



# COMMONWEALTH OF VIRGINIA

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December 10, 2009

The Honorable Mark C. Christie  
Chairman, State Corporation Commission  
1300 East Main Street  
Richmond, Virginia 23219-3630

Dear Commissioner Christie:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You ask whether 12 U.S.C. § 1768 exempts federally chartered credit unions from the tax on consumers of electricity imposed by § 58.1-2900 of the *Virginia Code*. If federal credit unions are exempt from the tax, you ask whether the exemption reaches the portion of the tax remitted to localities and how such exempted credit unions should be identified.

## Response

It is my opinion that 12 U.S.C. § 1768 exempts federal credit unions from the tax on consumers of electricity imposed by § 58.1-2900, including the portion of the tax remitted to localities. It further is my opinion that a federally chartered credit union may be identified by its name, which is required to include the words "Federal Credit Union."

## Applicable Law and Discussion

Section 58.1-2900(A) imposes "a tax on the consumers of electricity in the Commonwealth" and includes both a portion payable to the state and the applicable locality. Pursuant to 12 U.S.C. § 1768, Congress exempts federal credit unions from certain taxes:

The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such Federal credit unions shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed.

A 1971 opinion of the Attorney General (the "1971 Opinion") considered whether a federal credit union is exempt from state and local taxes under § 1768.<sup>1</sup> The 1971 Opinion concluded that federal credit

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<sup>1</sup>See 1971-1972 Op. Va. Att'y Gen. 393.

unions are subject only to real and personal property taxes.<sup>2</sup> A consumers' utility tax is not a tax upon property.<sup>3</sup> Therefore, I must conclude that Congress has exempted federal credit unions from the tax imposed by § 58.1-2900 on consumers of electricity, including both the state and local portions. This is consistent with a prior opinion of the Attorney General which concluded that federal credit unions are exempt from local utility taxes imposed on consumers of telephone services.<sup>4</sup>

Finally, you inquire concerning the identification of federal credit unions. I note that federal regulation requires a federally chartered credit union to identify its status by including the words "Federal Credit Union" in its name.<sup>5</sup>

### Conclusion

Accordingly, it is my opinion that 12 U.S.C. § 1768 exempts federal credit unions from the tax on consumers of electricity imposed by § 58.1-2900, including the portion of the tax remitted to localities. It further is my opinion that a federally chartered credit union may be identified by its name, which is required to include the words "Federal Credit Union."

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Mims", with a stylized flourish at the end.

William C. Mims

2:1203; 1:941/09-080

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<sup>2</sup> *Id.* at 393.

<sup>3</sup> *See* Op. Va. Att'y Gen.: 1972-1973 at 394, 395; 1971-1972 at 419, 420.

<sup>4</sup> *See* 1972-1973 Op. Va. Att'y Gen., *supra* note 3, at 395; *see also* 1984-1985 Op. Va. Att'y Gen. 327, 327 (concluding that federal credit unions may be subject to local real and personal property taxes, but not local business license taxes).

<sup>5</sup> *See* 12 C.F.R. Part 701, App. B, § VI (2009) (mandating that "[t]he last three words in the name of every credit union chartered by [the National Credit Union Administration] must be 'Federal Credit Union'").