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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Internal Revenue Service Federal Credit Union--Provision of Automatic Teller Machine

File: B-226065

Date: March 23, 1987

DIGEST

The Internal Revenue Service may provide an automatic teller machine at its own expense to the Federal Credit Union located at its Atlanta Service Center. Section 124 of the Federal Credit Union Act (12 U.S.C. § 1770) generally authorizes Government agencies to provide space and "services" to credit unions without charge. Section 515 of Public Law 97-320, which added definition of "services" to 12 U.S.C. § 1770, was clearly enacted in response to prior Comptroller General decisions holding "special services" unauthorized. As amended, statute is now sufficiently broad to encompass special services, including an automatic teller machine, if administratively determined to be necessary.

DECISION

The Director of the Atlanta Service Center, Internal Revenue Service (IRS), requested our decision on whether the IRS may provide an automatic teller machine to the Federal Credit Union located at the Center.

The Director states that the Center operates on three shifts, 7 days a week, 365 days a year. During the tax season, the Center employs a staff of over 5,500 people. In addition to other on-site services, Federal Credit Union banking services are provided. These services are relied upon heavily by the IRS employees. However, the Credit Union is closed to employees on two of the three shifts because of the overhead costs of night operations such as staff and computer time. The IRS and Credit Union have considered various alternatives, and have concluded that an automatic teller machine is the best way to provide banking services to employees on all three shifts. Under the proposal, the IRS would purchase the machine and the Credit Union

would maintain and stock it. As explained more fully below, we believe that 12 U.S.C. § 1770, by virtue of a 1982 amendment, provides the IRS with the authority to purchase the machine.

PRIOR GAO DECISIONS

A Federal credit union is a cooperative association organized in accordance with the provisions of the Federal Credit Union Act, as amended, 12 U.S.C. §§ 1751-1795 (1982), for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. 12 U.S.C. § 1752(1). While organized under Federal law and subject to the supervision of the Administrator of the National Credit Union Administration, a Federal credit union is a private organization. Its operating funds are generally obtained from private sources and are not appropriated by the Federal Government.

Section 124 of the Federal Credit Union Act, 12 U.S.C. § 1770, authorizes Government agencies to provide space and "services" to credit unions without charge if certain conditions are met. Prior to its amendment in 1982, it provided:

> "Upon application by any credit union organized under State law or by any Federal credit union organized in accordance with the terms of this chapter, at least 95 per centum of the membership of which is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, which application shall be addressed to the officer or agency of the United States charged with the allotment of space in the Federal buildings in the community or district in which such credit union does business, such officer or agency may in his or its discretion allot space to such credit union if space is available without charge for rent or services."

We issued a number of decisions interpreting section 124 prior to the 1982 amendment. E.g., 58 Comp. Gen. 610 (1979); B-177610, August 17, 1981; and B-164310, August 28, 1968. We issued our most recent decision in the series, B-177610, July 23, 1982, in response to requests from the Credit Union Administration (Administration) and the National Association of

Federal Credit Unions (Association), which had asked us to reconsider our earlier decisions.

In those decisions, we drew a distinction between "normal" services and "special" services. Normal services were defined as those services necessary to meet normal space needs which would have to be paid for by the Government whether space is allotted to the credit union or not. Examples are heating, lighting and cooling. Special services are those which would result in additional costs to the Government, such as telephone service and security alarm systems. We held that, under section 124, agencies could supply normal services to credit unions without charge, but could not provide special services.

Moreover, we held that agencies could not provide special services even on a reimbursable basis. This was because, absent statutory authority to the contrary, reimbursements would have to be deposited in the Treasury as miscellaneous receipts under 31 U.S.C. § 3302, and the net result would be that the agency's funds would be used for purposes other than those for which they were appropriated, in violation of 31 U.S.C. § 1301(a).

In our July 1982 decision, which affirmed the prior holdings, we highlighted telephones and security alarm systems as examples of special services. In concluding that special services were not authorized under the legislation as it then existed, we reviewed the statute's legislative history and addressed all of the arguments that had been presented to us. We stated, "If the Congress had intended to authorize Federal agencies to provide credit unions services independent of those necessary for use of the space, it would have done so expressly."

THE 1982 AMENDMENT

In October 1982, the Congress amended section 124 by enacting section 515 of the Garn-St. Germain Depository Institutions Act of 1982.[1/] The amendment added the following language to section 124:

> "For the purpose of this section, the term 'services' includes, but is not limited to, the providing of lighting,

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1/ Pub. L. No. 97-320 (October 15, 1982), 96 Stat. 1469, 1530.

heating, cooling, electricity, office furniture, office machines and equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone service), and security systems (including installation and other expenses associated with security systems). Where there is an agreement for the payment of costs associated with the provision of space or services, nothing in title 31 or any other provision of law, shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury."

DISCUSSION AND CONCLUSION

This is our first decision under the 1982 amendment to section 124. The issue is whether an automatic teller machine can reasonably be viewed as authorized under the amendment.

Although the legislative history contains no explicit statement on the point, it seems clear that the amendment was intended to provide the legislative authority we said in our decisions was required in order for agencies to be able to provide "special" services to credit unions. In part, this is evidenced by the amendment's timing. The July 1982 decision was issued during the period that the Congress was considering the Garn-St. Germain legislation. The decision's final paragraph states that we had held several meetings with representatives of the Senate Committee on Banking, Housing and Urban Affairs (and others) to discuss non-legislative proposals which would allow agencies to provide telephone services to credit unions on a reimbursable basis, and that we concluded that none could be implemented legally. The Chairman of that Committee proposed the amending language to the Senate on September 24, 1982, less than 2 months after our decision. 128 Cong. Rec. S12216 (daily ed., Sept. 24, 1982).

The amendment's wording provides further evidence that it was enacted in response to our decision. It can be no coincidence that the amending language cites the precise special services the decision had discussed--telephone services and security alarm systems.

Turning to the precise language of the amendment, we note that it cites examples of items we had characterized as normal services (lighting, heating, cooling, ect.) as well as items we had characterized as special

services. It is thus clear that the normal versus special distinction is no longer relevant in determining the extent of agency authority under section 124, and that the provision of what we had termed "special services" is no longer prohibited.

The amendment does not purport to define precisely what services may be provided. Rather, it gives several examples and states that the new authority "includes, but is not limited to" the items specified. Thus, the authority is not limited to only those items specified in the statute.

For purposes of determining the availability of appropriations, the 1982 amendment has made the providing of special services to credit unions an authorized agency function. Therefore, without any further definition in the statute, the standard for measuring the propriety of a particular expenditure not specified in the statute is the "necessary expense" test traditionally used in determining purpose availability under 31 U.S.C. § 1301(a). Under this test, an expenditure is permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of that function, and if it is not otherwise prohibited by law. Applying this test in light of the agency's justification in this case, providing an automatic teller machine to the credit union strikes us as a legitimate exercise of the agency's discretion under 12 U.S.C. § 1770.

Accordingly, should the Internal Revenue Service determine that providing an automatic teller machine to the Atlanta Service Center credit union would materially contribute to what is now an authorized agency purpose under 12 U.S.C. § 1770,[2]/ it may provide the machine, either without cost or on a reimbursable basis.

for Milton J. Socolar
Comptroller General
of the United States

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[2]/ It is clear that the Atlanta Director has already made this determination. We phrase our conclusion in this manner in the event that some other level of approval is required within the IRS prior to incurring the obligation.