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Executive Director

December 4, 1998

Sent by Facsimile

Attorney At Law

Re: Whether property leased for use as the Consular Office of Mexico is subject to property taxes

Dear Mr. _____ :

This is in response to your telephone request to the office of the Honorable Johan Klehs on, December 2, 1998, for a legal opinion on the issue of whether property leased by the Consul of Mexico in the City of _____ would be exempt from property taxes. You have provided a copy of the proposed lease agreement between the Mexican Consulate (lessee) and the property owner/lessor, _____, LLC, which is signed by you as its manager and the Consul,

For the reasons set forth below the property is not exempt from property taxes pursuant to Articles 49 and 32 of the Vienna Convention.

Article XIII, section 1 of the California Constitution states that all property is taxable unless otherwise provided by the Constitution or the laws of the United States. Exemption from local taxes for consular officers and employees follows from Articles 49 and 32 of the Vienna Convention on Consular Relations. Article 49 provides, in part:

“1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except...”

* * *

“(b) dues and taxes on private immovable property situated in the territory of the receiving state, subject to the provisions of Article 32.”

* * *

(See Exhibit No. 1: Article 49, "Exemption From Taxation" of Treaty of Vienna Convention on Consular Relations, U.S., Treaties and Other International Agreements (1970) vol. 21, copy enclosed.)

According to our annotated letter on this issue, research disclosed that "dues and taxes on private immovable property", as used in subdivision (b), encompasses local real property taxes. (See Exhibit No. 2: annotated letter to John J. Lynch, No. 435.0050, dated June 8, 1987, copy enclosed.)

Article 32 of the Convention provides:

"1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if under the law of the receiving state, they are payable by the person who contracted with the sending State or with the person acting on its behalf." (emphasis added)

(See Exhibit No. 3: Article 32, "Exemption from taxation of consular premises," copy enclosed.)

According to the United Nation's publication, Multilateral Treaties Deposited with the Secretary General (1998), both the United States and Mexico are parties to the Vienna Convention, although Mexico is a party thereto with reservation. (See Exhibit No. 4: page 70 of said publication, copy enclosed.) The United States government states in the Treaty that it considers the Convention as continuing in force between it and the countries who are parties thereto, except for the provisions to which the reservations are addressed in each case. (See Exhibit No. 5) The reservation by Mexico, however, is not relevant to this matter, and does not preclude the application of Articles 49 and 32 of the Convention. (See Exhibit No. 6: language of Mexico's reservation regarding the Treaty of the Vienna Convention on Consular Relations, p. 73, copy enclosed.)

As Mexico is a party to the Convention, the property leased for use as the consular office would be exempt from local property taxes under article 32, paragraph 1 if paragraph 2 thereof were not applicable. Paragraph 2 of Article 32 is applicable, however, since under California law, for purposes of taxation of leased property, the owner of the fee is deemed to be the owner of the whole estate (*Olhrbach's Inc. v. Los Angeles County* (1961) 190 Cal.App.2d 575). Therefore, since under state law, local property taxes are payable by the person from whom the foreign government leases the property, the exemption provided by Article 32, paragraph 1 is not available.

An additional basis for exemption for property leased to a foreign government for use as a consulate could be a specific provision to that effect in a treaty between the United States and a foreign government. However, I understand from your letter which arrived today with the copy of the lease agreement that the Consul is not making this claim, rather he is asserting that Mexico is not subject to property taxes pursuant to the Vienna Convention.

Absent a specific treaty provision to the contrary, real property leased and used by a foreign government as a consulate is not exempt from local property taxes. And where a lease agreement for real property between a lessor and a foreign government provides that the foreign government is to pay applicable local property taxes, as in this case, such is a matter of contract between the parties. Such private contacts do not operate to change the incidence of the tax.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or entity.

Yours Truly,



Mary Ann Alonzo
Tax Counsel

MAA:jd

<http://property/procednt/genccomp/1998/98018.maa>

Enclosure

cc: Honorable Lawrence E. Stone
Santa Clara Assessor
Ms. Harriet Burt

Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70

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DEPUTY DIRECTOR
PROPERTY TAXES

(916) 445-3237

July 7, 1983

Mr. Richard J. Moore
Alameda County Counsel
1221 Oak Street
Oakland, CA 94612

Attention: Mr. James F. May
Senior Deputy County Counsel

RECEIVED

JUL 11 1983

Division of Assessment Standards
SACRAMENTO

Dear Mr. May:

Exemption of Official Residence
Career Consul General of Argentina
APN 74-1043-25

This is in reply to your letter to Mr. Larry Augusta of May 5, 1983, concerning the exemption from ad valorem property taxation of official residences of career consul generals, based upon the application of the Vienna Convention on Consular Relations.

