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SENATE LABOR & COMMERCE COMMITTEE
BILL FILE

BILL NUMBER: SB 70
BILL TITLE: TAXATION BY MUNIS

SPONSOR: PEARCE

RECEIVED: 2/15

WRITTEN REQUEST TO SCHEDULE: DATE 2/14 FROM TALLY
SECTIONAL ANALYSIS RECEIVED: DATE _____ FROM _____
FISCAL NOTE REQUESTED: DATE _____ FROM _____
FISCAL NOTE RECEIVED: DATE _____ FROM _____
FISCAL NOTE CS REQUESTED: DATE _____ FROM _____
FISCAL NOTE CS RECEIVED: DATE _____ FROM _____
FISCAL NOTE CS REQUESTED: DATE _____ FROM _____
FISCAL NOTE CS RECEIVED: DATE _____ FROM _____
FISCAL NOTE CS REQUESTED: DATE _____ FROM _____
FISCAL NOTE CS RECEIVED: DATE _____ FROM _____

FIVE DAY NOTICE GIVEN:
COMMITTEES OF REFERRAL: FIRST: CRA SECOND: L&C THIRD: FIN

DATE	COMMITTEE ACTION
<u>3/4</u>	<u>HEARD & ADOPTED & PASSED OUT @SSB 70 (CRA)</u>
_____	_____
_____	_____
_____	_____

HEARING NOTIFICATION LIST

- | | |
|------------|-----------|
| 1. SPONSOR | 6. _____ |
| 2. AGENCY | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSSB 70 (C&RA)

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: An Act Relating to Taxation BRU: AK Industrial Dev. & Export Authority
 by Municipalities _____ Component: _____
 Sponsor: Pearce
 Requestor: Pearce COMPONENT SERIAL NO.

1	2	3	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) Payment of taxes would approximate \$388.0 in FY 93. Foreclosure reserve account funds would be utilized which are not an operating or capital cost. The attached illustrates amounts payable by political subdivision using an estimated Mill rate. Amounts payable will vary with changes in the Mill rate and assessed valuation of properties included.

Prepared By: Bertram L. Wagon, Executive Director Phone: (907) 561-8050
 Division: AK Industrial Dev. & Export Authority Date: February 8, 1991
 Approved by Commissioner: Glenn A. Olds
 Agency: Department of Commerce & Economic Development Date: February 8, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ANALYSIS - CSSB 70 (C&RA)

All costs associated with this legislation will be paid from AIDEA foreclosure reserves and do not require legislative appropriation.

Alaska Industrial Development and Export Authority:

The tax on \$27 million of defaulted loans at an average of 15 mills would equate to approximately \$420,000. Over the years, property acquired through foreclosures should decrease while the value of property will increase. The first payment to local governments would be January 1, 1992 which would occur in FY 93.

AS OF DECEMBER 31, 1990

<u>LOCAL GOVERNMENT</u>	<u>NUMBER OF PROPERTIES</u>	<u>ASSESSED VALUE</u>	<u>AIDEA PAYMENT (Excluding Bank Owned Portion)</u>
Municipality of Anchorage	41	\$15,828,742	\$257,080
Fairbanks North Star Borough	9	4,375,387	53,695
Kenai Peninsula Borough	13	4,442,086	42,840
Matanuska-Susitna Borough	10	2,269,530	27,968
City & Borough of Juneau	5	850,185	10,379
City & Borough of Sitka	1	501,480	6,174
City of Valdez	1	858,270	12,810
North Slope Borough	<u>1</u>	<u>507,045</u>	<u>9,314</u>
Total	<u>81</u>	<u>\$29,632,725</u>	<u>\$420,260</u>

FISCAL NOTE

No. 2

Version: C55B 70

(S) Publish Date: 2/15/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: An Act Relating to Taxation BRU: Investments
 by Municipalities _____ Component: _____
 Sponsor: Pearce
 Requestor: Pearce COMPONENT SERIAL NO.

	3	8	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)
SEE ATTACHED

Prepared By: Martin Richard, Director Phone: 465-2510
 Division: Investments Date: February 8, 1991
 Approved by Commissioner: Glenn A. Olds *Ballman Spec Ass II*
 Agency: Department of Commerce & Economic Development Date: February 8, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ANALYSIS - CSSB 70 (C&RA)

Division of Investments:

All costs associated with this legislation will be paid from Investments' foreclosure reserves and do not require legislative appropriation.

The Division of Investments has reviewed the fund-owned repossessed property and estimated the property tax that would have been paid to municipalities in 1990 if the state were not exempt from property taxes.

Boroughs currently require the state to pay taxes the year that the property is repossessed. After notifying the boroughs that the property is owned by the state, future years' taxes are exempt.

The following breakdown by taxing jurisdiction has been adjusted for these amounts:

<u>BOROUGH</u>	<u>ESTIMATED 1991 R.E. TAXES</u>	<u>TAXES DUE UNDER CURRENT PROCEDURES</u>	<u>PROPOSED INCREASE</u>
Mat-Su	\$ 818.40		\$ 818.40
Anchorage	12,876.57	\$2,908.72	9,967.85
Juneau	4,744.96		4,744.96
Fairbanks	2,003.63	1,619.56	384.07
Ketchikan	<u>238.25</u>	<u> </u>	<u>238.25</u>
	<u>\$20,681.81</u>	<u>\$4,528.28</u>	<u>\$16,153.53</u>

It is anticipated that the 1992 tax amounts would not be materially different from the 1991 taxes.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS SB 70

Revision Date: February 20, 1991
Title: An Act Relating to taxation of certain state property by municipalities
Sponsor: Pearce
Requestor: Senate C & RA

Department Affected: Revenue
BRU: Treasury /PERS & TRS
Component: _____

Component Serial No.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	219.3	375.0	350.0	325.0	300.0	275.0
TOTAL OPERATING	219.3	375.0	350.0	325.0	300.0	275.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	219.3	375.0	350.0	325.0	300.0	275.0
TOTAL	219.3	375.0	350.0	325.0	300.0	275.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS:The tax cost on the December 31, 1990 balance of \$25.8 million of default on loans owned by the retirement funds using an average millage rate of 17 would equate to approximately \$438,600. The effective date of January 1, 1992 would create a tax bill of approximately 219.3 for FY92. Over the years, property acquired thru foreclosure should decrease because of the improved state economy and reduction in real properties owned.

Prepared by: Brian C. Andrews *[Signature]*

Phone: 465-2350

Division: Treasury

Date: February 20, 1991

Approved by Commissioner: *[Signature]*

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

No. 1
 Bill Version: SB 70
 (S) Publish Date: 2/15/91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Community & Regional Affairs
 Title: "An Act relating to taxation..of certain property of governmental...." BRU: _____
 Sponsor: Senator Pearce Component: _____
 Requestor: Senate C&RA Committee COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Changes in SSB70 (C&RA) have no fiscal impact. This fiscal note is appropriate.

2/14/91 date [Signature] Comte Aide (initial)

Prepared By: Remond Henderson, Director Phone: 465-4708
 Division: Administrative Services Date: 2/13/91

Approved by Commissioner: _____
 Agency: Community & Regional Affairs Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS SB 70 C&RA

Revision Date: _____ Department Affected: Community & Regional Affairs
 Title: "An Act relating to taxation..of certain property of governmental...." BRU: _____
 Sponsor: Senator Pearce Component: _____
 Requestor: Senate C&RA Committee COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Administrative Services Date: 2/13/91
 Approved by Commissioner: _____
 Agency: Community & Regional Affairs Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 70

Revision Date: _____ Department Affected: Community & Regional Affairs
Title: "An Act relating to taxation..of
certain property of governmental.." BRU: _____
Component: _____

Sponsor: Senator Pearce

Requestor: Senate C&KA Committee

COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

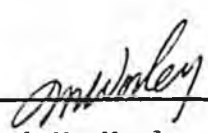
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)



Prepared By: Michael W. Worley, State Assessor Phone: 465-4878

Division: Municipal & Regional Assistance Date: 2/6/91

Approved by Commissioner: Remond Henderson for Edgar Blatchford

Agency: Community & Regional Affairs Date: 2/6/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska State Legislature

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Anchorage, Alaska 99503
(907) 561-2038

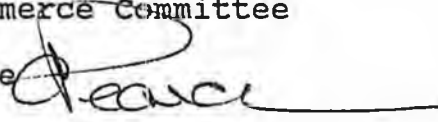


During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4993

Senator Drue Pearce
District G

MEMORANDUM

TO: Senate Labor & Commerce Committee

FROM: Senator Drue Pearce 

DATE: February 20, 1991

RE: CSSB 70 (C&RA), Taxation by municipalities of certain property of governmental entities

CSSB 70 (C&RA) would allow taxation of real property acquired by state and federal agencies through foreclosure or deed in lieu of foreclosure and retained for investment purposes.

The legislation was requested by the Alaska Municipal League because millions of dollars of assessed value are being removed from assessment rolls across the state by certain governmental agencies which have foreclosed on property in which they have a security interest. Some state agencies, like Alaska Industrial Development and Export Authority (AIDEA), the Public Employees Retirement System (PERS) and the Teachers Retirements System (TRS), have been exempted from taxation while others like Alaska Housing Finance Corporation (AHFC) pay local property taxes. Inequities are also created because exempt properties bear no tax burden but receive the same services they did while in private ownership. CSSB 70 (C&RA) will correct these inequities and will give municipalities the revenue to which they are entitled for the services they supply.

CSSB 70 (C&RA) extends to federal properties similarly held and not otherwise exempt from taxation by the provisions of federal law. Farmers Home Mortgage Association (FHMA) would pay taxes on their deed in lieu of foreclosed property if this legislation was passed.

