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BURTON W OLIVER
Executive Director
No. 94/27

TO COUNTY ASSESSORS:

APPEAL RIGHTS OF THE FDIC

During the 1980's, many savings and loan associations (S&L's) loaned money on properties on the basis of inflated appraisals and/or unrealistic sales prices. The S&L's acquired the properties when the borrowers defaulted on the loans, and in turn the S&L's failed and their assets, including the defaulted properties, were acquired by the Federal Deposit Insurance Corporation (FDIC).

As a federal agency, property of the FDIC could be exempt from state and local property taxation. Congress has chosen to allow states and local agencies to continue to tax real property owned by the FDIC, but such taxation is subject to special assessment appeal privileges that supersede state laws on assessment appeals. The Federal Deposit Insurance Act of August 9, 1989 (Section 219 of Public Law 101-73, 103 stats 262) was enacted by Congress to guide the FDIC in dealing with the acquisition of these savings and loans and their assets. Section 15 of that Act discusses the property tax issue for property acquired by the FDIC. It reads in part:

"(1) The Corporation including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed." (Emphasis added).

Congress recognized that the FDIC acquired or will acquire real estate throughout the country which had previously traded in the marketplace at sometimes grossly inflated prices. In an attempt to strike a balance between exempting the FDIC from local real estate taxes and paying property tax liabilities on excessive assessed values, Congress gave the FDIC special appeals rights. These rights were confirmed in a recent federal appellate court case. In F.D.I.C. v. Lowery (1993), 12 F. 3d 995 (10th Cir.), the reporter states the co-holding of the case in headnote 2:

"Authority of Federal Deposit Insurance Corporation (FDIC) to obtain reassessment of its property for tax purposes extended to valuations made in years preceding its acquisition of title and included valuations underlying tax liens which had already attached. Federal Deposit Insurance Act, section 2[15](b)(1), 12 U.S.C.A., section 1825 (b)(1)."


Although the United States 10th Circuit Court of Appeals covers a different geographical set of states (California is in the 9th circuit), any attempt to completely reverse this ruling would require an appeal to the United States Supreme Court.

There is some likelihood that the United States Supreme Court could conclude that Congress has exceeded its authority by overruling state procedural controls. However, Congress does have clear authority to completely exempt parcels once the FDIC has acquired title. Therefore, one could conclude that Congress traded the exemption right of the FDIC for the right to insure that the FDIC is paying taxes on a proper valuation.

Therefore, it is our opinion that the FDIC does have the right to challenge the valuation of property held by them and by their immediate predecessor of title, despite the fact that the California assessment appeal period may have expired. For any real property owned by the FDIC in which the property tax liability is outstanding, the FDIC has the right to appeal the assessment on which that liability is based.

If you have any questions or comments on this matter, please call our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

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