The facts presented by yourself and Mr. Paul A. Eisler, attorney for Consul General Avalle, are as follows:

1. On February 13, 1981, Consul General Avalle was formally recognized by the State Department as the representative of the Republic of Argentina to his post in San Francisco.
2. On May 8, 1981, a residence located at 133 Sea Bridge Court, Alameda, Alameda County, California, was purchased by "Consul General Oscar Carlos Avalle, a married man as his sole and separate property." The Partnership Grant Deed indicated on its face that it was an official residence. Mrs. Avalle executed a quit-claim deed to the property on this date as well.
3. On June 2, 1981, Mr. May prepared an opinion stating that this residence was not owned by a foreign government and therefore was not entitled to an exemption from ad valorem property taxes.

Copy: Grannit, Price, H. Kay

Circulate: Principals, Schult, Jones, Tech. Assistance present.

7-13-83 VH

July 7, 1983

4. Mr. Albert May, Exemption Supervisor for the Alameda County Assessor, notified Mr. Eisler that the subject property was being assessed under the guidance in the memorandum above, on November 17, 1982.

5. The State Department issued, on January 14, 1983, a circular diplomatic note which requested specific information regarding acquisition, use, sale or other disposition of real property by foreign missions, particularly missions and residences of Chiefs of Mission.

After reviewing all of the information submitted, as well as the 1853 treaty between the United States and the Argentine Confederation, I contacted Ms. McConneaughey, counsel for the Office of Protocol, U. S. Department of State, for additional background information regarding acquisition of official residences by career consuls in this country. Her opinion was that official residences of career consul generals were afforded the same exemption as that given other consulate property, regardless of how title was taken. The most common method of holding title is in the name of the occupying diplomat rather than in the name of the sending State. The rationale for this course of action is that it is quite uncommon for the acquisition of property to be in the form of an outright cash purchase. The usual method is the conventional financing through a domestic lending institution which makes the loan to an individual diplomat rather than to a foreign sovereign state for obvious reasons. The loan payments are then paid by the diplomat using funds provided by his government in the form of a housing allowance to him. She further indicated that the language of Article 32 of the Vienna Convention has consistently been interpreted as providing for a property tax exemption for the residence of the career consul generals. This is borne out by the September 3, 1976, letter from the Office of Protocol provided by Mr. May. (Exhibit 5, letter dated May 5, 1983, from Mr. May to Mr. Augusta.)

Turning to the language of the Convention itself, Article 49 entitled "Exemption from Taxation," provides as follows:

1. Consular officers and consular employees and members of their families forming parts of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

July 7, 1953

(b) dues and taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32.

(f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.

Article 32, referred to above, is entitled "Exemption from taxation of consular premises," and states:

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

By analyzing Article 32 in conjunction with subsections (b) and (f) of Article 49, the intent is to exempt from taxation or payment of other fees, anything affecting the consular premises themselves as well as the residence of the career head of the consular mission. The phrase "any person acting on its behalf" is perhaps less clear than that of "the sending State" in identifying exactly who must hold title as the owner of real property (i.e., consular premises or the residence) but it is doubtful that a career consul general can be construed other than as a person acting on behalf of a sending State.

The Deed of Trust identifies the residence as the "Official Residence" and the owner is listed as "Consul General Oscar Carlos Avalue, a married man as his sole and separate property." This description further supports a determination that such property is "the residence of the career head of consular post" of which he is the person acting on the behalf of the Republic of Argentina in its acquisition and ownership. Granted, if the residence at

July 7, 1963

133 Sea Bridge Court, Alameda, was a second residence and an official residence had been provided elsewhere or if title had been taken in the names of both husband and wife, then the classification of this property would not be as an official residence and would properly be subject to the county assessing it as any other home.

