

July 19, 1994

Danny M. Payne
Tax Commissioner
Department of Taxation
P.O. Box 2475
Richmond, Virginia 23207-2062

Subject: Tax Exemption of Federal Credit Unions (Your July 7, 1994, Letter)

Dear Mr. Payne:

In your letter to the National Credit Union Administration (NCUA), you have confused the tax exemption distinctions between employees of the United States government and purchases made by federal credit unions. You stated,

The department traditionally and consistently has held that purchases of tangible personal property by the United States, and thus federal credit unions, are exempt from the tax only if the purchases are pursuant to required official purchases to be paid out of public funds.

The legal and practical distinctions between purchases by the United States and federal credit unions are quite significant. The prohibition on State taxation upon the federal government has long been held to be a matter of federal sovereignty. Federal credit unions are financial institutions chartered, regulated and insured by the NCUA. They are not agencies of the United States and do not use public funds to carry out their responsibilities. See 12 U.S.C. 1752a et seq.

Taxation upon federal credit unions is controlled by federal statute and case law. The federal law is found at 12 U.S.C. 1768. The United States Supreme Court in the case, *James v. Dravo Contracting Co.*, 302 U.S. 134 (1937) held that sales taxes may not be imposed on federal instrumentalities, such as federal credit unions, when the legal incidence of the tax is on the purchaser. The tax may be imposed, the Court said, when the federal instrumentality is merely a collector of the tax. The Virginia regulation on "Retail Sales and Use Tax" provided in your letter is consistent with these authorities. It states, "Sales to federally chartered credit unions are exempt from the tax (12 USCA 1768)." VR 630-10-45 1.3. I believe that any confusion is the result of the regulation's placement under the subtitle of "Governments."

Danny M. Payne, Tax Commissioner

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We are not familiar with the methods employed by the states to control the tax exemption process. Preferable to submitting a "Letter of Exemption" would be a procedure using a tax exemption certificate.

Please call me if you want to discuss this matter. I can be reached at (703) 518-6540.

Sincerely,

Richard S. Schulman
Associate General Counsel

GC/RSS:bhs

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