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National Charters – Still Watching and Waiting

(June 2001)

April 20 marked the end of the comment period on the National Charters regulation the Farm Credit Administration (FCA) issued in January. Mums the word at the FCA on how

and when it will act on this regulation. If the FCA is wise, it will take to heart the stinging comments on National Charters the Treasury Department sent to FCA Chairman Mike Reyna on May 2 urging the FCA to withdraw the proposal. The last issue of *FCW* summarized Treasury's numerous objections to National Charters. *FCW* will continue to closely monitor this situation.

Big ACA Takes a Big Hit in Ohio Tax Case

Good news: The FCS's largest agricultural credit association (ACA) recently lost a tax case in the Ohio Supreme Court. The case set a precedent which could reverse the FCS's plunging tax bill. The ACA had sought a \$5 million refund in Ohio income taxes on the grounds that the FCA had named the ACA a "federally chartered instrumentality," thereby exempting it from all income taxes. The Court ruled that the ACA "does not stand in the government's shoes" and thus is not immune from state income tax. Refund denied: Unfortunately, the IRS has pumped out more than \$110 million in federal tax refunds to other ACAs on the mistaken belief that their real estate lending

is tax-exempt. Perhaps the IRS will rethink its position in light of the Ohio decision. Better yet, maybe the U.S. Supreme Court will affirm the Ohio case.

The Ever-Shrinking FCS

FCS consolidation is accelerating, according to recent FCA data. In the year ended April 1, 2001, the number of FCS associations shrank 26 percent, from 172 to 128. At the same time, the number of ACAs with two subsidiaries, a tax-exempt real estate lending association and a taxable production credit association, jumped from 11 to 60. Another 11 ACAs had not yet adopted that tax-minimizing structure. Based on pending mergers and restructurings,

the FCS will soon drop below 100 associations. So much for the FCS of old, when associations were locally controlled by their member-borrowers. Congress needs to study this unhealthy trend.

FCS's Three Big Wants

FCS's trade association recently pitched this wish list in congressional testimony: (1) modernize the FCS charter (read: give us broader lending powers); (2) increase the availability of venture capital in rural America (read: let FCS make venture capital investments); and (3) tell FCA to eliminate "unduly burdensome" regulations. Rural America needs this?

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