

UNCLASSIFIED

TELEGRAM

July 18, 2001

To: AMEMBASSY STOCKHOLM - ROUTINE

Origin: MOFM

From: SECSTATE WASHDC (STATE 125179 - ROUTINE)

TAGS: ABLD, AFIN, KREC

Captions: None

Subject: PROPERTY TAX ISSUE

Ref: (A) STOCKHOLM 1705 (B) STOCKHOLM 261

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1. The Department offices involved with the property tax issue (L,OFM,EUR) have determined that the following note to the Swedish MFA should be sent in response to the MFA note in reftel B. The text of the note was prepared by L/DL. The purpose is to lay out the Department's legal position once again and to make clear that reciprocal measures may be taken.
2. Text of note: (complimentary opening) and refers to the matter of tax exemption of Government-owned residential property below the Chief of Mission level. The Embassy referred the aide-memoir of the Ministry of Foreign Affairs to the Department of State in Washington D.C. for review. The Department has advised that it restates and reaffirms its earlier position that customary international law imposes an obligation on the host State to provide tax exemption to government-owned residences housing members of the diplomatic

mission.

The Department disagrees with the Ministry that "customary international law has [not] developed in this field."

Rather, after two exhaustive studies of international practice conducted by the Department, its Office of Legal Adviser, and United States embassies world-wide in 1980 and again in 1986, the United States Government published its position on international law exemption for diplomatic residences in the United States Federal Register dated July 30, 1986. That publication read as follows:

"In the opinion [of the Office of the Legal Adviser], the Department stated that its conclusion that 'international law imposes a binding obligation to exempt such property from taxation' was reached on the basis of its study of the sources of international law listed in Article 38(1) of the Statute of the International Court of Justice, 'and in particular... the current virtually uniform practice of states in implementation of the Vienna Convention. ...[T]he survey reflected a general acknowledgment of a legal obligation to exempt such property on the part of states that are party to the Convention'...subject to reciprocal treatment of comparable property owned by the United States abroad."

After publication of the Federal Register notice, and as noted in the Embassy's earlier diplomatic note, the Department circulated a note to all missions on August 13, 1986, implementing its international legal determination.

The Department also requested confirmation of reciprocal treatment of United States property abroad. As noted, the Government of Sweden confirmed exemption of United States diplomatic residential property in Sweden. On the basis of this representation, the Government of Sweden enjoyed exemption from costly annually recurring property taxes, as well as exemption for one-time transfer taxes associated with purchase or sale, on all of its real

estate holdings of diplomatic residences in Washington, D.C., Maryland, and Virginia for over thirteen years.

As recently as 1997, the Department again surveyed all United States embassies regarding host State practice with respect to exemption from real estate related taxes imposed on properties abroad. Of the 160 embassy responses received by the Department, ninety-one percent (91%) of States exempt the United States Government from annual property taxes on diplomatic residences.

Additionally, the vast majority of States, over 75% and

perhaps as high as 91% (the data is not more precise), exempt the United States from one-time property taxes associated with the purchase or sale of embassy residences.

Therefore, the Embassy reconfirms the position of the United States Government and restates that the nearly uniform custom and practice of States have ripened into a customary law obligation to provide tax exemption to Government owned residences housing members of the diplomatic mission, subject to reciprocity.

The Embassy asks for reconsideration of the position of the ministry of Foreign Affairs and the Ministry of Finance, for recognition of the international law obligation to grant tax exemption for 11 diplomatic residences purchased by the United States Government in 1997 and for the immediate removal and cure of all adverse actions taken by the Government of Sweden stemming from non-payment.

The Department wishes this issue to be resolved to the benefit of both countries and not to become a subject for reciprocal action by the Department. However, the Department is required under the Foreign Missions Act to take reciprocity into account when considering the benefits provided foreign missions in the United States.

POWELL

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Additional Addressees:

None

cc:

None

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TO AMEMBASSY STOCKHOLM

UNCLAS STATE 125179

E.O. 12958: N/A

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