



## Memorandum

To : Mr. Verne Walton  
Chief, Assessment Standards Division

Date: April 8, 1994

From : James M. Williams

Subject: Special Assessment Appeal Treatment for the FDIC

In your memo of February 17, 1994 to Richard Ochsner, Assistant Chief Counsel, you asked us to review an assertion by Property Research Ltd. of Portland, Oregon that the Federal Deposit Insurance Corporation is entitled to special federal guarantees in regard to assessment appeals of properties that it has acquired via default. In its letter of February 5, 1994 to the San Bernardino County Assessor, Property Research states:

As you know, I am seeking to have the revised value of \$5,500,000 for the 1992-93 tax year also be effective for the 1991-92 tax year despite the fact that the county sent out a supplemental notice which was not appealed within sixty days of that mailing.

Pursuant to federal statute, the appeal rights of the F.D.I.C. are not governed by state law, but rather federal law. I have highlighted the portion of the statute that states "notwithstanding the failure of any person to challenge an assessment under state law of such properties value, such value, and the tax thereon, shall be determined as of the period for which the tax is imposed.

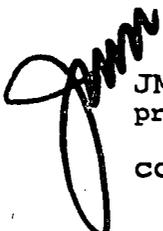
The reasonable interpretation of this language is that the F.D.I.C. has extraordinary appeal rights, recognizing that the F.D.I.C. acquired billions of dollars of real estate throughout the country which had previously traded in the marketplace at sometime grossly inflated values. It appears that Congress intended to strike a balance that continue the policy of not exempting F.D.I.C. real estate from local assessment and taxation but also recognized that the F.D.I.C. should not be required to pay property tax liabilities based upon assessed values which exceeded the market value of those properties as of the relevant assessment dates.

I have verified the statute quoted above as Section 15 of the Federal Deposit Insurance Act of August 9, 1989 (Section 219 of Public law 101-73, 103 stats 262) which is found in Title 12 of the United States Code, section 1825. Initially I did not agree that it necessarily meant what Property Research asserted but then I found *F.D.I.C. v. Lowery*, 12 F.3d 995 (10th Cir. 1993) which the reporter states the co-holding of the case in headnote 2:

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

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

There is some likelihood that the supreme court could conclude that congress has exceeded its authority by running roughshod over state procedural controls but that would not do us much good. Congress does have clear authority to completely exempt parcels once FDIC has acquired title so you might say that it has traded this right for the right to insure that it is paying taxes on a proper valuation. Based on the circuit court's application of the statute, I would conclude that the position taken by Property Research Ltd. is correct. The Federal Deposit Insurance Corporation does have the right to challenge the valuation of property held by their immediate predecessor of title, notwithstanding that the California appeal period has expired. In the example submitted it appeared that the assessor was willing to stipulate to the year that was still open, so it would also seem that stipulation would be most expedient for the prior year.

 JMW:jd  
precednt/equalizn/94002.jmw

cc: Ms. Jennifer Willis, MIC:70  
Mr. John Hagerty, MIC:62  
Mr. Arnold Fong, MIC:64