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GOVERNOR

STATE OF MICHIGAN  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
ROBERT W. SWANSON, ACTING DIRECTOR

LINDA A. WATTERS  
COMMISSIONER

**DATE:** February 15, 2006

**LETTER NO.:** 2006-CU-01

**TO:** The Board of Directors and Management of Michigan State-Chartered Credit Unions

**SUBJECT:** OFIS Discontinues Filing IRS 990

Historically, the Office of Financial and Insurance Services (OFIS) has submitted a consolidated 990 group return to the Internal Revenue Service (IRS) on behalf of all Michigan state-chartered credit unions. The purpose of this letter is to inform credit union officials that OFIS will discontinue filing an IRS 990 (Organization Exempt from Income Tax) consolidated group return after the 2005 tax year. OFIS will file the 990 return for 2005 (due by May 15, 2006.) Credit unions will be required to file individual 990 returns for the 2006 tax year and each tax year thereafter.

The IRS is expected to issue a Technical Advice Memorandum on tax treatment of income considered unrelated to a credit union's principle business purpose, otherwise known as Unrelated Business Income Tax (UBIT). This memorandum is expected to outline types of income creating potential income tax liabilities, including insurance sales and certain nonmember ATM fees. This anticipated IRS pronouncement raises concerns regarding the ability and appropriateness of OFIS, as a financial institutions regulatory agency, reporting an individual credit union's tax liability position.

The decision to discontinue filing the group tax return for all Michigan state-chartered credit unions was based on the following:

- The method of collecting information for the 990 form is the NCUA's 5300 Report process. This information currently does not include a segregation of income or expense data to the degree necessary to properly determine taxable income and related expenses. OFIS does not expect the 5300 call report to be modified to collect this data because the anticipated IRS Technical Advice Memorandum will likely not affect federally chartered credit unions, which are not required to file a 990 return.
- In the event of a tax dispute, OFIS could be placed in the role as advocate between the regulated depository institution and the Internal Revenue Service. This would be inappropriate for an independent regulatory agency

- Filing the group return could taint the filings of all Michigan chartered credit unions. In the event one institution submits inaccurate information, filing a group return increases the potential tax liability and legal and reputational risks for all entities. This represents a potential aggregated impact to all Michigan chartered credit unions inconsistent with the Commissioner's duty of ensuring the safety and soundness of the industry within Michigan.

OFIS encourages credit union officials to ensure internal reporting systems collect and report relevant information to fully comply with future IRS pronouncements regarding Unrelated Business Income Tax. Credit unions should consult knowledgeable professionals, such as C.P.A.s, tax consultants, or attorney's skilled in this area.

Directors should also ensure that appropriate personnel are either trained or contracted to complete the year end 2006 tax return. This may be done as part of the required audit process in accordance with Section 344 of the Michigan Credit Union Act and Bulletin 2005-02-CU. OFIS will consider prompt and accurate filing of the annual 990 tax return, and the applicable monitoring of the tax liability position, as part of managements responsibility to operate their respective institution in a safe and sound manner.

Sincerely,

Roger W. Little, Deputy Commissioner  
Credit Union Division