make a required withdrawal from his IRA account. The amount of the penalty, if imposed by the IRS, would be xxxxxx. The IRS never imposed this penalty. xxxxxxxxxx failed to report income of xxxxxxxxxx on his tax return for 1991. The income was the result of claimant's withdrawals from his IRA account. The JC FCU may have failed to inform claimant to make the required withdrawals, but was under no statutory or regulatory obligation to so inform. Once the withdrawals were made, the JC FCU reported the withdrawals resulting in income of xxxxxxxxxx to both the IRS and to the claimant. Claimant did not include this income in his 1991 tax return. In 1994, the IRS found the error and notified xxxxxxxxxx of the taxes owed as well as the interest thereon. The taxes owed are xxxx plus xxxx interest, totaling xxxx. The JC FCU made an offer to pay a penalty that was never imposed by the IRS. Neither the JC FCU nor the ALMC as liquidating agent for the JC FCU is responsible for claimant's tax obligations. As claimant does not have a valid claim, it is unnecessary for the Board to address the issue of timeliness.

Order

For the reasons set forth above, it is ORDERED as follows:

The claim against the now liquidated Self Reliance (JC) Federal Credit Union for payment of xxxxxxx for income tax and interest on such tax for unreported income for 1991 is hereby denied. It is not a valid creditor's claim.

So ORDERED this 13th day of April, 1995, by the National Credit Union Administration Board.

Becky Baker
Secretary of the Board