

Memorandum

To: Mr. Dennis Fox
Program Planning Manager (MIC:92)

Date: March 16, 1998

From: Gary J. Jugum
Assistant Chief Counsel

Subject: Bank ATM's

I am responding to your memorandum of January 23, 1998 concerning the taxation of bank automated teller machines (ATMs) for sales and use tax purposes. You ask for clarification in view of actions taken by the Board for property tax purposes. You state:

“During 1997 the Board took various actions on Property Tax Rule 122.5, ‘Fixtures,’ regarding ATMs for property tax purposes. In February 1997, they voted to classify ATMs as personal property. In June and October 1997, they clarified the status of ATMs classifying them as either fixtures or personal property depending on how the ATMs were structured or installed. At the October 28, 1977 meeting, the Board voted to classify ATMs as personal property if installed as a free-standing or counter-top unit within a building; or, fixtures if the ATM was installed in a structure built primarily for the ATM or installed through the wall of a building designed or extensively modified for the specific purpose of housing an ATM.”

You ask that we clarify how ATMs should be classified under the Sales and Use Tax Law.

Pursuant to Sales and Use Tax Regulation 1521, free-standing or counter-top ATMs are tangible personal property, and tax applies to the gross receipts from a retailer's sale of such ATMs. Contracts to furnish and install such units are not construction contracts. However, ATMs which are built into the wall of a building or other structure are classified as “fixtures” under Regulation 1521. Contracts to furnish and install such units are construction contracts. Tax applies to the sales of such “fixtures” as specified in that regulation.

The application of Regulation 1521 to ATMs reaches a result for sales and use tax purposes which is consistent with the result reached by the Board in its classification of ATMs for property tax law purposes.

This memorandum should be annotated forthwith.

SJ:rz

cc: Sales and Use Tax Attorneys