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IRS ARGUMENT DOESN'T APPEAL TO JUDGE

The IRS has 60 days to appeal the ruling. Credit Unions may want to consider delaying their filing of Form 990-T.

The judge in the Community First Credit Union case rejected the government's appeal of the jury's verdict in favor of the credit union. On May 14, 2009, the U.S. District Court jury in Green Bay found for Community First Credit Union in allowing a refund claim of \$54,604 of overpaid unrelated business income tax (UBIT). On July 14, 2009, U.S. District Court Judge William Griesbach rejected the government's claim that the jury lacked an evidentiary basis for its verdict. The IRS now has 60 days to appeal the judge's ruling. The IRS has not yet issued a response to Judge Griesbach's ruling; however, it is likely to appeal.

Credit unions who have extended their 2008 Form 990-T may want to consider delaying their filing of the form until there is further information regarding the case/issues. For organizations filing their Form 990s and 990-Ts on a calendar year basis, a second extension for form 990 is due August 17 and the Form 990-T should have already been extended to November 15.

Until we get more information regarding the IRS's reaction and position related to the ruling, credit unions should continue making estimated tax payments for 2009 and should discuss this situation with their tax preparer. With respect to taxes paid with Form 990-T filed for prior year UBIT, credit unions should consider filing a claim for refund of UBIT taxes previously paid but could also consider holding off on amending returns until the IRS position is known. Credit unions have three years from the date the original Form 990-T was filed to amend the return and/or file a claim for refund, which would extend the period of time that refunds might be obtained.

There is a similar case in which Bellco Credit Union of Colorado has challenged the IRS. This case will be tried in Denver. While the IRS will consider the jury ruling in the Appleton credit union case, it generally likes to "test" the waters in multiple jurisdictions.

CONTACT INFORMATION

For more information, please contact your Wipfli relationship executive or:

Maria Bruggink
Tax Partner
715.843.8326

Or e-mail us at WipfliFiPractice@wipfli.com.

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