

Credit Unions Get Unrelated Business Income Tax (UBIT) Relief from the IRS (Internal Revenue Service)

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On March 24, 2014, the Internal Revenue Service (IRS) has finally changed course and instructed its examiners that the **unrelated business income tax (UBIT)** will not be applied to key, revenue generating products sold by credit unions to their members. IRS examiners have now been instructed that when examining original or amended Forms 990-T or claims for refunds by state-chartered credit unions, income from credit life and disability insurance, as well as guaranteed auto protection (GAP) insurance that is sold to members should not be treated subject to UBIT. The IRS also clarified that if the credit union has a royalty arrangement, the examiners should not treat other insurance products sold to members, such as accidental death and dismemberment insurance, subject to UBIT.

The IRS directive to examiners comes after lengthy litigation in Wisconsin and Colorado that challenged the long-held position taken by the IRS that income from credit life and disability insurance, as well as GAP insurance was not substantially related to the tax-exempt purposes of a credit union. The credit unions prevailed in both cases, leading to the recent IRS directive to examiners. With this new directive, the IRS has directed its examiners that income from the sale of the following products to credit union members is 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
- ATM per-transaction fees from members
- Interest from credit card loans
- Sale of collateral protection insurance
- Credit life and credit disability insurance
- GAP insurance

The IRS also signaled through its directive to examiners that UBIT should not be applied to other insurance products, such as accidental death and dismemberment insurance, if the credit union has a royalty arrangement for those products. There remains, however, a list of credit union products subject to UBIT if not subject to a royalty arrangement:

- Automobile warranties
- Dental insurance

- Cancer insurance
- Accidental death and dismemberment insurance
- Life insurance
- Health insurance
- ATM “per-transaction” fees from nonmembers

This IRS directive comes at an important time as credit unions seek to maximize fee income, and permits credit unions to offer these products and services to their members with clarity on the tax consequences. Credit unions should compare these lists to their product offerings to determine how this directive can be most effectively used to benefit credit union operations. In all cases, credit unions should be sure to consult with their tax advisors as they examine this directive and how it can be most effectively applied.

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