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No. 91/72

October 16, 1991

TO COUNTY ASSESSORS:

RESOLUTION TRUST CORPORATION,
PROPERTY TAX POLICY

A copy of a policy statement published in the Federal Register on June 20, 1991 setting forth the policy statement of the Resolution Trust Corporation regarding payment of state and local property taxes is enclosed for your information.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:sk
Enclosure

RESOLUTION TRUST CORPORATION

Statement of Policy Regarding the Payment of State and Local Property Taxes

AGENCY: Resolution Trust Corporation

ACTION: Policy Statement

SUMMARY: After considering (1) the powers granted to it under the Constitution and Federal law, (2) its obligation to maximize recoveries from the disposition of financial institutions and their assets, and (3) the potential effect of its actions upon state and municipal tax schemes, the Resolution Trust Corporation (the "Corporation") has issued the following policy statement to provide guidance as to how it will administer its statutory responsibilities in this area.

DATES: This policy statement is effective June 4, 1991.

FOR FURTHER INFORMATION CONTACT: David R. Wiley, Senior Asset Specialist, RTC, (202) 416-7136, Robert I. Dodge, Assistant Director for Real Estate Management, RTC, (202) 417-7475, David N. Wall, Senior Counsel, Legal Division, (202) 736-0115, or Camille E. Evans, Senior Attorney, Legal Division, (202) 416-7028.

SUPPLEMENTARY INFORMATION:

A. Scope and Applicability

This policy statement generally applies to the Corporation when it is liquidating assets in its corporate and receivership capacities. The policy statement generally does not apply when the Corporation is acting (1) as conservator; (2) with respect to special asset pools covered by assistance transactions where the Corporation does not retain ownership or (3) with respect to a subsidiary of a receivership.

B. Taxes

Payment of Taxes

The Corporation will pay its proper tax obligations when they come due. Furthermore, the Corporation will pay claims for delinquencies as promptly as is consistent with sound business practice and the orderly administration of the institution's affairs. The Corporation may decline to pay property tax claims in situations where abandonment of its interest in the property is appropriate.

Owned Real Property

Owned real property of the Corporation is subject to state and local real property taxes, if those taxes are assessed according to the property's value. The Corporation is immune from real property taxes assessed on other bases.

Secured Interests in Real Property

Real property which is subject to a security or lien interest is subject to ad valorem taxes and taxes assessed on other bases.

Personal Property

The Corporation is immune from all forms of personal property taxation on owned personal property.

Other Related Taxes

The Corporation is immune from taxes other than ad valorem real property taxes. Taxes on sales, transfers, or other dispositions of Corporation property are generally in the nature of excise taxes which are levied on the transaction and not on the property (although the calculation of the amount of tax may be based on the property's sale price); the Corporation is immune from such taxes.

C. Interest and Penalties

Interest

The Corporation will pay claims for interest on delinquent taxes properly owed at the rate provided under state law. The Corporation will generally follow a state's own characterization as to whether a delinquency charge constitutes a penalty, but will reserve its right to challenge any charge (or portion thereof) called interest that is demonstrably a penalty.

Penalties

The Corporation is not liable for any amounts in the nature of fines or penalties. The Corporation will not pay, nor recognize liens for, such amounts. The Corporation will not pay attorneys' fees or other similar costs that may be imposed under state law in connection with the resolution of tax disputes.

D. Tax Liens

General Principles

If any property taxes (including interest) or Corporation owned property are secured by a valid lien (in effect before the property becomes owned by the Corporation), the Corporation will pay those claims. With respect to property not owned by the Corporation, but in which the Corporation has a lien interest, and property taxes (including interest) secured by a valid lien with priority over the Corporation's lien interest will be paid. However, if abandonment of its interest in the property is appropriate, the Corporation may elect not to pay such claims.

Foreclosure

No property of the Corporation is subject to levy, attachment, garnishment, foreclosure, or sales without the Corporation's consent. Furthermore, a lien for taxes and interest may attach, but the Corporation will not permit a lien or security interest held by it to be eliminated by foreclosure without the Corporation's consent.

Sales of Tax Liens

In cases in which a tax lien has been sold to a private party under state law, if (1) the tax lien has priority over the Corporation's lien, and (2) the Corporation desires to eliminate the tax purchaser's interest, the Corporation will pay the amount required by state law to satisfy such interest (other than any fees or penalties specifically imposed to redeem such interest). If the tax lien does not have priority, the Corporation will take whatever action is necessary to ensure that its interest is satisfied first.

E. Challenges to Assessments

The Corporation is only liable for state and local taxes which are based on the value of the property during the period for which the tax is imposed, notwithstanding the failure of any person, including prior record owners, to challenge an assessment under the procedures available under state law. In the exercise of its business judgment, the Corporation may challenge assessments which do not conform with the statutory provisions, and during the challenge will generally pay tax claims based on the assessment level deemed appropriate. The Corporation will generally limit challenges to the current and immediately preceding taxable years and to the pursuit of previously filed tax protests. However, the Corporation may, in the exercise of its business judgment, challenge any prior taxes and assessments provided that (1) the Corporation's records (including appraisals, offers or bids received for the purchase of the property, etc.) indicate that the assessed value is clearly excessive, (2) a successful challenge will result in a substantial savings to the Corporation, (3) the challenge will not unduly [sic] the sale of the property, and (4) there is a reasonable likelihood of a successful challenge.

F. Dispute and Notification Procedures

Disputes

The Corporation will attempt to advise taxing authorities of its statutory rights and resolve all tax disputes as taxes become due. In order to dispose of property subject to disputed tax claims, the Corporation may, as business judgment dictates, enter into agreements with taxing authorities, title companies, or prospective purchasers which provide for the disputed amounts to be held in escrow. When the closing of a transaction is threatened because of disputed tax amounts, the Corporation may, as business judgment dictates, elect to pay the disputed tax claims under protest. In all such cases the Corporation shall reserve its legal rights to a refund of such disputed amounts and may pursue, through litigation if necessary, a reimbursement of the disputed amounts and any attendant costs, and interest.

Notification

The Corporation will attempt to notify state and local taxing authorities of the existence of an interest in property which the Corporation believes to be within the authority's jurisdiction.

G. Subsidiaries and Conservatorships

For the present, the Corporation has determined not to assert Federal tax immunity on behalf of state-chartered corporations, the stock of which is wholly or partially owned by the Corporation acting in any of its capacities. Additionally, for the present, the Corporation will not assert Federal tax immunity for conservatorships or special asset pools covered by assistance transactions where the Corporation does not retain ownership. However, a conservatorship of a newly-formed institution is not liable for obligations not specifically assumed from a receiver (as in a "pass-through receivership"). In this situation, the de novo institution may not be liable for any penalties assessed prior to the "pass-through receivership," but would be liable for any penalties assessed after the establishment of the de novo institution. Finally, when acting in these capacities, current and prior assessments may be challenged to the extent permitted by state law.

By order of the Board of Directors.

Dated at Washington, DC, this 4th day of June 1991.

William J. Tricarico,

Assistance Executive Secretary.

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