

September 14, 1998

Richard W. Murray, President/CEO  
IAG Federal Credit Union  
One Interstate Terrace  
600 Midland Avenue  
Rye, New York 10580-3999

Re: State Tax or Assessments on ATMs, Your letter dated July 23, 1998.

Dear Mr. Murray:

You have asked whether the Massachusetts Division of Banking's annual assessment against a federal credit union's (FCU's) electronic branch is permissible. Section 24 of Massachusetts' Electronic Branches and Electronic Funds Transfer Statute requires the commissioner of banks to assess an annual fee against all electronic branches to cover the cost of regulating these entities. MASS. GEN. LAWS ANN., CH. 167B, §24 (WEST 1194). You advise that the amount being assessed is \$495. This assessment is not permissible.

The attached letter from James J. Engel to Jerome F. Coleman dated April 27, 1979, explains that "[s]tate and local licensing rules that entail the payment of a fee by the licensee are tantamount to a tax and are therefore preempted by section 122 of the Federal Credit Union Act (12 U.S.C. §1768)." That letter also explains that not all fees are impermissible. "For example, a rule that requires the obtaining of a building or occupancy permit from a local authority and entails the payment of a fee would not be considered a tax if it is shown that the fee bears a relation to the cost of a service being provided."

The \$495 fee being charged FCUs to maintain electronic branches in the state of Massachusetts does not appear to bear a relation to the cost of the service being provided. The fee is intended to cover the cost of examination and supervision by the state regulator. These entities are not examined or regulated by the state regulator. The assessment is, therefore, equivalent to a licensing fee which makes it an impermissible tax on FCUs.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/MFR:bhs  
SSIC 3600  
98-0732  
Enclosure