

August 4, 1971

Mr. Philip E. Watson
Los Angeles County Assessor
500 W. Temple Street
Los Angeles, California 90012

Attention: Mr. Alan Altman

Dear Mr. Altman:

I discussed the matter of the claim of the Austrian Government property tax exemption on property it owns in Los Angeles County and uses as a consulate with Mr. Ken Briggs of your office. He stated that the Republic of Austria acquired property for use as a consulate after the lien date but prior to the start of the fiscal year in 1971. The question he posed was how taxes should be handled for the tax years 1970-71 and 1971-72. I believe we are agreed that the situation is controlled by the Opinion of the Attorney General, No. 69-242. (52 Ops.Cal.Atty.Gen. 264.) In this opinion the Attorney General cites Republic of Argentina v. City of New York, (1969) 25 N.Y. 2d 252, 250 N.E.2d 698, in which the Court of Appeals of New York held under principles of international law and comity the states and political subdivisions thereof were required to grant tax immunity to property owned by foreign governments and used for public purposes. Thus, the question in the present case is not whether the consulate should be exempt but how the exemption should operate where the government did not acquire the property until after the lien date.

We assume that with respect to 1970-71 taxes that the taxes were paid and the Austrian Government is seeking a refund for the proportionate payment is made into escrow. Its payment, however, did not represent a payment of taxes which would entitle it to a refund but merely a reimbursement to the owner of the property who became responsible for the taxes on the previous lien date and who passed on a proportionate part of them through the contract of sale. By way of comparison the Court of Appeals of New York in the Argentina case disallowed a claim for refund of past taxes even though it approved the exemption as to current and future taxes.

As respects the 1971-72 taxes, we believe the Austrian demand for exemption should be granted. While it is true that exemptions under California law must be met as of the lien date preceding the fiscal year to which the taxes relate, the present question does not involve principles of California law but of constitutional and international law. California is not in a position of refusing an exemption required by federal law on the technical ground that the requirements therefore were not met as of the lien date, but rather these technical grounds must give way to constitutional requirements. Thus, in Slick Airways v. County of Los Angeles 140 Cal.App.2d 311, the status of an airplane was determined by its use in the interstate commerce during the fiscal year even though this use had not commenced as of the lien date.

A second compelling reason is the fact that the State of California would cause an embarrassing international situation should it insist on foreclosure of its tax liens against property of a foreign nation. This point was also discussed in the New York case.

Since the assessment of the property is included in the roll which the assessor has turned over to the auditor, it will be necessary to treat the Austrian Government's demand as a claim for cancellation of taxes. I believe that on the basis of the foregoing precedents, the assessor is justified in recommending that the taxes be cancelled. Furthermore, by use of the procedures of section 4986, the county's legal adviser will have the opportunity to review these authorities and give the benefit of his view.

Very truly yours,

John H. Knowles
Tax Counsel

JHK:el

bc: Mr. Ronald B. Welch
Mr. Neilon M. Jennings
Mr. Abram F. Goldman
Mr. Jack F. Eisenlauer
Mesars. Delaney, Hartigan & Bertane