STATE OF CALIFORNIA

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#76/12

January 23, 1976

TO COUNTY ASSESSORS:

EXEMPTION OF FARMERS HOME ADMINISTRATION PROPERTIES

The Farmers Home Administration (FmHA) is an agency of the United States Department of Agriculture that lends money to qualified persons who wish to acquire certain types of rural property. Upon default, title to property that secures such a loan may be transferred to the United States of America by either a "deed in lieu of foreclosure" procedure in which the trustor, using a warranty deed, conveys the property directly to the United States, or by a regular trustee's sale in which a trustee's deed is used. In either case, taxable real and/or personal property becomes exempt from local property taxes on the date that title passes to the United States.

The Supremacy Clause of the U. S. Constitution controls this subject; property owned by the United States may not be taxed unless so authorized by an act of the U. S. Congress. (McCulloch v. Maryland, 4 Wheat. 316, 4 L.Ed. 579 (1819). The Housing Act of 1949 does not authorize state or local taxation of the covered property; however, the Act, specifically 42 U.S.C. 1413(c), grants permissive authority to the FmHA administrator to make in-lieu payments up to the amount of the actual tax on foreclosed properties. In the past he has chosen to do so, but it now appears that this policy will be reversed. The validity and interpretation of a predecessor statute has been tested and upheld by the U. S. Circuit Court of Appeals, U.S. v. City of Milwaukee, 140 F. 2d 286 (7th circuit, 1944).

If a property acquired under the authority of the 1949 Act becomes tax delinquent and no record of ownership transfer to FmHA has occurred, then normal delinquency procedures should be taken. At this point, FmHA is authorized to shore up the buyer by paying the taxes at the discretion of the administrator; local authorities should accept such payment and draw no further conclusions concerning exempt status. If, however, FmHA chooses to exercise the power of sale, remove the defaulting buyer, and take record title in the name of the United States, collection of all taxes then due and payable can be accomplished in one of two ways. First, FmHA may choose to pay all taxes in full. Secondly, if full payment is not offered by FmHA, California Revenue and Taxation Code, Section 4986(b), should be applied in order to collect all or any part of the unpaid balance from the prior owner.

A copy of FmHA's January 8, 1976 payment policy is attached. Note that FmHA intends to satisfy all taxes due at the time ownership is recorded in the name of the United States.

This letter has no bearing on established or future taxable possessory interests.

Sincerely,

Jack F. Eisenlauer

Jack F. Eisenlauer, Chief
Assessment Standards Division

JFE:ebv
Enclosure