In our opinion the interpretation of Article 32 of the Vienna Convention by Mr. May is a reasonable interpretation. However, we think that the terms of this Article are susceptible to another equally reasonable interpretation, which interpretation is in favor of the exemption. In light of the well established principle that where a treaty admits of two constructions, one restrictive of rights and the other favorable to them, the latter is to be preferred, which principle in turn reflects the basic principles of friendship and amity between nations, we think that the interpretation favoring the exemption should be made in this case. (Geofrey v. Riggs, 133 U.S. 258 [33 L.Ed. 642, 10S.Ct. 295]; Hauenstein v. Lynham, 109 U.S. 483 [25 L.Ed. 628]; Re Anderson, 166 Iowa 617 [147 N.W. 1098]; In Re Zaleski's Estate, 292 N.Y. 332 [55 N.E. 2d 184]; Universal Adjustment Corp. v. Midland Bank, 281 Mass. 303 [184 N.E. 152].

Accordingly, it is our opinion that under the present circumstances the residence of Consul General Avelle is an official residence and as such, is exempted from ad valorem property taxes under the provisions of Articles 32 and 49 of the Vienna Convention on Consular Relations.

Very truly yours,

Gilbert T. Gembacz
Tax Counsel

GTG:jlh

cc: Mr. Donald L. Kroger
Alameda County Assessor

Mr. Paul A. Eisler

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section



STATE BOARD OF EQUALIZATION

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Executive Secretary

June 8, 1987

Mr. John J. Lynch
Los Angeles County Assessor
500 West Temple Street, Room 320
Los Angeles, CA 90012

Attention: Mr. Irwin Protus
Chief, Ownership Services

Dear Mr. Lynch:

This is in response to Mr. Protus's recent inquiry as to how we view for assessment purposes property leased to foreign governments and used as consulates.

As you know, with respect to local property taxes, article XIII, section 1 of the California Constitution states that unless otherwise provided by this Constitution or the laws of the United States, all property is taxable. A frequent basis for exemption from local or municipal taxes for consular officers and employees, however, follows from article 49 of the Vienna Convention on Consular Relations which provides, in part:

"1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national regional or municipal, except....

* * *

"(b) dues and taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32.

* * *"

Research discloses that "dues and taxes on private immovable property", as used in subdivision (b), is designed and intended to encompass local real property taxes. See Lee, Vienna Convention on Consular Relations, pps. 140 and 150 (1966).

[Handwritten signature]

Article 32 of the Convention provides:

"1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

"2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf."

Thus, inquiry would have to be made to determine whether the foreign government involved, as well as the United States, is a party to said Convention.¹ If it is not, the Convention is not applicable. If the foreign government is a party to said Convention, the property would be exempt from local property taxes under Article 32, paragraph 1 if paragraph 2 thereof were not applicable.

Article 32, paragraph 2 is applicable, however, since in California, for purposes of taxation of leased property, the owner of the fee is deemed to be the owner of the whole estate (Graciosa Oil Co. v. Santa Barbara County, 155 Cal.140; Olhrbach's, Inc. v. Los Angeles County, 190 Cal.App.2d 575). Thus, because under the law of California, local property taxes are payable by the person from whom the foreign government leases the property, the exemption provided by Article 32, paragraph 1 is not available. Such is the subject of and is further explained in a December 18, 1970, letter from the California Attorney General to Mr. John R. Stevenson, Legal Advisor, Department of State, copy enclosed.

An additional basis for exemption for property leased to a foreign government and used as a consulate could be a specific provision to that effect in a treaty between the United States and a foreign government. If such is claimed to be the case, the foreign government should be requested to provide a copy of

¹See, for example, United States Department of State's Publication 9433, Treaties in Force, A List of Treaties and Other International Agreements of the United States in Force on January 1, 1986.

Mr. John J. Lynch

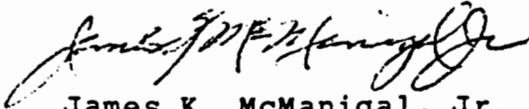
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June 8, 1987

the treaty or a citation to and source where the treaty or copy thereof may be obtained and/or reviewed.

Absent a specific treaty provision to the contrary, real property leased and used by a foreign government as a consulate is not exempt from local property taxes. And where a lease agreement for real property between a lessor and a foreign government provides that the foreign government is to pay applicable local property taxes, such is a matter of contract between the parties and results in the foreign government being obligated to do so.

Very truly yours,



James K. McManigal, Jr.
Tax Counsel

JKM/rz

Enclosure