This legislation is supported by the Municipality of Anchorage and the Alaska Association of Assessing Officers.

DP:tej

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 19, 1991

SUBJECT: Municipal Taxation of Property of Governmental Entities
(CSSB 70(CRA))

TO: Senator Drue Pearce

FROM: Tamara Brandt Cook
Director *TBC*

Here is the sectional summary you requested for CSSB 70 (CRA).

Section 1. Modifies the current tax exemption applicable to the Teachers' Retirement Fund to recognize the power of a municipality to impose taxes under section 2 of the bill.

Sec. 2. Removes the exemption from municipal taxation for property of a state entity acquired through foreclosure or deed in lieu of foreclosure and retained as an investment. Removes the exemption for property of another municipality if the property is located in the taxing municipality, except that a borough is prohibited from taxing property of a city located in the borough. Provides that property of an entity of the United States is exempt from municipal taxation only to the extent required by federal law.

Sec. 3. Foreclosure procedures do not apply to property of governmental entities that is taxable under the first section of the bill. A municipality may bring an action in superior court to compel payment of the taxes.

Sec. 4. Modifies the current tax exemption applicable to the Public Employee's Retirement System to recognize the power of a municipality to impose taxes under section 2 of the bill.

Sec. 5. Modifies the current tax exemption provision of the statutes dealing with the Alaska Industrial Development and Export Authority to recognize the power of a municipality to impose taxes on some property under section 2 of the bill. Although other exemption statutes are not specifically modified in the bill, the taxing authority granted to municipalities under section 2 of the bill will have priority over those

Senator Drue Pearce
February 19, 1991
Page 2

statutes. For example, property of the Alaska Permanent Fund Corporation that is taxable under section 2 will be taxable despite the general exemption for the corporation contained in AS 37.13.180.

Sec. 6. The bill takes effect January 1, 1992 to coincide with the beginning of the tax year.

TBC:gc/lrb
91-049.lmb

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 6, 1991

SUBJECT: Municipal Taxation of Property of Governmental Entities
(SB 70)

TO: Senator Drue Pearce

FROM: Tamara Brandt Cook
Director TBC

Here is the sectional summary you requested for SB 70.

Sec. 1. Removes the exemption from municipal taxation for property of a state entity acquired through foreclosure or deed in lieu of foreclosure and retained as an investment. This provision does not apply to property of the Teachers' Retirement Fund or the Public Employees' Retirement System. Provides that property of an entity of the United States is exempt from municipal taxation only to the extent required by federal law.

Sec. 2. Foreclosure procedures do not apply to property of governmental entities that is taxable under the first section of the bill. A municipality may bring an action in superior court to compel payment of the taxes.

Sec. 3. Modifies the current tax exemption provision of the statutes dealing with the Alaska Industrial Development and Export Authority to recognize the power of a municipality to impose taxes on some property under the first section of the bill. Although other exemption statutes are not specifically modified in the bill, the taxing authority granted to municipalities under the first section of the bill will have priority over those statutes. For example, property of the Alaska Permanent Fund Corporation that is taxable under section 1 will be taxable despite the general exemption for the corporation contained in AS 37.13.180.

Sec. 4. The bill takes effect January 1, 1992 to coincide with the beginning of the tax year.

TBC:gc
91-058.glc

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

February 19, 1991

POSITION PAPER

RE: CS Senate Bill 70 (C&RA)

SPONSOR: Senator Pearce

DEPARTMENTAL POSITION: Support

Program Effects

Senate Bill 70 would provide for certain federal, state, and municipal properties to become taxable by municipal governments as follows:

1. Federal Property

At the present time Farm Home Administration properties (and possibly other federal properties) are taxable by local governments under federal law. The federal government argues, however, that Alaska's statutes preclude municipalities from levying against these taxable federal properties. In Section 2 of the bill, AS 29.45.030 (a)(8) is "housekeeping" language necessary to clear up that problem.

2. State Property

Sections 1, 2, 4, and 5 of the bill provide language which would make state-held investment property taxable if the property were acquired through foreclosure or deed in lieu of foreclosure. Known properties under this category include certain properties held by the Teacher's Retirement System (TRS), the Public Employees Retirement System (PERS), and the Alaska Industrial Development Authority (AIDA).

3. Municipal Property

In Section 2 of the bill, AS 29.45 (a)(C) provides for property which is owned by one municipality, but is located in another, to become taxable. The amendment precludes taxation by a borough of property which is located within its jurisdiction and is owned by a city within the borough. Within boroughs, however, property belonging to one city and located in another, would become taxable by the city within which it is located.

- P.O. BOX B
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PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

Taking Fairbanks North Star Borough as an example of this:

If the City of North Pole owned property which were located in the City of Fairbanks, the Fairbanks North Star Borough would not be allowed to levy a tax against the property because the property would be "located within a borough and owned by a city within that borough." That feature of the amendment would not alter existing law. At the present time, no borough levies property taxes against property owned by a city which is located within that borough.

On the other hand, using the same example, any property tax rate levied by the City of Fairbanks would be levied against the property owned by the City of North Pole because "municipal real property located outside the municipality is taxable by another municipality." In this example, the real property of the City of North Pole is located outside of North Pole and is, therefore, taxable by the City of Fairbanks.

Comments

The primary reason publicly owned property is typically exempted from property taxation is because the property normally belongs to the people who pay for the provision of municipal services to the property, and who would receive the payment of tax revenues from a levy against the property. In other words, in a case where property is owned by and located in the same municipality, all residents of the municipality would be the taxpayers, the service providers, and the recipients of the resulting revenues. Clearly, it would simply be a waste of time and money to levy against and collect property taxes from such property.

In the case addressed by the amendment, however, there are two distinctly separate groups of people involved. In the example cited above, the people of the City of North Pole receive services such as police protection, etc. for their property which is located in the City of Fairbanks. The people of the City of Fairbanks pay for and provide those services to the property owned by North Pole. The proposed amendment would provide for the people of North Pole to reimburse the City of Fairbanks through property taxation for the services provided to the North Pole property.

Position Paper - CSSB 70
February 19, 1991
Page Three

The Department supports the passage of Senate Bill 70. Whenever practicable, the Department believes municipal services provided to property and to people should be paid for by the recipients of the services. Senate Bill 70 directly addresses that concept.

E. Blatchford

Edgar Blatchford, Commissioner

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICHEL, GOVERNOR

P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

February 8, 1991

POSITION PAPER

RE: Senate Bill 70

SPONSOR: Senator Pearce

Program Effects

Section one of the bill provides for property which is retained by the State for investment purposes to become taxable by municipal governments. Section one also makes it clear in state law that federal property which is taxable under federal law is taxable as well under Alaska Statutes.

The proposed amendment to the bill (7-LS0420A.1 Cook) provides for property which is owned by one municipality, but is located in another, to become taxable. The amendment precludes taxation by a borough of property which is located within its jurisdiction and is owned by a city within the borough. Within boroughs, however, property belonging to one city and located in another, would become taxable by the city within which it is located.

Taking Fairbanks North Star Borough as an example of this:

If the City of North Pole owned property which were located in the City of Fairbanks, the Fairbanks North Star Borough would not be allowed to levy a tax against the property because the property would be "located within a borough and owned by a city within that borough." That feature of the amendment would not alter existing law. At the present time, no borough levies property taxes against property owned by a city which is located within that borough.

On the other hand, using the same example, any property tax rate levied by the City of Fairbanks would be levied against the property owned by the City of North Pole because "municipal real property located outside the municipality is taxable by another municipality." In this example, the real property of the City of North Pole is located outside of North Pole and is taxable by the City of Fairbanks.

Comments

The primary reason publicly owned property is typically exempted from property taxation is because the property normally belongs to the people who pay for the provision of municipal services to the property, and who would receive the payment of tax revenues from a levy against the property. In other words, in a case where property is owned by and located in the same municipality, all residents of the municipality would be the taxpayers, the service providers, and the recipients of the resulting revenues. Clearly, it would simply be a waste of time and money to levy against and collect property taxes from such property.

In the case addressed by the amendment, however, there are two distinctly separate groups of people involved. In the example cited above, the people of the City of North Pole receive services such as police protection, etc. for their property which is located in the City of Fairbanks. The people of the City of Fairbanks pay for and provide those services to the property owned by North Pole. The proposed amendment would provide for the people of North Pole to reimburse the City of Fairbanks through property taxation for the services provided to the North Pole property.

The Department supports the passage of Senate Bill 70. Whenever practical, the Department believes municipal services provided to property and to people should be paid for by the recipients of the services. Senate Bill 70 directly addresses that concept.

Remond Henderson for
Edgar Blatchford, Commissioner



March 1, 1991

POSITION PAPER

CS FOR SENATE BILL NO. 70 (CRA)

The Alaska Municipal League supports CS for Senate Bill No. 70 (CRA). The legislation would require certain public entities to fairly compensate municipalities through the payment of property taxes on certain properties which benefit from municipal services. The AML urges the passage of the legislation to protect fiscal stability at the local level. The bill would do three important things:

1. It would make state agency property which is acquired through foreclosure or deed in lieu of foreclosure and retained as an investment subject to local taxation. Currently, AHFC pays local taxes on investment property but PERS, TRS and AIDEA do not.

2. It would make property owned by a municipality subject to taxation by the municipality in which the property is located except a borough could not tax property owned by a city within that borough. Without the legislation, the residents of the municipality in which the property of another municipality is located receives no benefit in exchange for the tax revenue it must forego.

3. It would clarify that property owned by the federal government is subject to local taxation to the extent required by federal law. Currently, the FDIC, FSLIC, HUD and VA pay taxes or payments in lieu of taxes, but the FHA has chosen not to because state law is not clear.

