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May 7, 1982

No. 82/69

TO COUNTY ASSESSORS:

TAXABLE STATUS OF PERSONAL PROPERTY OWNED BY INSURANCE COMPANIES

Section 28 of Article XIII of the California Constitution imposes a gross premiums tax on insurance companies. This tax is in lieu of all other state or local taxes except for taxes on real property and other specified taxes. The long-established rule has been that the in-lieu provision exempts from property taxation all personal property owned by an insurance company, regardless of whether the property is actually used for the transaction of insurance company business.

For the 1973 lien date, the San Francisco County Assessor's Office assessed personal property to which title was held by Massachusetts Mututal Life Insurance Company but which was leased to California Hyatt Corporation. The personal property was hotel equipment used in operating the Hyatt Hotel on Union Square.

The insurance company paid the taxes under protest and took the matter to court. The trial court found in favor of the assessor and the Court of Appeal (First Appellate District, Division One) affirmed the trial court's finding. The Court of Appeal stated:

> "Since the 'in lieu' exemption is granted in return for imposition of a tax on gross, rather than net, receipts, and is functionally related to the tax which insurers must pay...in our view it would be inappropriate to allow a tax exemption for property owned by an insurer but not used to produce taxable gross premiums . . . the insurer's 'in lieu' exemption was obviously meant to lighten the otherwise heavy burden of the 'gross premiums' tax...an exemption from all other taxes, including taxes on what might be major assets used in non-insurance business activities, seems rationally no part of the constitutional tax system."

The decision is being appealed to the California Supreme Court. If the appeal is accepted, it may be several months before a final decision is reached. In the meantime, it would be prudent for assessors to obtain appropriate information relating to personal property owned by insurers but not used in the conduct of insurance company business. Appropriate escape assessments for the 1978 lien date should be enrolled prior to

June 30, 1982 to prevent loss of assessments due to the statute of limitations. The assessments should be made pursuant to Section 531 of the Revenue and Taxation Code, without Section 506 interest.

We will inform you when there are further developments relating to this case.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

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AL-10-1326A