General Services Administration
Public Buildings Service
Washington, DC 20405

NOV 2 6 1984

PRL 84-18

to
of: Leasing Division - PRL

Subject: Payment of Real Estate Taxes

To: All Real Property Leasing Activities (PRL Distribution List)

1. Purpose.

   a. To remind real property leasing activities of GSA's policy regarding the payment of real estate taxes under the tax escalation clause.

   b. To give examples of some of the special taxes that should be reviewed on a case-by-case basis to determine whether we should pay them.

2. Background.

   In a recent case before the GSA Board of Contract Appeals, the Board ruled that special assessments are not to be considered when calculating adjustments under our real estate tax clause. The Board's ruling overturned a final decision mistakenly rendered by a GSA contracting officer. The contracting officer, as part of the tax escalation clause, paid special assessments (drainage and downtown improvement taxes) on a building in which the Government occupied space.

3. Coverage. All real property leasing activities.

4. Procedure.

   a. It has been and continues to be our policy that the Government will pay only those real estate taxes that are for the purpose of funding general services of the taxing jurisdictions. Such taxes are defined as taxes which are assessed on an ad valorem basis against all taxable property in the taxing jurisdiction without regard to benefit to the property. The city, state, and school components of the real estate tax are typical examples of taxes that the Government will pay.

   b. It is our policy that the Government will not pay taxes which may be categorized as benefits and harm avoidance payments which offer greater benefits to the property owner than to temporary occupants of the building. Typical examples of taxes the Government will not pay include user charges, licenses, special improvement taxes, commercial zone usage charges, vault tax, metropolitan district charges, front footage charges, streetlight

maintenance charges, downtown redevelopment charges, road and bridge taxes, canal district taxes, etc. This list is not complete, and other special assessments may be included in the tax bill.

In some jurisdictions, special assessments are listed separately on the tax bill. In other jurisdictions, they may not be separately identified. In those cases, you must take special care to ensure that they are not passed on to the Government as part of the general real estate tax increases. As a rule of thumb, whenever there is a charge on the tax bill and there is no tax rate associated with that charge, you should be alerted to the possibility that the charge is a special assessment.

You should review all tax bills very carefully and get a legal opinion each time one of these special assessments appears or may be included. It is essential that a consistent position is taken within each jurisdiction so that we do not put ourselves in the position of paying the assessment for one building and denying it for another.

Please note that in some jurisdictions, water and sewer charges, snow removal, or rubbish/trash removal charges may also be included in the tax bill. They should not be paid as part of real estate tax escalation. These are operating expenses which rightfully should be considered under a lease clause pertaining to the escalation of operating expenses.

5. Implementing instructions. These procedures are applicable to tax escalations processed by the regional leasing branches after the date of this memorandum. We recognize that staffing and other constraints will not permit an across-the-board analysis of prior tax payments. However, you are not precluded from reviewing previous tax payments for selective cases and determining, with the concurrence of regional counsel, to pursue reimbursement for any payments clearly made in error.

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