While, traditionally, property owned by a public entity is tax exempt, the line between private and public has become less clear recently. Certain public property is held not for administrative or public service purposes but for investment purposes, intentionally or unintentionally. These properties generate income and compete with property owned by the private sector and which is subject to local taxation. The property or investment is enhanced, or at least protected, by the municipal services provided to it, such as fire and police protection. Therefore, such property should be subject to local taxes to protect a municipality's tax base and its ability to provide services, especially as state oil revenues decline.

The AML supports CSSB 70 (CRA) and urges its passage. Thank you.

A handwritten signature in black ink, appearing to read 'Scott A. Burgess'.

Scott A. Burgess
Executive Director

FEB 4 1991




217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

February 4, 1991

MEMORANDUM

TO: Senator Drue Pearce

FROM: Scott A. Burgess, Executive Director 

SUBJECT Proposed Amendment to SB 70

The Alaska Municipal League supports SB70 with the addition of the sponsor's amendment (7-LS0420A.1 Cook) which provides that municipal real property located outside the municipality is taxable by another municipality. The amendment makes clear, however, that real property owned by a city is not taxable by a borough when it is owned by a city in that borough.

This proposed change in Title 29 was adopted as part of the AML 1991 Municipal Platform in response to a concern that the real property tax base in a number of municipalities could be eroded by the ownership and acquisition of real property by municipalities located outside the city or borough required to provide services. The host municipality providing services such as roads, utilities, and police and fire protection for these properties will need, particularly as state revenues decline, a stable rather than a declining tax base.

In other words, without this limited exception to municipal tax immunity, real property which would otherwise be taxed would continue to be exempt from taxes even though the outside municipality owning the real property has no governmental responsibilities or obligations to the citizens of the municipality required to provide services.

As a matter of policy and equity this amendment is consistent with the principal goal of SB 70 that property which is protected and enhanced by the services of a local government should, in the absence of some overriding policy consideration, bear some obligation to support these services.

The AML supports SB 70 with the proposed amendment. Thank you.

JAN 31 1991



Matanuska-Susitna Borough

350 EAST DAHLIA AVE, PALMER, ALASKA 99645-6488 • PHONE 745-9680
BOROUGH ATTORNEY'S OFFICE PHONE 745-9679

January 28, 1991

The Honorable Drue Pearce
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

ATTENTION: Talley Johnson

Dear Senator Pearce:

SUBJECT: Taxation of Farmers Home Administration Properties

I have enclosed information related to the Matanuska-Susitna Borough's disagreement with Farmers Home Administration (FmHA) regarding the taxability of properties held by that agency. As you can see from the packet of information enclosed, Representative Larson has requested the attorney general's office to provide an opinion on the taxability of the property.

Please call if I can be of further assistance or if you require additional information on this matter.

Sincerely,
MATANUSKA-SUSITNA/BOROUGH

A handwritten signature in cursive script that reads "Michael Gatti".

MICHAEL GATTI
Borough Attorney

MG:sah
16\012891-2

enclosures w/index

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

- 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
- 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679
- P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

December 5, 1990

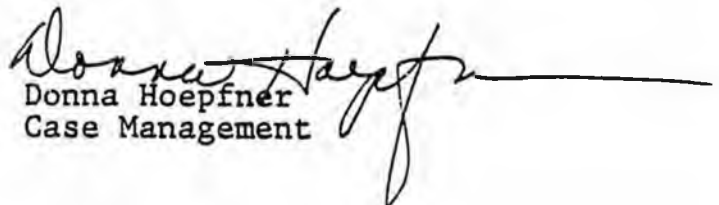
The Honorable Ronald Larson
Alaska State Legislature
House of Representatives
P.O. Box V
Juneau, AK 99811

Re: Attorney General's file # 663-91-0223

Dear Representative Larson:

This is to acknowledge receipt of your opinion request. We have assigned the request to Marjorie Odland and titled our file "Taxability of FmHA properties held for resales." Please refer to the file number listed above if you need to contact the attorney regarding this request.

Sincerely,


Donna Hoepfner
Case Management

Al-ska State Legisla'ire



Session Address:
STATE CAPITOL BUILDING
BOX V
JUNEAU, ALASKA 99811
(907) 465-3727

Interim Address:
BOX 53
PALMER, ALASKA 99645
(907) 745-3826 - Palmer
(907) 376-6828 - Wasilla

Representative Ronald L. Larson
District 16B

November 29, 1990

Douglas B. Baily, Attorney General
PO Box K
Juneau, Alaska 99811

Dear Mr. Baily:

A question has arisen regarding the local taxability of property held by the federal Farmers Home Administration (FmHA). At least two local governments assert that FmHA property, which reverts back to the federal government due to foreclosure or otherwise, is taxable while it is held by the federal government prior to resale. Conversely, the federal government claims that AS 29.45.030 exempts the FmHA from taxation notwithstanding the last sentence of Alaska State Constitution, Article IX, Section 4, and Article XII, Section 9.

I have attached a series of correspondence from various local governments and the U.S. Department of Agriculture which outline the positions on this issue.

Please provide me with a legal opinion as to the taxability of FmHA properties held by the agency for resale. I would appreciate your response within 30 days of the date of this letter. Please call if you have any questions or require any further information.

Sincerely,

A handwritten signature in cursive script that reads "Ronald L. Larson".
Ronald L. Larson
State Representative

enclosures

November 28, 1989 letter
To: Douglas B. Bailey
Re: Local Taxation of FmHA Property

INDEX TO ATTACHMENTS

1. November 6, 1990 letter of Timothy J. Binder (U.S. Dept/Agriculture) re: local taxation of FmHA property.
2. November 6, 1989 memorandum of Mary K. Osowski (Community Development Division) re: taxation of SFH inventory in Alaska.
3. October 6, 1989 letter of Michael Gatti (Matanuska-Susitna Borough) re: taxation of FmHA property.
4. July 24, 1989 letter of Michael E. Trow (U.S. Dept/Agriculture) re: local taxation of FmHA property.
5. May 31, 1989 letter of Michael E. Trow (U.S. Dept/Agriculture) re: local taxation of FmHA property.
6. May 23, 1989 letter of Michael Gatti (Matanuska-Susitna Borough) re: local taxation of FmHA property.
7. May 8, 1989 letter of Wayne Haerer, Jr. (Kenai Peninsula Borough) re: placement of FmHA properties on 1989 assessment roll.
8. May 20, 1988 memorandum of Roger E. Willis (U.S. Dept/Agriculture) re: payment of real property taxes FmHA Instruction 1955-B.
9. May 10, 1988 memorandum of Michael E. Trow re: payment of real property taxes - Alaska, FmHA Instruction 1955-B.
10. May 2, 1988 Memorandum of Kristine A. Schmidt (Kenai Peninsula Borough) re: tax exemption of FmHA.
11. November 19, 1987 memorandum of Kristine A. Schmidt re: tax status of property owned by certain federal and state loan agencies.
12. May 5, 1987 memorandum of Deborah Vogt, Asst. AG re: tax-exempt status of state foreclosed upon properties.



United States
Department of
Agriculture

Office of
General
Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 326-3115 (FTS 423)
(FAX) 326/423-3807

November 6, 1990

Michael Gatti
Borough Attorney
Matanuska-Susitna Borough
P. O. Box 1608
Palmer, Alaska 99645-1606

RE: Local Taxation of Farmers Home Administration Property

Dear Mr. Gatti:

Back in October I contacted the Matanuska-Susitna Borough Assessment Office (Borough) concerning the assessment of taxes on property held by FmHA. They said that they would be talking with you about this matter. Since I have heard nothing back, I have taken the liberty to write to you directly. I understand that you have been involved in this matter, having written at least one letter to Michael E. Trow detailing your position on this matter.

Since that time, this office has sent the question back to our Washington, D.C. office to obtain an independent view of the subject. The Washington, D.C. office has stated that under the present law, FmHA is not authorized to pay taxes assessed by the Borough in Alaska. As I understand the present situation, FmHA, upon such advise, has refused to pay such taxes. The Borough has continued to issue assessment notices relating to taxes assessed for periods during which FmHA held title to the real property. This has caused some degree of consternation to purchasers of FmHA property.

Under the Supremacy Clause of the Federal Constitution, the United States is immune from taxes imposed by State or local authorities. *McCulloch v. Maryland*, 4 Whet. 316 (1819); See *Minneapolis Star v. Minnesota Comm. of Rev.*, 460 U.S. 575, 589 n. 12 (1983) ("[t]he Supremacy Clause has prohibited . . . any direct taxation of the Federal Government."). This immunity may be waived by Congress but any such waiver must be "narrowly construed because it defeats the immunity shielding the federal government." *National R.R. Passenger Corp. v. Pa. P.U.C.*, 848 F.2d 436, 439 (3rd Cir. 1988), cert. denied ___ U.S. ___, 102 L.Ed.2d 220 (October 11, 1988). Accordingly, the first question to be answered is whether and to what extent Congress has waived the sovereign immunity of the United States. The answer to this question must be narrowly construed against such waiver.

In 1977, Congress passed a provision which waived the Federal sovereign immunity from State and local taxes for certain property held by FmHA. 42 U.S.C. 1490h. However, in accordance with the narrow construction given to such statutes, this statute has been interpreted to grant authority to States and local governments to tax rural housing projects, but it does not, by itself, impose taxes. *Dawson v. Childs*, 665 F.2d

Local Taxation of FmHA Property
November 6, 1990
Page 2

705, 711 (5th Cir. 1982). One must look to State law to determine whether the property, in fact, is subject to taxes.

