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July 29, 2008

**Re: Supplemental Assessment – College Exemption
Assignment No.**

Dear Ms. :

This is in response to M 's request for our opinion regarding whether the Institute (S) continues to qualify for the college exemption on property it leases and uses exclusively for educational purposes (the property) following a change in ownership of that property. As discussed below, it is our opinion that a change in ownership of the property does not disqualify S from the college exemption.¹ Thus S is exempt from any supplemental assessments that resulted from a change in ownership of the property.

Factual Background

The following facts were included in Ms. M 's letter, and for purposes of this letter, will be assumed to be true:

S is a California nonprofit public benefit corporation, which operates a college that qualifies as a nonprofit institution of higher education within the meaning of article XIII, section 3, subdivision (e) of the California Constitution and an educational institution of collegiate grade within the meaning of Revenue and Taxation Code² section 203.

S originally leased an entire building from an entity called D (D), which appears to be a for-profit entity. The lease was a triple-net lease that passed on all costs and expenses of the property, including a portion of the property taxes to S .

¹ However, if upon the change in ownership of the property, use of the property also changed, our opinion may be different.

² All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

On December 29, 2005, D sold the property subject to the lease to M, LLC (M), which appears to be a for-profit entity.

Prior to the December 29, 2005 change in ownership of the property, S received the college exemption for the property. At no time, either before or after the change in ownership of the property, did S stop using the property for purposes which qualified for the college exemption. As a result of the change in ownership, the County Assessor (the Assessor) levied a supplemental assessment on the property.

S subsequently filed a timely claim for exemption based on the college exemption. This claim was denied by the Assessor.

Law and Analysis

I. College Exemption

California Constitution article XIII, section 3, subdivision (e) exempts all “[b]uildings, land, equipment and securities used exclusively for educational purposes by a nonprofit institution of higher education.” (Emphasis added.) The constitutional provision is implemented by section 203, subdivision (a).

The specific language of California Constitution article XIII, section 3, subdivision (e) establishes that the sole requirement for the college exemption is that the property be used by a nonprofit institution of higher education in the manner specified. The California Court of Appeal has held that property is “used exclusively” for a state university within the meaning of the state college exemption when it is used to provide “any facilities which are reasonably necessary for the fulfillment of a generally recognized function of a complete modern” state university. (*Mann v. Alameda County* (1978) 85 Cal.App.3d 505, 508-509, following *The Church Divinity School of the Pacific v. Alameda County* (1957) 152 CalApp.2d 496, 502, which interpreted similar language in Cal. Const., art. XIII, § 3, subd. (e).) Thus, as use of the property is the sole criteria for the college exemption, the ownership of the property is immaterial.

Accordingly, since S’s use of the property to operate a college constituted exclusive use of the property for educational purposes prior to the December 29, 2005, change in ownership of the property, and no changes in the use of the property were made after that date, the property continued to be eligible for the college exemption on and after December 29, 2005. (Calif. Const. art XIII, § 3, subd. (e); Rev. & Tax. Code, § 203.)

II. Supplemental Assessments on Leased Property that Qualifies for the College Exemption

The Legislature adopted the supplemental roll assessment system to require assessors to promptly enroll changes in value due to changes in ownership and new construction.³ The Legislature's stated purpose for requiring supplemental assessment is “to ensure that real property is assessed immediately upon a change in ownership or completion of new construction

³ Stats. 1983, Chapter 498, S.B. 813 added Chapter 3.5 to the Revenue and Taxation Code to require supplemental assessments commencing with the 1983-84 assessment year.

rather than the following lien date.”⁴ Thus, section 75 et seq. provides that all property assessed pursuant to the property tax limitations of article XIII A of the California Constitution is subject to supplemental assessment and section 75.10 requires the assessor to appraise real property at its full cash value on the date of the change in ownership or completion of new construction.

The legislation that created the supplemental assessment system also contained exemption provisions, which are found in Article 3 of Chapter 3.5 of the Revenue and Taxation Code (§§ 75-80). (S.B. 813, CH. 498, Stats. of 1983.)

Section 75.21, subdivision (a) provides an exemption from supplemental assessment for property that is not receiving an exemption on the regular roll, if all the specified requirements are met. Subdivision (a) does not apply in the present case since S’s property already qualified for the college exemption on the regular roll on the date of the change in ownership.

