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May 9, 1988

Mr.
Vice President - General Counsel

Dear Mr. :

This is in response to your letter to Mr. Richard Ochsner in which you request our opinion with respect to the following facts which are set forth in your letter.

> The problem arises from the sale by M of its possessory interest in property located at Road in California to the University of California, San Diego on October 15, 1987. UCSD is, of course, a tax-exempt public entity. M was the owner of record of the possessory interest on the lien date (March 1, 1987) and the transfer occurred during the fiscal year. As of the date of the transfer, M had paid taxes for the entire first half of the fiscal year and expected a pro rata refund of the amount paid for the period following the transfer date. The San Diego County Tax Assessor's Office has indicated that it will not process M 's claim for a refund and will hold M responsible for the tax bill for the second half of the fiscal year.

The question presented by the foregoing facts is whether the property tax on the possessory interest must be prorated (pursuant to the cancellation and refund procedures) when the possessory interest is transferred from a non-tax exempt entity to a tax-exempt public entity during the fiscal year.

Revenue and Taxation Code* section 4986(a) provides in relevant part that "[a]ll or any portion of any tax, . . . heretofore or hereafter levied, shall, on satisfactory proof, be cancelled by the auditor . . . if it was levied or charged: [¶](6) On property acquired by the . . . state, . . . or other public entity, to the extent provided in Article 5 (commencing with Section 5081)."

*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Section 5086 provides in relevant part that "[i]f exempt property is acquired by negotiated purchase, . . . after commencement of the fiscal year for which the current taxes are a lien on the property: [¶](b) The portion of the current taxes that are allocable to the part of the fiscal year that begins on the date of apportionment shall be cancelled and are not collectible either from the person from whom the property was acquired or from the public entity that acquired the property."

Section 5096.7 provides:

> If taxes have been paid on property acquired by negotiated purchase by any public entity designated in Section 5081 after the commencement of the fiscal year for which the taxes are a lien on the property, the portion of such taxes which are allocable to that part of the fiscal year which begins on the date of apportionment determined pursuant to Section 5082 and made uncollectible if unpaid by virtue of Section 5086, shall be deemed erroneously collected and shall be refunded to the person who has paid the tax, where the person was not otherwise reimbursed for that portion of the taxes by the public entity which acquired the property.
>
> Refunds under this section shall be applicable to taxes paid on either the secured or unsecured rolls.

For purposes of section 5086 (and sec. 5096.7), section 5081 defines "exempt property" in pertinent part to mean "[p]roperty acquired by the state . . . or other public entity that becomes exempt from taxation under the laws of the state." Thus, M 's right to cancellation and refund in accordance with the foregoing sections depends upon whether the possessory interest it sold to UCSD is "exempt property" as defined above in section 5081.

It is undisputed that a possessory interest in real property is itself real property (secs. 104(a), 107, San Pedro, Los Angeles & Salt Lake Railroad Company v. City of Los Angeles (1919) 180 Cal. 18, 21). The definition given in sections 104 and 107 are controlling in matters relating to property taxation (sec. 101, Ventura County v. Barry 207 Cal. 189, 195). Thus, a possessory interest would constitute "property" for purposes of the cancellation and refund provisions.

Article XIII section 3(a) exempts from property taxation property which is owned by the State. The "State," of course, would include the University of California (see Regents of University of California v. City of Los Angeles (1979) 100 Cal.App.3d 547).

In our view, "property owned by the State" is not limited to fee ownership and properly includes possessory interests. (See Tri-Cities Children's Center, Inc. v. Board of Supervisors (1985) 166 Cal.App.3d 589 wherein the court held that property "owned" as used in section 214 (welfare exemption) includes possessory interests.)

Accordingly, under our interpretation, the possessory interest acquired from M by UCSD constitutes "exempt property" for purposes of section 5081. Moreover, we note that section 4986(a) quoted above requires the cancellation of "any tax . . . levied . . . on property acquired by the state, . . . ." (Emphasis added.)

For the foregoing reasons, we are of the opinion that the cancellation and refund provisions discussed above are applicable with respect to the property taxes levied on the possessory interest in question from the date of apportionment (apparently October 15, 1987) to June 30, 1988.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the San Diego County assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

If we can be of further assistance in this matter, please let us know.

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Tax Counsel

EFE:cb
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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Hon. Gregory J. Smith
San Diego County Assessor