



FAILURE TO APPEAL IS APPEALING

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Please check our website (www.wipfli.com) regularly for current updates.

The Internal Revenue Service chose not to appeal the jury decision in favor of Community First Credit Union of Appleton, Wisconsin. The IRS's deadline for filing the appeal was September 12, 2009. The products at issue in the Community First Credit Union case included credit life insurance, credit disability insurance, and guaranteed asset protection (GAP) products.

A second lawsuit against the IRS was filed by Belco Credit Union of Greenwood Village, Colorado. Belco has challenged the assessment of unrelated business income tax (UBIT) on revenues from the sale of insurance products and financial services. Belco Credit Union v. U.S. is scheduled for trial in December of this year. A major issue is whether insurance sold is related to the making of loans. Both Belco and the IRS have moved for summary judgment. The judge has not issued decisions on these motions and has requested that both sides reconsider their requests for a jury trial.

The IRS, itself, was not silent with respect to credit unions over the summer months; it issued another important Technical Advice Memorandum. PLR 200931064 asserts that income from shared branching arrangements, management services to other credit unions, certain CUSOs, and sales of financial management services and insurance products are subject to UBIT.

In light of the Community First Credit Union failure to appeal, Wipfli recommends credit unions consider the following:

- For those that have not yet filed Form 990-T for the year ended 2008, do not include income from credit life insurance, credit disability insurance, and GAP products in computing your unrelated business taxable income. The failure of the IRS to appeal on this case should suffice as substantial authority for this position. Although there is no guarantee you will prevail in the event of an IRS challenge, you should be able to avoid substantial underpayment penalties.
- For open years, file a protective refund claim for unrelated business income taxes paid on revenue from the products at issue in the Community First Credit Union case and/or other products and services, the income from which results in unrelated business income tax. This claim will keep the statute of limitations open for as long as it takes to resolve these issues in the courts. At this point, filing an amended Form 990-T and requesting a refund is premature, since the issues are still pending through the litigation of other cases. In addition, it may be possible to trigger an IRS audit by filing large refund claims for these items.

For Wipfli clients, we will review Form 990-Ts prepared by Wipfli; your engagement executive will contact you during the next several weeks regarding the necessity of filing a protective claim. If we do not currently prepare your Form 990s, we would be happy to work with you to ensure that you preserve your ability to claim refunds to which you ultimately may be entitled.