DATE: March 10, 1986
TO: Jack Sturak, Assistant City Treasurer
FROM: City Attorney
SUBJECT: TOT Exemptions - Department of State
         Representatives

   In response to your memorandum of February 5, 1986 concerning the TOT exemptions applicable to certain diplomatic and consular officials, we conclude that you are correct in your decision to honor the tax exemption card. This concurrence is based on the concept of diplomatic immunity.

   The memorandums of March 18, 1977 and June 21, 1977 referred to by the City Auditor in their memorandum of January 30, 1986 (this subject) are not applicable to diplomatic immunity. The thrust of those memoranda is that it is not impermissible to bill a federal employee for the TOT tax, even though the Federal Government is exempt. Diplomatic immunity, however, is a totally different concept, since the diplomat himself is exempt from the application of U.S. law pursuant to international treaty.

   As a matter of constitutional law, treaties and conventions concluded by the President are superior to the laws of any individual state. Hauenstein v. Lynham, 100 U.S. 483, 25 L.Ed. 628 (1880); see also Zachering v. Miller, 389 U.S. 429, 19 L.Ed 2d 683 (1968). Under the terms of Article 49 of the Vienna Convention on Consular Relations, Dec 24, 1969, 21 U.S.T. 78, T.I.A.S. 6820, consular officers are exempt from all taxes imposed by the host nation and its political subdivisions, except those that are related to the furnishing of a service or benefit, such as real property taxes on individual residences. Under the provisions of 22 U.S.C. section 254c, the President may extend a greater or lesser degree of exemption to a foreign consular official depending upon the level of exemption accorded to a United States consular official who is posted to the corresponding foreign nation. The United States Department of State has been delegated the authority to issue tax exemption cards to foreign consular officials based on this principle.

                    JOHN W. WITT, City Attorney
                    By
                       Rudolf Hradecky
                       Deputy City Attorney
RH:mem:160.1(x043.2)
ML-86-17