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WRITER'S DIRECT DIAL NO.

576-7292

January 12, 1994

Richard C. Massey, Program
Director - Real Estate
United States Department of State
Office of Foreign Missions
Washington, D.C. 20520

Re: Exemption from State recording taxes
for conveyances to and from foreign missions.

Dear Mr. Massey:

You have requested clarification concerning the position taken by the State of Maryland regarding application of its recording taxes, i.e., State transfer and recordation taxes, to conveyances of real property to and from foreign missions. You have also requested that the State's position and the position taken by Montgomery County, Maryland with respect to its County transfer tax be consistent.

With respect to your first inquiry, I have concluded that conveyances of real property to a foreign mission for use as consular or embassy premises are exempt from 50% of the State transfer and recordation taxes. Over 20 years ago, this Office addressed the same question and concluded that the ratified Consular Convention and Protocol of 1964, the ratified Vienna Convention on Consular Relations (1963), and the unratified Vienna Convention on Diplomatic Relations (1961) all evidenced an intent to exempt a foreign mission from payment of taxes like the Maryland transfer and recordation taxes.¹ 57 Opinions of the

¹ The opinion and the conventions cited therein appear equally applicable to county transfer taxes. The Consular Convention and Protocol of 1964 expressly refers to "taxation of any kind imposed by the receiving state or any of its states or local (cont'd)

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Attorney General 684 (1972). (A copy of the opinion is enclosed for your convenience.) As stated in the referenced conventions, and highlighted in the opinion, the exemption from payment of taxes does not extend to the private party contracting with the foreign mission.

The Annotated Code of Maryland, Real Property Article, §14-104 provides that absent a contrary provision in the parties written agreement or in law, payment of State and local transfer and recordation taxes are presumed to be shared equally between the grantor and grantee on instruments other than a mortgage or deed of trust. Thus, under Maryland law, 50% of the State and county transfer tax and State recordation tax would be payable by a foreign mission that is buying or selling property. The above-referenced conventions exempt a foreign mission from paying such taxes. Therefore, conveyances of real property to and from foreign missions are exempt from 50% of the applicable recording taxes. This is the position outlined in your current procedures.

If a foreign mission contracts to pay more than 50% of the recording taxes, the exemption would not apply to the additional tax liability contractually assumed by the foreign mission. As stated in Article 23, §1 of the Consular Convention and Protocol of 1964, the exemption from taxes applies to "the payment of which the officer or employee of the consular establishment would otherwise be legally liable." Absent a contract agreement to the contrary, the foreign mission would only be legally liable for 50% of the recording taxes. A similar position has been taken by this Office with respect to the federal exemption from payment of taxes afforded the Resolution Trust Corporation. See enclosed copy of letter of advice to William Beckett, Esquire dated March 19, 1992.²

With respect to your second request, please be advised that the Attorney General's Office does not provide legal advice to the counties; each county has its own legal counsel. Moreover, the Maryland General Assembly has authorized the counties to establish their own county transfer taxes. While the General Assembly has mandated certain exemptions from county transfer

governments". The Vienna Convention on Consular Relations (1963) refers to "all national, regional or municipal dues and taxes whatsoever".

² The Montgomery County Attorney's Office has taken a contrary view regarding conveyances from the Resolution Trust Corporation as evidenced by the memorandum to Douglas Browning, Chief of the Montgomery County Division of Revenue, from Assistant County Attorney Christopher Malone dated October 22, 1992 and enclosed with your letter to me. The County has concluded that conveyances from the RTC are fully subject to County transfer tax.

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taxes set forth in the Annotated Code of Maryland, Tax-Property Article, Title 13, Subtitle 4, the exemption afforded to conveyances of property to and from foreign missions does not fall under any of the mandatory exemptions set forth in the Code. Therefore, this Office has no authority to require Montgomery County to interpret the law or apply its County transfer tax in a manner that is consistent with the position taken with respect to the State transfer and recordation taxes.

However, inasmuch as our conclusion is based on federal law and a State Code provision that are applicable to both State and local recording taxes, the County may be persuaded to reconsider its position. While my communications with the Montgomery County Office of Law, after receiving your correspondence, have been unsuccessful in changing that office's position, as you can see from the enclosed letter, the Attorney General has written to the County Executive for Montgomery County in an effort to encourage the County to adopt a position on this issue consistent with that of the State.

Sincerely,



Julia M. Freit
Assistant Attorney General

JMF/s
Enclosures