I note that in your letter on this subject, you distinguish the *Dawson* case and conclude that our reading of the case was in error. However, I note that our reading of the case is identical to that given to the case by the Court of Appeals for the Seventh Circuit. *United States v. County of Cook, Ill.*, 725 F.2d 1128, 1131 (7th Cir. 1984). The Court, in that case, interpreting a different statutory waiver of tax immunity, followed the rationale of the *Dawson* case, in holding that the statute did not supersede a state law prohibiting such taxation. The applicable statute in that case stated: "With respect to any interest in real property acquired under the provisions of this section, the same shall be subject to State and local taxes until title to the same shall pass to the Government of the United States." 40 U.S.C. 602a(d). The Defendants argued that this provision superseded a State law which exempted such property from taxation. The Court rejected this argument, stating:

Section 602a(e) (sic) opens United States property to taxation, but it does not require local taxation of United States property. If the state of Illinois statutorily exempts from local taxes property being acquired under purchase contract by the United States, then the United States is certainly entitled to take advantage of that exemption.

(Emphasis in the original.)

Based upon the above opinions, it is my view that the Congressional waiver of sovereign immunity does nothing more than open the Government property to taxation. One must look to the applicable State law to determine whether Government property, indeed, is subject to local taxes.

The applicable State law begins with the Constitutional provision found in Article IX, Section 4. That provision provides that the valid existing exemptions are retained "unless otherwise provided by law." You raised an argument that the Federal statute is other "law" for purposes of this provision. However, the Federal statute does not purport to address the matter of State exemptions. Nowhere in that statute is there any intimation that Congress intended to waive a valid exemption provided by Alaska law. The Federal statute addresses the issue of sovereign immunity, not State exemptions. See *County of Cook, supra*. Thus, although sovereign immunity has been waived, the question remains as to whether the State has chosen to tax such property.

The answer to this question is "no." Like Texas in the Fifth Circuit opinion and Illinois in the Seventh Circuit opinion, the State of Alaska has enacted a law granting immunity from taxes to property held by the Federal Government. AS 29.45.030(a)(1). That statute provides in relevant part: "The following property is exempt from general taxation: (1) municipal, state, or federally owned property . . ." I have been unable to find any State law waiving this exemption. Under the rule of the above opinions, this State law effectively bars local governments from taxing Federal property, notwithstanding the existence of a Federal

Local Taxation of FmHA Property
November 6, 1990
Page 3

statute making such property subject to taxation. (I note that there is an explicit State statute that makes property held by the Alaska Housing Finance Corporation subject to local taxation. AS 18.56.190.)

For the above reasons, would it be possible for you to revisit this issue. I would be happy to discuss the matter with you over the telephone. Or would it be possible for you to request an opinion from the State Attorney General's Office. I know that this issue has wider implications than your Borough, although it is your Borough that has continued to hold a view divergent from that of the FmHA.

I am concerned because it appears to me that the people we are attempting to help are being caught in the middle of this matter. FmHA borrowers often lack the resources to pay for the back taxes assessed against their property. I do not believe that they should be the ones who are required to bear the burden of resolving this matter. Yet, the taxes are being assessed against them because the United States does not believe it has the authority to pay such taxes under the present law. Since the dispute, if there is one, is between the United States and the Borough, it seems that we are the parties who should bear the burden of resolving the dispute.

In any event, I am looking forward to your reply. If I can be of any assistance to you in this matter, please contact me at the number listed above.

Sincerely,

ARNO REIFENBERG
Regional Attorney

Timothy J. Binder
Attorney

TJB/jc

6 - NOV 1989

Our Ref: LEG 5-2-1

TO: Ronnie O. Tharrington
Assistant Administrator - Housing
Farmers Home Administration

FROM: Mary K. Osowski, Attorney MARY K. OSOWSKI
Community Development Division

SUBJECT: Taxation of SFH Inventory in Alaska

We have reviewed your October 24, 1989 memorandum and its attachments on the above-captioned subject and have also spoken to Michael Trow in our Portland OGC office. We agree with the position of our Portland office that the Matanuska-Susitna Borough has no authority to impose property taxes on FmHA SFH inventory property. While § 528 of Title V of the Housing Act of 1949 waives the Federal Government's sovereign immunity from taxation of FmHA housing property in its possession, this waiver is not an unconditional one. It is conditional and the condition that applies here is the statement that the property shall be subject to State and local taxation "in the same manner and to the same extent as other property is taxed." Therefore, for example, if a State law exempts Federally owned property from taxation, our position has been that § 528 does not operate to negate or override this exemption.

Section 29.45.030(a)(1) of the Alaska Statutes clearly exempts Federally owned property from general taxation. Neither we nor our Portland office read the somewhat confusing language in Article IX, § 4 of the Alaska Constitution¹ as changing the meaning of § 29.45.030(a)(1) or somehow affecting (as the Borough's attorney contends) the conditional waiver in § 528 of Title V of the Housing Act of 1949.

Your memorandum asked us to inform you of what course we thought prudent for FmHA to follow in this matter. Apparently the Borough's attorney has threatened to bring a declaratory judgment action against FmHA if it continues to refuse to pay property taxes on its housing inventory properties. Your memorandum indicates that

¹ The last sentence of this section states that "[a]ll valid existing exemptions shall be retained until otherwise provided by law." Our Portland office's October 13, 1989 memorandum to Darwin Betts points out that this language is not self-executing and that § 29.45.030(a)(1) of the Alaska Statutes in fact does exempt Federally owned property from general taxation.

RECEIVED

NOV 1 1989

Office of the General Counsel U.S.D.A.

our Portland office questions whether such an action could be successfully defended. Actually they are worried about the situation in which the Borough would not sue but would instead start to file tax liens against the property, forcing FmHA to sue to stop the practice. They wondered whether the United States Attorney's office would be willing to file such a suit. Nonetheless, we cannot advise FmHA to pay taxes under the circumstances in this matter because of the language in § 528 and the Alaska statute. We do wonder, however, why the Borough's attorney did not seek an Alaska Attorney General's opinion on the issue, especially on the effect of the Alaska Constitutional provision. While FmHA cannot ask for such an opinion itself, we know that in other situations FmHA has asked a sympathetic party such as a State legislator to request such an opinion. We suggest that avenue be explored here because, if the Alaska Attorney General agrees with our position, then the Borough's taxation efforts should cease and a lawsuit will have been avoided.

If you have any questions about this memorandum, please call me on 447-5220.

cc: Arno Reifenberg, Associate R/A, Portland, Oregon Attn: Michael Trow

Note to Reifenberg: Nice job done on the research memos on this issue

OGC:CD:MKOSOWSKI:11/3/89:CD-95:AK-Tax:5.0-A



Matanuska-Susitna Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-9680

BOROUGH ATTORNEY'S OFFICE

October 6, 1989

Michael E. Trow, Attorney
U.S. Dept. of Agriculture
Office of General Counsel
1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204

RE: Taxation of Farmers Home Administration Property

During the assessment cycle for fiscal year 1989/1990, the question of taxation of Farmers Home Administration (FmHA) property has been raised. Previously such property was omitted from the Borough tax rolls for an indiscernible reason. On May 20, 1988 a memorandum from the United States Department of Agriculture, Farmers Home Administration, Roger E. Willis, State Director, asserts that property held by FmHA is not taxable. Director Willis' conclusion is based upon a May 10, 1988 legal memorandum from attorney, Michael E. Trow of the Office of General Counsel for the U.S. Department of Agriculture. In that memorandum Mr. Trow concludes that AS 29.45.030(a)(1) does not pre-empt 42 U.S.C. §1490h waiving FmHA's sovereign immunity from taxation. (The memo incorrectly cites the federal statute as §1491h.) It is my understanding that the FmHA holds approximately 90 properties in the Borough for a total assessed valuation of \$3,486,500 which equals approximately \$23,952 of real property tax revenue for fiscal year 1989 at a mill rate of 6.87 and \$32,075 of real property tax revenue for fiscal year 1990 at a mill levy of 9.2.

ANALYSIS

A general rule of law associated with the taxation of property agencies and instrumentalities of the United States government is that in the absence of a Congressional waiver of sovereign immunity, there is immunity from state and local taxation of these areas. 70 Am.Jur.2d, State and Local Taxation, §221. In determining whether there is any governmental tax immunity for an agency or instrumentality of the federal government, one court has pointed out that:

In considering the immunity of federal instrumentalities from state taxation, two factors may

Michael E. Trow
October 6, 1989
Page 2

be of importance which are lacking in the case of claimed immunity of state instrumentalities from federal taxation. Since the acts of Congress . . . constitutional powers are supreme, the validity of state taxation of federal instrumentalities must depend (a) on the power of Congress to create the instrumentality and (b) its intent to protect it from state taxation. Helvering v. Gerhardt, 304 U.S. 405, 82 L.Ed. 1427, 58 S.Ct. 969, Rehearing denied 305 U.S. 669, 83 L.Ed. 434, 59 Sup.Ct. 56. 19___.

Even though the instant case deals with local government taxation of property held by an agency of the federal government by analogy, the same principle expressed in the foregoing case should apply.

