

Memorandum



To : Mr. James Barga

Date : January 27, 1991

From : Ken McManigal

Subject: Public Law 96-8 - Taiwan Relations Act; American Institute of Taiwan and Taiwan/Coordination Council for North American Affairs

This is in response to your request that we review various documents and advise whether Coordination Council for North American Affairs' (CCNAA) real property in San Francisco County is exempt from property taxation. Such documents included Public Law 96-8 (April 10, 1979) - Taiwan Relations Act, October 2, 1980, Agreement on Privileges, Exemptions and Immunities Between the American Institute in Taiwan and CCNAA, Millen Industries, Inc. v. CCNAA (1988) 855 F. 2d 879, a July 16, 1990, letter from Mr. Steven R. Ratner, U.S. Department of State, to Mr. Ron Cressio, and an August 6, 1990, memorandum from Deputy Santa Clara County Counsel James Rees to Mr. Loren Leavitt.

Typical bases for exemption from local property taxes for foreign governments' officials are the Vienna Convention on Consular Relations and individual governmental treaties. See my June 8, 1987, letter to Mr. John Lynch, Los Angeles County Assessor, copy attached. Upon the United States' recognition of the People's Republic of China, however, its governmental relations with Taiwan were, of necessity, withdrawn; and former relations with Taiwan had to be restructured. Thus, Public Law 96-8 was enacted to do so through the United States' American Institute of Taiwan and an instrumentality to be established by Taiwan. As explained in the July 16, 1990, letter:

"Section 10 (c) of the Taiwan Relations Act, Public Law 96-8 of April 10, 1979, gave the President specific authority to 'extend with respect to the Taiwan instrumentality [CCNAA] and its appropriate personnel, such privileges and immunities (subject to appropriate conditions and obligations) as may be necessary for the effective performance of their functions.' The President's authority under the Taiwan Relations Act was delegated to the Secretary of State by Executive Order No. 12143 (June 22, 1979). A further delegation of this authority was

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Exemption

made to the American Institute of Taiwan (AIT), the contracted representative of the Department of State charged in the Taiwan Relations Act with the implementation of U.S. unofficial relations with Taiwan, in an internal State Department Decision Memorandum dated May 27, 1980. See, e.g., Millen Industries v. Coordination Council for North American Affairs,...

"...AIT negotiated (with CCNAA) the Agreement on Privileges and Immunities dated October 2, 1980. Article 5 (d) of the agreement states:

Real property used for the performance of the sending counterpart organization's authorized functions and for which the counterpart organization would be liable for payment of taxes shall be exempt from central and local taxation of the jurisdiction in which the receiving counterpart organization is located. The property... of the sending counterpart organization shall be exempt from taxation by the central and local authorities of the jurisdiction in which the receiving counterpart organization is located."

And as construed by the United States Court of Appeals, District of Columbia Circuit in Millen Industries, Inc. v. CCNAA, supra:

"The CCNAA is an 'instrumentality' established by Taiwan. As the language of the quoted section reveals, the President is empowered to recognize such an instrumentality and extend to it and its appropriate personnel necessary privileges and immunities. Subsequently, the President delegated this authority to the Secretary of State. Exec. Order No. 12143, § 101-1, 3 C.F.R. 402 (1980), reprinted in 22 U.S.C. § 3301 note at 662 (1982). Thereafter, the State Department, pursuant to the Secretary's delegated authority, entered into contract with the American Institute in Taiwan (AIT) pursuant to 22 U.S.C. § 3305 authorizing it to 'carry out, on an unofficial basis, programs, transactions, and other relations with or relating to the people on Taiwan,' and to 'perform and enforce existing international and other agreements and arrangements between the Government or any department or agency thereof and the people on Taiwan,' and to '[o]therwise represent the United States and the

American people, and carry out functions on their behalf ... with respect to the people of Taiwan.' Contract between Department of State and The American Institute in Taiwan, Schedule, Article I (Apr. 12, 1979) (Contract No. 2013-900101). AIT, at the direction of the Department of State, entered into an agreement with the CCNAA which recognizes the CCNAA as to the Taiwanese counterpart agency. Therefore, shortly put, the CCNAA for purposes of this action, rather than being a subject or citizen of Taiwan, is Taiwan."

Upon consideration, we agree with Deputy County Counsel Rees that the authority of American Institute of Taiwan is derived from a Presidential delegation of authority to the State Department which has, in turn, been delegated to it; that CCNAA is Taiwan's instrumentality; and that the Agreement on Privileges, Exemptions and Immunities has the effect of exempting CCNAA's real property in San Francisco, as the result of United States law and the Supremacy Clause of the United States Constitution. In effect, due to political considerations, the United States and Taiwan are carrying on "governmental" relations through instrumentalities rather than directly.

We are returning the documents herewith.


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Attachments

cc: Mr. John W. Hagerty
Mr. Verne Walton