

CONNELL & ANDERSEN LLP
545 FIFTH AVENUE
NEW YORK, NEW YORK 10017

WILLIAM F. CONNELL
ROY C. ANDERSEN

TELEPHONE: (212) 687-6900
FACSIMILE: (212) 687-6999
randersen@connellandersen.com

OF COUNSEL
GEORGE A. SCHNEIDER
LUCA CANTELLI

June Second Half Developments

Overview

The banking agencies published an addition to their tax policy statement for holding companies. This addendum provides a discussion on how section 23A of the Federal Reserve Act and Regulation W can apply to intercompany tax agreements. These issues can arise in banking organizations with multi-state operations and insured banks and certain tax refunds may create issues under the rules designed to protect insured banks from improper dealings with affiliates.

Temporary Cease and Desist Orders of the BCFP

On June 18, 2014, the BCFP published its final rule to define how adjudications to issue Cease and Desist Orders would be handled and prescribe rules for administration. This rule was originally published as an interim final rule with a request for comments. Only one comment was submitted on the proposed rule. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-18/html/2014-14228.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-26/html/2013-23229.htm>

Tax Allocations for Holding Companies

On June 19, 2014, the banking agencies published a final addendum to the Policy Statement on income tax allocation in a holding company structure. This rule is to insure that a consolidated group maintains an appropriate relationship regarding the payment of taxes and treatment of tax refunds. The Addendum instructs holding companies to review and revise their tax allocation agreements to ensure that the agreements expressly acknowledge that the holding company receives a tax refund from a taxing authority as agent and is consistent with certain of the requirements of sections 23A and 23B of the Federal Reserve Act. See the Policy at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-19/html/2014-14325.htm>

Continuation of Emergency North Korea

On June 24, 2014, the President published a notice to continue for one year the national

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emergency that had been declared regarding North Korea. This emergency was first declared in 2008 due to the development of nuclear weapons and was made worse by sinking a Korean ship and numerous missile tests. See the President's notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-24/html/2014-14947.htm>

Continuation of Emergency in the Western Balkans

On June 25, 2014, the President published a notice to continue for one year the national emergency that had been declared regarding the Western Balkans. This emergency was first declared in 2001 due to extremist violence in Macedonia and Kosovo. See the President's notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-25/html/2014-15040.htm>

Credit Union Voluntary Liquidations

On June 26, 2014, the NCUA published its final rule to ease the burdens on liquidating Credit Unions and remove some of the burdensome requirements to close a Credit Union. The final rule raises the asset-size thresholds that determine the frequency of required creditor notice publication. Further, it allows FCUs to use electronic media to meet the publication requirement while also enabling FCUs to issue share payouts to members by electronic payment methods. Also, the final rule clarifies the existing calculation of pro rata distributions to members. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-26/html/2014-14885.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2014-03-03/html/2014-04231.htm>

Credit Union Appraisals on Mortgage Loans

On June 26, 2014, the NCUA published its proposed rule to eliminate a duplicative rule on providing appraisals to applicants for mortgage loans. Credit Unions are now required by the BCFP's Regulation B to provide such appraisals. In addition, Credit Unions will be able to rely on existing appraisals for refinancings so long as there is adequate collateral protection. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-26/html/2014-14889.htm>

Credit Union Securitization of Loans

On June 26, 2014, the NCUA published its proposed rule to clarify that a natural person federal credit union is authorized to securitize loans that it has originated, as an activity incidental to the business for which an FCU is chartered, provided the transaction meets certain requirements. The proposed rule would also apply those requirements to federally insured, state-chartered credit unions that are permitted by state law to securitize their assets. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-26/html/2014-14926.htm>

Failed Credit Union Safe Harbor for Assets Securitized

On June 26, 2014, the NCUA published its proposed rule to continue the safe harbor that had been granted to Credit Unions that transferred assets pursuant to existing law under participations or under securitization programs. The NCUA will continue to recognize these transfers in a liquidation of a failed credit union. This rule recognizes that the conservator or liquidating agent cannot use its statutory power to repudiate or disaffirm contracts to avoid a legally enforceable and perfected security interest in transferred financial assets. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-26/html/2014-14919.htm>

Burma Sanctions Rules

On June 26, 2014, OFAC published its final rule to amend and reissue in its entirety the Sanctions rules applicable to doing business with Burma. In response to historic reforms in Burma, the U.S. Government took a number of steps to authorize new U.S. investment in Burma and the exportation or reexportation of U.S. financial services to Burma. OFAC issued and made available on its Web site a general license authorizing the exportation or reexportation of financial services to Burma from the United States or by a U.S. person, subject to certain limitations. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2014-06-30/html/2014-14841.htm>

This advisory is a service of Connell & Andersen LLP for our clients and friends. It is not a full recitation of all developments. The descriptions are summaries of complex and detailed laws and regulations and may be incomplete or misleading. We invite any of our readers to contact us to discuss any items contained herein for further elaboration.