With respect to the first prong of the test announced above, clearly Congress has the power to create the Farmers Home Administration. The second prong of the test, that is Congress' intent to protect Farmers Home Administration from state taxation may be determined from the provisions of 42 U.S.C. §1490h which provides for the taxation of Farmers Home Administration-held property. It provides:

All property subject to a lien held by the United States or the title to which is acquired or held by the Secretary under this title other than property used for administrative purposes shall be subject to taxation by a State, Commonwealth, territory, possession, district, and local political subdivisions in the same manner and to the same extent as other property is taxed: Provided, that no tax shall be imposed or collected on or with respect to any instrument if the tax is based on--

(1) the value of any notes or mortgages or other lien instruments held by or transferred to the Secretary;

(2) any notes or lien instruments administered under this title which are made, assigned, or held by a person otherwise liable for such tax; or

(3) the value of any property conveyed or transferred to the Secretary, whether as a tax on the instrument, the privilege of conveying or transferring, or the recordation thereof; nor shall the failure to pay or collect any such tax be a ground for refusal to record or file such instruments, or for failure to impart notice, or prevent the enforcement of its provisions in any state or federal court.

Michael E. Trow
October 6, 1989
Page 3

The preamble to 42 U.S.C. 1490h provides that all Farmers Home property is subject to taxation by a state or political subdivision in the same manner and to the same extent as other property is taxed. There are three exceptions to the general rule, all of which apparently are concerned with the taxation of the value of any notes or mortgages or lien instruments held or assigned to the Secretary or the value of any property conveyed or transferred to the Secretary, whether a tax on the instrument, the privilege of conveying or transferring or the recordation thereof. It is important to note that the exceptions are based on the value of any property conveyed or transferred to the Secretary and not the property itself. The plain meaning of the phrase "value of any property" means that proceeds generated from the conveyance or transfer of the property to the Secretary are not taxable. This phrase does not exempt from taxation the property itself, whether held by a private individual or FmHA.

The waiver of intergovernmental tax immunity set forth in 42 U.S.C. §1490h means exactly what it says. FmHA property is taxable but the monetary value derived therefrom is not.

THE DOCTRINE OF PRE-EMPTION IS IRRELEVANT TO THE QUESTION
OF EXPRESSED CONGRESSIONAL WAIVER OF SOVEREIGN IMMUNITY
FROM TAXATION OF FmHA PROPERTY

AS 29.45.030(a) provides the following property is exempt from general taxation:

1. Municipal, state or federally-owned property, except that a private leasehold interest, or other interest in the property is taxable to the extent of the interest.

The enabling authority for AS 29.45.030(a) is set forth in Alaska Constitution, Article IX, Sec. 4, Exemptions. This article provides:

The real and personal property of the state or its political subdivision shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of property used exclusively for non-profit, religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law. (Emphasis added.)

Michael E. Trow
October 6, 1989
Page 4

Article IX of the Alaska Constitution states that private leasehold interests and contracts or interest in land or property owned or held by the United States, the state, or its political subdivisions shall be taxable to the extent of those interests. The last sentence of Article IX, Sec. 4 provides that "all valid existing exemptions shall be retained until otherwise provided by law." The constitutional framers thus saw fit to authorize the waiver of governmental sovereign immunity from taxation if "otherwise provided by law." 42 U.S.C. §1490h waives sovereign immunity from local taxation of FmHA property since it is a statute which is "otherwise provided by law" and within the contemplation of the exception to the general exemption rule. This provision must be strictly construed against the property holder and in favor of the taxing authority. McKee v. Evans, 490 P.2d 1222 (1971). A federal statute is law as is a state statute or local ordinance. In other words, a law is a law whether it is federal, state or local law. 42 U.S.C. 1490h clearly provides that, within three narrowly crafted exceptions, FmHA property is taxable by a local government.

DAWSON v CHILDS DOES NOT STAND FOR THE PROPOSITION EXPRESSED
IN THE GENERAL COUNSEL'S MEMORANDUM OF MAY 10, 1988

The General Counsel cites the case of Dawson v. Childs, 665 F.2d 705 (1982) for the proposition that 42 U.S.C. 1490(h) does not pre-empt the general exemption from general taxation contained in As 29.45.030(a). A close reading of Dawson clearly establishes that the General Counsel's conclusion is erroneous. In Dawson, FmHA acquired property it had made direct loans on through foreclosure or by a voluntary conveyance in lieu of foreclosure. The property remained in FmHA's inventory for awhile pending sale. In 1977 the FmHA conveyed the property to the Dawsons with a provision in the warranty deed related to the payment of taxes which effectively amounted to a contract whereby the government agreed to pay any taxes against the property during the time of its ownership, provided that the property was subject to Texas local statutes and taxes. The corollary to this proposition is that government would have no liability if the property were not subject to Texas local statutes. In October 1977, Congress amended the Housing Act of 1949, 42 U.S.C. §1472 et seq., waiving sovereign immunity from taxation on certain property, including Farmers Home Administration held property. 42 U.S.C. 1490h. The amendment was retroactive to January 1, 1977. The Dawsons tendered payment for a portion of the 1977 property taxes when they owned the property. The local taxing authority refused the payment and demanded payment for the entire year as for tax year 1976 during which the United States

Michael E. Trow
October 6, 1989
Page 5

possessed title. The court held that the amendments to 42 U.S.C. 1471 et seq. did not take effect until January 1, 1977, therefore, sovereign immunity before that date shielded the FmHA property from local taxation. The court further held that the Texas statutory exemption exempted "all property" from taxation. The Texas exemption cited in Dawson is substantially distinguishable from the Alaska exemption contained in AS 29.45.030(a) and the express language of Article IX, Sec. 4 of the Alaska Constitution authorizing exceptions to the exemption of federal property from local taxation in its last sentence. FmHA property is therefore subject to Borough property taxes.

UNEQUAL TREATMENT

The Borough disagrees with FmHA's position that taxation of Farmers Home property results in unequal treatment. There are numerous examples of local taxation of state and federally held property within the state. FmHA property is subject to taxation just as other federally and state held property is subject. Alaska Constitution, Article IX, §1,4,5.

ESCAPED PROPERTY

In Municipality of Anchorage v. Alaska Distribution Company, 725 P.2d 692 (Alaska 1986), the Alaska Supreme Court held that public policy required all taxpayers to bear their fair share of taxes and thereby disallow windfalls due to the tax assessor's errors. This principle is known as the recapture of escaped property and it authorizes a municipality to seek back taxes on property that escaped taxation for up to six years. AS 09.10.120; AS 29.45.100(a); AS 29.45.110(a); AS 29.45.220; Municipality of Anchorage v. Alaska Distribution Company, supra. Accordingly, the Borough Assessor may assess taxes against FmHA property that were not paid for the last six years.

CONCLUSION

For the reasons cited above, FmHA property is subject to real property taxation by the Matanuska-Susitna Borough. Even though the subject FmHA property is subject to taxation by the Borough, my client has authorized me to tender an offer to you to compromise a disputed claim. The Borough will forebear from filing a declaratory judgment action for delinquent taxes, penalties and interest, including the assessment of FmHA for six years of escaped property in exchange for FmHA tendering payment to the Borough for delinquent 1988 and 1989 taxes, penalty and

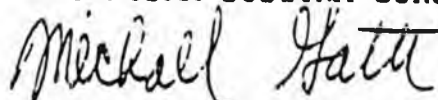
Michael E. Trow
October 6, 1989
Page 6

interest on the property. The 1988 and 1989 delinquent taxes, penalty and interest on the subject property are as follows:

	<u>Taxes</u>	<u>Interest</u>	<u>Penalty</u>
1988	\$ 818.69	\$ 57.57	\$ 81.87
1989	\$30,922.12	\$102.22	\$2,514.94

Please advise the Borough of your client's position on this matter within thirty days.

Sincerely,
MATANUSKA-SUSITNA BOROUGH



MICHAEL GATTI
Borough Attorney

cc: Gary Lewis, Borough Assessor

MG:sah

5-092689-1



United States
Department of
Agriculture

Office of
General
Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 326-3115
(FTS) 423-3115
(FAX) 326/423-3807

July 24, 1989

Michael Gatti
Borough Attorney
Matanuska-Susitna Borough
P. O. Box 1608
Palmer, Alaska 99645-1608

RE: Local Taxation of Farmers Home Administration Property

Dear Mr. Gatti:

Please refer to my letter of May 31, 1989. Farmers Home Administration has expressed concern because your assessor has begun to levy taxes on its inventory property. Where that property is now in the process of being sold to low income third parties, the end result will only be to preclude sale because neither those parties nor the agency has funds with which to pay the taxes.

I must reiterate the agency's position that while it holds title to the subject properties, they are immune from local taxation. I have again reviewed Alaska General Law, AS 29.45.030(a)(1), together with the constitutional and federal statutory law applicable to taxation of federal entities. There are two reasons why I conclude that Farmers Home Administration inventory property continues to be exempt from the imposition of these taxes. First, AS 29.45.030(a) expressly exempts property of the United States from taxation. Second, because the statute exempts state and municipal property too from general taxation, the Borough may not discriminate by taxing only property of the United States.

Under the Supremacy Clause of the Federal Constitution, the United States is immune from taxes imposed by State or local authorities. McCulloch v. Maryland, 4 Whet. 316 (1819); see also Minneapolis Star v. Minnesota Comm. of Rev., 460 U.S. 575, 589 n.12 (1983) ("the Supremacy Clause has prohibited... any direct taxation of the Federal Government"). This immunity may be waived by Congress but any such waiver must be narrowly construed because it defeats the immunity shielding the Federal Government. National R.R. Passenger Corp. v. P.A. P.U.C., 848 F.2d 436, 439 (3rd Cir. 1988), cert denied ___ U.S. ___, 102 L.Ed.2d 220 (Oct. 11, 1988).

In 1977, Congress amended the Housing Act of 1949, adding a provision which waived the federal sovereign immunity from state and local taxes for certain property held by Farmers Home Administration. 42 U.S.C. §1490h. This waiver was limited in three respects: (1) federal property used for administrative purposes could not be taxed, (2) federal property could be taxed only in the same manner and to the same extent as other properties were taxed, and (3) no tax could be assessed on instruments or the privilege of conveying or transferring or the liquidation thereof, if that tax is based on the value of the property conveyed.

