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 No. 77/110

August 15, 1977

TO COUNTY ASSESSORS:

UNITED STATES SUPREME COURT UPHOLDS CALIFORNIA STATUTES AUTHORIZING
 COUNTIES TO IMPOSE AN ANNUAL PROPERTY TAX ON POSSESSORY INTERESTS
 ON LAND OWNED BY THE FEDERAL GOVERNMENT

On January 25, 1977 the United States Supreme Court rendered a decision in United States; et al v. County of Fresno, 429 U.S. 452, 50 L. Ed. 2d 683, 97 S. Ct. 699, affirming the right of a county to impose an annual property tax on possessory interests in employee housing located in National Forests and supplied to employees by the United States Forest Service as part of their compensation. The court pointed out that the private beneficial use resulting from the occupancy of the housing by the employees provides a basis for taxation and that such tax is not barred by the supremacy clause as a state tax on the federal government or federal property.

In our opinion this decision also supports the taxation of military housing located on or off base. However, there are more problems with applying this concept to military housing than to Forest Service property. First of all, the property usually must have been acquired by the federal government after 1939. In order to assert state taxation over military bases, the power of taxation must be reserved to the state and this was not done in California until 1939. Unless such reservation is made at the time of ceding the land to the United States, the jurisdiction of the federal government is exclusive and a tax cannot be asserted against any possessory interest without express congressional authorization. (U.S. Constitution, Article I and VIII, Clause 17.) An example of such congressional authorization is found in 12 USCA Section 1748 et seq.

An even greater problem may exist in the reasons the court in the Fresno case found the possessory interest to be taxable. First, the exclusive use of the property must carry with it the degree of exclusiveness necessary to give the occupier or user something more than a right in common with others. This makes it questionable whether the typical military barracks can come within the definition of a taxable possessory interest. In addition, Justice Stevens in his dissent in the Fresno case, asserted that the taxation of military barracks would be considered patently invalid.

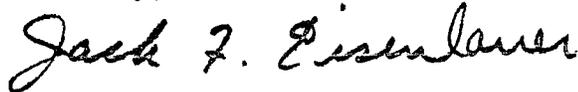
The U.S. Court in the Fresno case held that the tax did not violate the supremacy clause. The rule to be derived from the court's decision is that an economic burden imposed on the federal government as the result

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of a state tax imposed on those who deal with the government does not render the tax unconstitutional so long as the tax is imposed equally on other similarly situated constituents of the state.

This language can be taken to approve the taxation of possessory interests in military housing located off base. As to the private military housing located on base, we think it is taxable because of its similarity to the Forest Service situation. In addition, DeLuz Homes v. County of San Diego, 45 Cal. 2d 546, approved the taxation of one type of housing (Wherry Act) located on a military base. However, it is possible that the court could find more than an economic burden in this situation and if the tax seems to interfere with other federal functions, such as secrecy on a base, it may be held to be invalid. In gathering the information necessary for the taxation of these interests, it probably will be necessary to establish communication with the base commander and to elicit the cooperation of other base personnel. Please let us know the results of your efforts in this regard.

Sincerely,



Jack F. Eisenlauer, Chief
Assessment Standards Division

JFE:cmm