

August 3, 2011

Mr. Bob McGrew, Manager
Houston Musicians Federal Credit Union
609 Chenevert
Houston, TX 77003

Re: Musical Instrument Loans as Member Business Loans

Dear Mr. McGrew:

You have asked if loans in excess of \$50,000, in the aggregate per member, made to the credit union's members for the purchase of musical instruments are considered member business loans (MBLs). As explained below, the loan is an MBL.

MBLs are defined as any loan, line of credit, or letter of credit, in an amount of \$50,000 or more, and where the borrower uses the loan proceeds for a commercial, corporate, other business investment property or venture, or agricultural purpose. 12 U.S.C. §1757a(c)(1); 12 C.F.R. §723.1(a),(b). Other exemptions may apply but are not relevant to the discussion here. In your letter, you indicated the credit union makes loans to professional musicians for the purchase of musical instruments and that, without these instruments, the member would not be employed. You note, however, the IRS does not consider the interest on these loans to be a business deduction for the member and also provided a legal opinion from your counsel stating the loan should be considered a personal loan, just like an automobile.

We do not consider IRS treatment of an expense to be determinative of whether a loan qualifies for MBL treatment under NCUA Part 723.¹ Similarly, the fact that an item may be purchased for a non-business purpose is not controlling. For example, a \$50,000 loan to purchase an automobile for use as a taxicab or package delivery truck is an MBL and not a personal loan. It is the loan's actual purpose and amount, absent any applicable exemptions, that determine whether the loan is an MBL.

It is our view the instrument loan provides a means for your professional musician members to purchase a musical instrument for use in their trade as paid musicians. The musical instrument is a tool of the musician's trade and is acquired for use in a business capacity. Therefore, where a loan to a member for this purpose totals \$50,000

¹ While you did not submit any IRS documentation in support of your statement, we found in our research that IRS rulings addressing the deductibility of business expenses are fact specific and often turn on whether an individual is determined to be an independent contractor or an employee; an expense is ordinary and necessary for an existing trade or business; or, the taxpayer is able to provide required documentation to substantiate the expense. Consequently, a disallowed business expense deduction does not indicate an IRS determination that the underlying activity is not a trade or business.

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or more when aggregated with other such loans to the member, the loan is an MBL and subject to Part 723.

Additionally, you mentioned Houston Musicians' long history of making instrument loans to its members. We encourage you to discuss your credit union's possible qualification for an exception to the aggregate MBL limit, as either a credit union chartered for the purpose of making MBLs or as a credit union with a history of primarily making MBLs, with the region.

If you have any questions, please contact Staff Attorney Linda Dent, or me, at (703) 518-6540.

Sincerely,

/s/

Hattie M. Ulan
Associate General Counsel

GC/LKD:bhs

11-0734

cc: C. Keith Morton, Director, Region IV