The second of these restrictions, at issue here, is in line with the general constitutional standard that discriminatory taxes are not permitted. As stated in Memphis Bank & Trust Co. v. Garner, 459 U.S. 392, 397 n.7 (1983): "[S]tate taxes are constitutionally invalid if they discriminate against the Government." The point of comparison in determining whether taxes discriminate against the federal government is not the general public, but the state. A state constitutionally may not enact laws granting to itself or those in privity with it privileges with respect to tax laws which it does not also grant to the Federal Government. Davis v. Michigan Department of Treasury, ___ U.S. ___, 103 L.Ed.2d 831, 805, n.4 (March 28, 1989); Phillips Chemical Company v. Dumas Independent School District, 361 U.S. 376 (1960).

However, before Farmers Home Administration property can be made subject to non-discriminatory state and local taxation, Alaska must enact enabling legislation. It has not done so. To the contrary, AS 29.45.030(a)(1) expressly exempts the agency's property from taxation. In Dawson v. Childs, 665 F.2d 705, 711 (5th Cir. 1982), the court considered this very issue. The appellant argued that the waiver of federal sovereign immunity provided by 42 U.S.C. §1490h pre-empted the state's exemption of United States property from taxation under Texas statute. The court was unpersuaded, finding that the exemption granted by Texas statutes prevented the taxing of Farmers Home Administration property even though the federal government had removed the constitutional barrier to such taxation.

Turning to the discrimination issue, AS 29.45.030(a)(1), in a straight forward manner, appears to grant immunity equally to municipal, state, and federally-owned property. Under Davis, Alaska and the Matanuska-Susitna Borough may not exempt the property owned by them from taxation, while at the same time taxing the property of Farmers Home Administration. 42 U.S.C. §1490h states that federal property may be taxed "in the same manner and to the same extent as other property is taxed." As with the state statute at issue in the Davis case, it is safe to assume that this language also was designed to incorporate the constitutional doctrine of non-discrimination in defining the scope of immunity in 42 U.S.C. §1490h. Having reached this conclusion, we must reach the further conclusion that under

Michael Gatti
Taxation of FmHA Property
Page 3

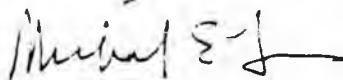
Davis, Farmers Home Administration property is subject to taxation only in the same manner and to the same extent that state or borough property is subject to taxation. Because the state of Alaska retains tax immunity for itself and its municipalities property, see AS 29.45.030(a)(1), tax immunity for Farmers Home Administration property is also retained. The State may not favor itself in its taxing scheme in relation to the federal government. Davis, 100 L.Ed.2d at 903-905.

Please advise your assessor that under Davis and Dawson, Farmers Home Administration inventory property is not subject to taxation until Alaska enacts a statute to the effect that the United States and its agencies and instrumentalities and their property are declared to be taxable to the extent permitted under the laws of the United States and to the extent that State and municipal properties are taxed.

Your assessor needs to be advised at once that there is simply no basis in law for the borough to tax Farmers Home Administration inventory property.

Sincerely,

ARNO REIFENBERG
Regional Attorney



Michael E. Trow
Attorney

cc: Darwin Betts
FmHA - Alaska

MET/jc:8907073



United States
Department of
Agriculture

Office of
General
Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 326-3115
(FTS) 423-3115
(FAX) 326/423-3807

Law Office
Received

May 31, 1989

Michael Gatti
Borough Attorney
Matanuska-Susitna Borough
P. O. Box 1608
Palmer, Alaska 99645-1608

RE: Local Taxation of Farmers Home Administration Property

Dear Mr. Gatti:

I have reviewed your letter of May 23, 1989 and my May 10, 1988 letter to Roger E. Willis, State Director, FmHA, Alaska. My position remains that, while Congress has waived FmHA's sovereign immunity from taxation, see 42 USC 1490h, FmHA inventory property is not subject to local taxation because Alaska General Law, AS 29.45.030(a)(1) expressly exempts "[f]ederally owned property, except that a private leasehold, contract, or other interest in the property is taxable to the extent that the interest."

Alaska Constitution Article IX, Section 4 provides, in pertinent part:

Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law.

You feel that 42 USC 1490h which waives the federal government's sovereign immunity from taxation of FmHA property somehow is other law which removes that property from within the "valid existing exemption" provided by AS 29.45.030(a)(1).

Notwithstanding the 42 USC 1490h waiver of sovereign immunity, until the cited state statute is amended, FmHA owned property is within the existing state law exemption. This was exactly the issue decided in Dawson v. Childs, 665 F2d 705, 711 (5th Cir. 1982): 42 USC 1490h does not preempt valid existing state law

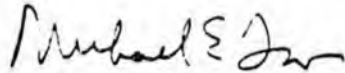
-2-

exemptions. Accordingly, it remains FmHA position that until Alaska repeals its statute, your borough has no authority to tax FmHA's property.

Please call me if you wish to discuss this matter further.

Sincerely,

ARNO REIFENBERG
Regional Attorney



Michael E. Trow
Attorney

cc: Darwin Betts
FmHA - Alaska

MET/jc:8905139



Matanuska-Susitna Borough

P. O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-4801

May 23, 1989

Mr. Michael Trow
U.S. Department of Agriculture
Office of General Counsel, Rm. 1734
1220 S.W. Third Avenue
Portland, Oregon 97204

Dear Mr. Trow:

Subject: Local taxation of Farmers Home Administration Property

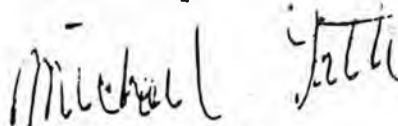
In your opinion of May 10, 1988, you conclude that Farmers Home Administration property is exempt from taxation notwithstanding 42 U.S.C. 1490(h). Your conclusion is based, in part, on the case of Dawson v. Childs, 665 F.2d 205 (1982) which stands for the proposition that congress has waived Farmers Home Administration's sovereign immunity from taxation pursuant to 42 U.S.C. 1490(h). Since your opinion does not cite Alaska Constitution Article IX, Section 4 exemption, you may wish to re-evaluate your position in light of this section which provides:

"The real and personal property of the state or its political subdivision shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of property used exclusively for non-profit, religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law." (Emphasis added.)

Clearly 42 U.S.C. 1490(h), which is otherwise provided by law, waives the federal government's sovereign immunity from taxation of Farmers Home Administration property in its possession. Please re-evaluate your opinion in light of this new information. Since this property is taxable, the assessor has placed it upon the Borough's assessment rolls. Your representative in Palmer has been previously supplied with a Notice of Taxation.

Please call if you have any questions or require any further information on this issue. I look forward to your response which I expect to receive in approximately five days of receipt of this letter. Also, please notify your client agency that the property is subject to taxation.

Sincerely.

Handwritten signature of Michael Gatti in cursive script.

Michael Gatti
Borough Attorney

cc: Gary Lewis, Borough Assessor

MG:sah

L\52389-3



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMAN
MAYOR

May 8, 1989

Matanuska-Susitna Borough
P.O. Box B
Palmer, AK. 99645

Att: Karl D. Borglum

Dear Karl:

I am responding to your inquiry of May 3, 1989, wherein you asked if the Kenai Peninsula Borough has placed Farmers Home Administration properties on the assessment roll for 1989.

The answer is no, not the original roll. It was an inadvertent oversight and the plan is, to place these (six total) properties on the 1989 supplemental roll.

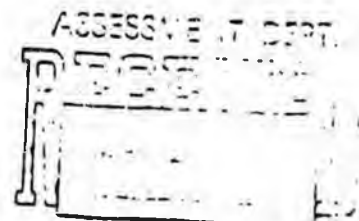
I have elected to place these properties on the assessment roll as taxable for two reasons.

- (1) My legal staff, through exhaustive research, feel very confident as to our legal authority to tax. Oral and written communication from them has instilled my confidence in their findings.
- (2) In the spirit of equality and fairness, I cannot maintain taxability of all the other State and Federal agencies that qualify and overlook Farmers Home Administration.

I hope this clarifies my position on this matter and serves some positive reinforcement to your endeavors. I might suggest that, perhaps you should have your legal counsel contact Kristine Schmidt, Kenai Peninsula Borough, Deputy Borough Attorney on this matter.

With Best Regards,

Wayne D. Haerer, Jr.
Director of Assessing



WDH/mch

Page 2

cc: Lenny Reagin, Assessor
Fairbanks North Star Borough

Steve Van Sant, Assessor
Municipality of Anchorage

Mike Worley, State Assessor
Community and Regional Affairs

For Administrative Use Only

Alaska AN No. 67(1955)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
PALMER BUSINESS PLAZA
634 SOUTH BAILEY, SUITE 103
PALMER, ALASKA 99645

Subject: Payment of Real Property Taxes
FmHA Instruction 1955-B

May 20, 1988

To: Area Loan Specialists
Assistant Area Loan Specialists
Loan Assistants
Alaska

The Office of General Counsel for the Department of Agriculture on May 10, 1988 issued an opinion concerning local taxation of FmHA inventory properties.

Simply stated, AS 29.45.030(a)(1) exempts from general taxation all federally owned property in Alaska. Unless this statute has recently been amended (in 1988) local boroughs are precluded from taxing FmHA owned inventory property. If you are approached by the local authorities concerning taxation, you should ask for the citation authorizing that action. Also, in that event, feel free to contact the RH section for further guidance.

Roger E. Willis
ROGER E. WILLIS
State Director

EXPIRATION DATE: 05-23-89

FILING INSTRUCTIONS: PRECEDING
FmHA Instruction 1955-B

MAY 20 1988



United States
Department of
Agriculture

Office of
General
Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 221-3115
(FTS) 423-3115

May 10, 1988

TO: Roger E. Willis
State Director
FmHA - Palmer, Alaska

FROM: Michael E. Trow *met*
Attorney

SUBJECT: Payment of Real Property Taxes - Alaska
FmHA Instruction 1955-B

Please refer to your memorandum of May 3, 1988. The local boroughs tell you they plan to begin taxing FmHA on its inventory real property. In 1977 Congress waived FmHA's sovereign immunity from taxation. See 42 U.S.C. §1491h, copy attached. However, as far as I can tell Alaska has exempted from general taxation all federally-owned property. See AS §29.45.030(a)(1) (1986). I have looked through the 1987 amendments to the Alaska statutes and find this statute to still be good law. I do not have any 1988 Alaska legislative materials from which to discern whether the statute has recently been changed.

Even though Congress has consented to the taxation of FmHA held property by local political subdivisions, in Dawson v Childs, 665 F.2d 705, 711 (5th Cir. 1982) the Fifth Circuit held that FmHA property was taxable only if the Congressional waiver pre-empted the Texas statutory exemption at issue. The Texas statute exempted "[a]ll property, whether real or personal, belonging exclusively to this state, or any political subdivision thereof, or the United States" As the Fifth Circuit held the statute says "all." Until the state repealed its statute the local political subdivision had no authority to tax FmHA's property. In other words, the state statute was not pre-empted by 42 U.S.C. §1490h.

Likewise, unless AS §29.45.030(a)(1) has recently been amended, the local boroughs are without power to tax FmHA-held property. This is simply for the reason that §29.45.030(a)(1) precludes them from doing so. Please ask one of the local boroughs that has advised you that it will be begin to tax FmHA-held property to cite you some authority for it to do so. If it only cites you to 42 U.S.C. §1490h, cite Dawson v Childs as authority for the proposition that it is without power to tax FmHA property.

MET/jc

- 5 1988

MEMORANDUM

TO: Jack Cline, Borough Appraiser
FROM: *KAS* Kristine A. Schmidt, Deputy Borough Attorney
DATE: May 2, 1988
SUBJECT: Tax Exemption of Farmers Home Administration ("FMHA")

I understood that Farmers Home Administration foreclosed property was TAR'd last fall, based on a letter from Leland Aley dated October 19, 1987 (copy attached). Subsequently, Don Thomas asked me for a legal opinion on the taxability of several state and government agencies, including the Farmers Home Administration.

I sent my opinion November 19, 1987 (copy attached). In that opinion I stated that: "... property foreclosed on pursuant to a loan agreement with [Farmers Home Administration] under 42 U.S.C. Sec. 1471, et seq., and acquired or held by FMHA, even if the foreclosure deed states that the grantee is the United States on behalf of [Farmers Home Administration], is taxable, as intended by Congress when it enacted 42 U.S.C. Sec. 1490(h)."

The FMHA tried to assert that its foreclosed property was tax exempt from municipal taxes in the case of Dawson v. Childs, 665 F.2d 705, 708 (5th Cir. 1982). The federal court in that case ruled that Congress specifically waived tax immunity for FMHA property acquired at foreclosure and held by FMHA. Although AS 29.45.030(a)(1) exempts federal property, it does so based on the immunity of the federal government from taxes in general. Where the federal government has waived its tax exemption, then federal property is taxable.

This analysis is similar to the state tax situation. The Alaska Constitution and state law (AS 29.45.030(a)(1)) provide that state property is exempt; however, where the state statutes provide that state property is taxable, they have waived this exemption.

At a March meeting between Don Thomas, you and myself, we discussed the FMHA tax exemption and I thought we were agreed that these properties were to be returned to the tax rolls.

On April 29, 1988, I received a phone call from Debra Brega, Asst. Borough Attorney of the Fairbanks North Star Borough. She said that her opinion was the same as mine, and that the FNSB intended to tax FMHA on its tax rolls (see attached letter). Based on what I thought was my understanding, that we

Memo to Jack Cline
Re: Tax Exemption of FMHA

May 2, 1988
Page Two

also had put FMHA-foreclosed property back on the tax rolls, I informed her that we also do not exempt such property. However, when I asked Wendy Kitchens to confirm this, she said that you had decided to continue to give FMHA a tax exemption.

It is the Borough's responsibility to strictly interpret tax exemptions. Where there is a question about whether property qualifies for tax exempt status under law, we should decide against tax exemption. Therefore, I strongly recommend that you return FMHA-foreclosed properties to the tax rolls, and send a 1988 Notice of Assessment to FMHA. I would also recommend that you reverse the TAs done in the fall of 1987, so that FMHA does not escape liability for 1987 taxes. Although it is too late to put the property in this year's foreclosure judgment, the 1987 liability will show up on next year's foreclosure list, if not paid.

KAS/bg
attachments
cc/attach: Thomas R. Boedeker, Borough Attorney

MEMORANDUM

TO: Don Thomas, Borough Assessor
Bob Walston, Asst. Borough Assessor

FROM: *KAS* Kristine A. Schmidt, Deputy Borough Attorney

DATE: November 19, 1987

SUBJECT: Tax Status of Property Owned By Certain Federal and State Loan Agencies.

You have requested an opinion on the taxability of property acquired in foreclosure actions and owned or held by various state and federal agencies. Based on my research of federal and state statutes, my opinion is as follows:

1. Alaska Housing Finance Corporation (AHFC). This agency is liable for taxes on real property of which it is fee owner. A.S. 18.56.190(a).

2. Farmers Home Administration (FHA). ^{"FHA" KAS} Property subject to a lien held by the United States or the title to which is acquired and held by the FHA under the farm housing loan statutes, other than property used for administrative purposes, is subject to local property taxes to the same extent as any other property. 42 U.S.C. Sec. 1490(h).

I understand that FHA claims exemption based on the fact that the trustee's deed to the property was in the name of the United States. I would argue for taxability based on 42 U.S.C. Sec. 1490(h), even in this situation, because Congress intended to tax property acquired and held by the FHA, whether the grantee of the property is the United States on behalf of the FHA or not.

In addition, at least one Federal appeals court has ruled that 42 U.S.C. Sec. 1490(h) is a waiver of tax exemption for property acquired at foreclosure and held by the FHA. Dawson v. Childs, 665 F.2d 705, 708 (1982). Therefore, it is my opinion that property foreclosed on pursuant to a loan agreement with FHA under 42 U.S.C. Sec. 1471, et seq, and acquired or held by FHA, even if the foreclosure deed states that the grantee is the United States on behalf of FHA, is taxable, as intended by Congress when it enacted 42 U.S.C. Sec. 1490(h).

3. Federal Deposit Insurance Corporation (FDIC). Real property of the Corporation is subject to local taxation to the same extent as other real property. 12 U.S.C. Sec. 1625.

4. Federal Home Loan Mortgage Corporation (FHLMC). ^{"FHLMC" KAS} Real property of the Corporation is subject to local taxation to the same extent as other real property. 12 U.S.C. Sec. 1452(d).

Tax status--Federal/State agencies
November 19, 1987

Page 2

5. Federal Land Banks or Federal Land Bank Associations. Real property held by land banks or land bank associations are taxable to the same extent as other property. 12 U.S.C. Sec. 2055.

6. Federal Savings and Loan Insurance Corporation (FSLIC). Real property of the Corporation is subject to local taxation to the same extent as other real property. 12 U.S.C. Sec. 1725(e).

7. Department of Housing and Urban Development (HUD). The Secretary is authorized to enter into payments in lieu of tax agreements with respect to property acquired or owned under any loan or grant by the Department. 42 U.S.C. Sec. 3535(i).

8. National Housing Act. Property acquired and held by the Secretary of HUD pursuant to the National Housing Act, 12 U.S.C. Sec. 1701, et. seq., especially housing renovation and modernization projects (42 U.S.C. Sec. 1701-1706) and mortgage insurance projects (42 U.S.C. Sec. 1707-1715) is taxable. See especially 42 U.S.C. Sec. 1706(b) and 42 U.S.C. Sec. 1714.

Property of the Government National Mortgage Association ("Ginnie Mae") and Federal National Mortgage Association ("Fannie Mae") is similarly taxable. 42 U.S.C. Sec. 1723(a)(c).

9. Small Business Administration (SBA). Property held by the SBA in fee simple is exempt from taxation. U.S. v. City of Roanoke, 258 F. Supp. 415 (W.D.Va. 1966); U.S. v. Schwartz, 278 F. Supp. 329 (S.D.N.Y. 1968); U.S. v. Joe Murray's Paint Lookout, Inc., 359 F. Supp. 335 (D.C.N.Y. 1973).

Property may be taxable when it is held as security by the SBA (but not owned in fee simple). U.S. v. City of Roanoke, supra, p. 418.

Municipal tax liens have priority over SBA loans on property mortgaged to the SBA. 15 U.S.C. Sec. 646. Therefore, delinquent property tax liens can be enforced on property currently owned by the SBA but formerly owned by someone else, as long as the liens attached before the SBA acquired title.

10. Veteran's Administration (VA). The Veteran's Administration may purchase or take title to property, including through foreclosure, and property acquired or held under the VA loan statutes is subject to state civil laws, including tax laws. 39 U.S.C. Sec. 1820(a)(6). Therefore, the VA-foreclosed property is taxable by the Borough.

Tax status--Federal/State agencies
November 19, 1987

Page 3

I understand the VA has sent an opinion to the Borough that states that the VA is not liable for late penalties or interest on property taxes. I disagree with that opinion based on the intent of Congress in 38 U.S.C. 1820(a)(6) that all state civil laws apply to VA-acquired property, including tax laws; and state civil tax laws include tax penalties and interest provisions. It is therefore my opinion that VA-acquired property should be treated like all other property; and if penalties and interest accrue on a VA-held parcel, that the VA is liable.

Last, there is an issue about an apparent conflict between the Alaska Constitution, Art. IX, Sec. 4 (exempting state property from taxes unless the legislature provides otherwise), A.S. 29.45.030(a)(1) (exempting municipal, state, and federal property from taxes), and the state and federal statutes above that specifically make state and federal loan agency property taxable. It is my opinion that A.S. 29.45.030(a)(1) can be interpreted to allow a waiver of that exemption by state or federal law; and that the statutes specifically allowing taxation are such waivers. Therefore, it is not a conflict, in my opinion, to tax state or federal property where specifically allowed to by statute; regardless of A.S. 29.45.030(a)(1).

KAS/bg/bl

MEMORANDUM

State of Alaska

file

TO: Milt Barker
Deputy Commissioner
Department of Revenue

DATE: May 5, 1987

FILE NO.: 663-86-0528

THRU:

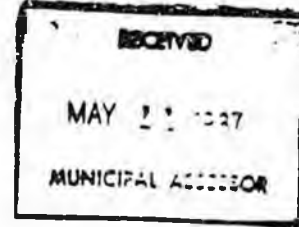
TELEPHONE NO.: 465-3600

SUBJECT: Tax-exempt status
of state foreclosed
upon properties

FROM: Grace Berg Schaible
Attorney General

By: Deborah Vogt *DV*
Assistant Attorney General
Department of Law

*Copy to Barb -
Bill -
Ellen -
Maithu -
me -*



You have asked for an analysis of the municipal tax liability on real property that is foreclosed upon by the state. 1/

As a general rule, municipal property taxes are a lien on the property involved. If the state forecloses upon property on which a lien has arisen, the property is taken subject to the lien. 2/ I understand that there is no dispute regarding prior years: if the state takes property, for example, in April of 1986 and the 1985 taxes have not been paid, the tax lien must be satisfied before the state can give clear title to the property to a third party. 3/

1/ The property at issue has been foreclosed upon by the Public Employees Retirement System (PERS) and the Teachers' Retirement System (TRS). Property foreclosed upon by the Alaska Housing Finance Corporation (AHFC) is subject to the provisions of AS 18.56.190, which states that such property is exempt from taxation "except taxes on real property of which the corporation is fee owner." Thus, AHFC pays municipal property tax on property owned by the corporation.

2/ AS 29.45.300(b) provides that "[p]roperty taxes, together with penalty and interest, are a lien upon the property assessed...."

3/ The existence of a lien does not imply that a municipality may enforce a lien against the state during the period that the state owns the property. Although we have not analyzed this question, it is likely that the state's sovereign immunity would prohibit a municipality from enforcing a lien against the state.

R E M E M O R A N D U M

MAY 05 1987

MRAD
DEPT OF COMMUNITY
AND REGIONAL AFFAIRS

Nor should there be any dispute about the fact that municipalities cannot tax the property when it belongs to the state. The Alaska Constitution provides that "[t]he real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law." Art. IX, sec. 4. AS 29.45.030 provides for required exemptions from municipal property taxation, and exempts "state ... property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest...." AS 29.45.030(a)(1). Although it might be argued that property owned by PERS or TRS is not state property, we have previously advised that such property is nonetheless statutorily exempt from property taxes. 1984 Inf. Att'y Gen. Op. (July 31; 663-84-0327). Thus, if the state owns property throughout an entire year, there can be no municipal tax liability for that year.

Your question is how to handle the current year's property taxes when the state becomes the owner mid-year. You have asked whether the property tax liability can be prorated between exempt and non-exempt status during a year, and if not, when the tax liability arises. Our answers are that the tax liability may not be prorated, and that exempt status should be determined as of January 1 of the tax year.

Courts that have faced these issues have come to wide ranging conclusions. Only two principles emerge: first, in the absence of specific statutory authority to do so, proration cannot be implied. Second, the time that the tax liability arises is determined by the applicable statute.

Although proration of taxes is certainly the custom in transfers of land between two private owners, and although it would certainly seem logical to do so when the state acquires property, I have found no case in which, in the absence of statutory authority, a court has permitted proration. The cases hold that the tax liability for a year either exists or does not exist; it does not partly exist. 4/

4/ In rejecting the proration of taxes, one court noted that "[t]he power in the courts to relieve against property taxes lawfully assessed under explicit legislative authority is, at the least, not a familiar weapon in the judicial arsenal..." District of Columbia v. Sussman, 352 F.2d 683, 685 (D.C. Cir. 1965).

The question then becomes, when does the tax liability for a year arise; or, when does an exemption from taxation attach. Unfortunately, the cases here are of little help. They are unanimous only in that they look to the relevant statute for guidance. Again unfortunately, our statute does not address the question of when the lien for property taxes arises or when an exemption attaches.

Our statutes require that property be assessed at full and true value as of January 1 of the assessment year. AS 29.45.110. A municipality must determine the rate of levy by June 15, and mail tax statements setting out the rate and the date when taxes become delinquent by July 1. AS 29.45.250. Property taxes are a lien upon the property assessed. AS 29.45.300. AS 29.45.320 and 29.45.330 deal with the enforcement of "delinquent real property tax liens." No provision states clearly the date on which the lien arises.

The only provision of the statutory scheme dealing with the timing of an exempt status is AS 29.45.030(f), which deals with the senior citizen and disabled veteran exemption. That provision requires that an application be filed for the exemption by January 15 "of the assessment year," and similarly requires separate applications for each "assessment year." Although the provision does not explicitly state that the exempt status should be determined as of January 1 for the entire assessment year, that interpretation is apparently universally applied by assessing officers.

Some courts that have addressed this question have held that the tax liability is enforceable against the government only if the liability has ripened into a lien. Of these cases, some hold that a lien cannot arise until the tax rate has been set, or until the time that the taxes are due. Utah Parks Co. v. Iron County, 380 P.2d 924 (Utah 1963), Adams Co., Inc. v. Nist, 411 N.Y.S.2d 504 (1978), Rochester Housing Authority v. Sibley Corp., 351 N.Y.S.2d 934 (1974), City of St. Louis v. Ford Motor Co., 158 F.2d 354 (8th Cir. 1946). Others hold that the lien relates back to the assessment date. See e.g., State v. Snohomish County, 128 P. 667 (Wash. 1912), Huntington City v. Peterson, 518 P.2d 1246 (Utah 1974). Other courts have found the tax liability to depend not on the formal existence of a lien, but rather simply on whether the property was exempt as of a "tax status" date, or the assessment date. Lutheran High School Ass'n v. City of New York, 288 N.Y.S. 855 (1968), Appeal of Title Services, Inc., 252 A.2d 585 (Pa. 1969).

The two most helpful cases that we have located focus, in the absence of clear statutory guidance, on the practical realities of municipal budgeting. These cases, District of Columbia v. Sussman, 352 F.2d 683 (D.C. Cir. 1965) and City of East Orange v. Palmer, 220 A.2d 679 (N.J. 1966) each involve controversies between the local government and the state -- or the district (which the court found to be in the same status as a state). In each case the court points out that a municipal government sets the tax rate to be levied on real property as a function of its revenue needs; it may set its budget to stay within certain rates, or establish rates to generate a certain amount of revenue, but in either case the rate is a direct function of the taxable value of property within its jurisdiction. The municipality needs to know with certainty what that value is. If property changes from taxable to exempt status within a tax year, the municipality will have miscalculated its revenue. For largely this reason, both courts conclude that the tax status at the beginning of the tax year is determinative for the entire year.

In the District of Columbia case, the tax year ran from July 1 through June 30. Assessments were made beginning in the preceding January, and finalized in May. The assessment role was finalized on July 1. The United States had condemned property as of July 26, and had argued that taxes were due only for the period between July 1 and July 26. The appeals court held that the taxes were due for the entire tax year. This statutory scheme differs slightly from Alaska's in that there assessments are made and finalized before the tax year begins while in Alaska assessments are made and finalized within the tax year.

The New Jersey statutory scheme is more similar to Alaska's. There, the tax year runs from January 1 through December 31. The assessment date is the preceding October 1, with the assessment role being finalized in January. The tax rate is set in July and taxes are due in February, May, August and November. Since two installments of taxes are due before the rate is set, the previous year's levy is used as an estimate. The court held that a transfer of property after January 1 would not affect the tax liability for that year. It reserved its opinion on property acquired between October 1 and December 31.

Since Alaska's statutory scheme is silent on the question at issue, and since it is not identical with the statutes of other jurisdictions that have faced this question, it is not possible to predict with any degree of certainty how Alaska's court would answer the question. Since a variety of answers seemed at least arguably permissible, I suggested that

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the Commissioners of the Departments of Revenue and Community and Regional Affairs meet and discuss the policy implications. The commissioners met on March 23, 1987, and agreed that a January 1 "tax status" date should be used. In addition, the State Assessor indicated that this question had been raised at a meeting of the Alaska Association of Assessing Officers, and that the members of that body agreed that a January 1 "tax status" date should be used. In our opinion, that result may be legally required under existing law; if it is not required, it is certainly legally permissible.

Thus, unless and until the legislature provides otherwise, the state should treat property acquired after January 1 of a year as taxable property for that entire year. Conversely, when selling or disposing of property that has attained tax-free status because it was owned by the state on January 1, that status for the current tax year should be reflected in the sales price.

DV:jf

cc: David Hoffman
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