Section 75.21, subdivision (b) provides an exemption from supplemental assessment when the property is already exempt and all the specified requirements have been met:

If the property received an exemption on the current roll or the roll being prepared and the assessee on the supplemental roll is eligible for an exemption and, in those instances in which the provisions of this division require the filing of a claim for the exemption, the assessee makes a claim for an exemption of a greater amount, then the difference in the amount between the two exemptions shall be applied to the supplemental assessment.

As noted above, the lease between M (assessee/lessor) and S (lessee) requires S to pay all property taxes. However, we consider the lease agreement a private contract between the assessee and lessee, and as such, it has no effect on a governmental agency that is not a party to the contract. For property tax purposes, we rely on the provisions of the Revenue and Taxation Code and Property Tax Rules to determine the party responsible for payment of property taxes. Section 23 defines “assessee” “as the person to whom the property or a tax is assessed.” It is our understanding that the assessor intends to assess the property to the developer as of the December 29, 2005, change in ownership. Thus, M (the new owner) would become the “assessee” as of the December 29, 2005, change in ownership of the property. Accordingly, subdivision (b) is not applicable here since M is not an assessee eligible for the college exemption.

However, there are alternative provisions that apply in the case of an exemption in which the assessee and holder of the exemption are not the same entity. Section 75.22 provides that:

A property shall be eligible for exemption from the supplemental assessment if the person claiming the exemption meets the qualifications for the exemption established by this part no later than 90 days after the date of the change in ownership or the completion of new construction.

⁴ Analysis of the Assembly Committee on Revenue and Taxation, "Major Tax Legislation of 1983, July 1983."

Further, section 75.21, subdivision (c) provides:

In those instances in which the provisions of this division require the filing of a claim for the exemption, except as provided in subdivision (d),(e), or (f), any person claiming to be eligible for an exemption to be applied against the amount of the supplemental assessment shall file a claim or an amendment to a current claim, in the form prescribed by the board, on or before the 30th day following the date of notice of the supplemental assessment, in order to receive a 100-percent exemption.⁵

In essence, sections 75.21, and 75.22 provide that a property can continue to be exempt despite a change in ownership and, therefore, will not be subject to supplemental assessment if the claimant files a claim for exemption within 30 days of the notice of supplemental assessment and meets all the qualifications for the exemption within 90 days after the date of change in ownership. Unlike section 75.21, subdivision (b), subdivision (c) of that section does not expressly require that the claimant be the “assessee.” Instead, the test is whether a person claiming the exemption meets the “qualifications for the exemption.” As explained above, while some exemptions (such as the welfare exemption) require both the owner and the operator of a property to be qualifying entities, there is no such requirement under section 203. Because the use of the property is the principal criteria for the college exemption, the ownership of the property is immaterial as long as “the person claiming the exemption meets the qualifications for the exemption” as established by California Constitution article XIII, section 3, subdivision (e) and section 203, subdivision (a).

In the present case, it is our understanding that S was still using the property exclusively for educational purposes pursuant to California Constitution article XIII, section 3, subdivision (e) and section 203, subdivision (a) on December 29, 2005, and that there were no other changes to its organizational structure or its use of the property to disqualify it from the college exemption. Thus, even though M, a nonexempt entity, purchased the property, the use of the property by S for educational purposes was not affected. As discussed above, section 75.21, subdivision (b) only applies in cases when “the assessee on the supplemental roll is eligible for an exemption.” For this reason, it is not necessary to follow the procedures under section 75.21, subdivision (b).⁶ Instead, it is sections 75.21, subdivision (c) and 75.22 that govern, meaning that the property may retain the college exemption in spite of the change in ownership.

Therefore, assuming that S met all filing requirements for the college exemption within 30 days of the notice of the supplemental assessment pursuant to section 75.21, subdivision (c), S was exempt from supplemental assessment on the property. S was compliant with section 75.22 since the property received the college exemption prior to the change in ownership of the property, and did not change its use of the property following the change in ownership.

⁵ Section 75.21, subdivisions (d), (e) and (f) provide for a number of exceptions to subdivision (c) that are inapplicable to the present case.

⁶ Although the Assessor cites LTA 84/67, examples J1 and J2 in support of his reading of section 75.21, subdivision (b), these examples only deal with cases in which an exemption is claimed through an owner rather than through a lessee or an operator. For this reason, these examples are not applicable to the current case.

July 29, 2008

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Daniel Paul

Daniel Paul
Tax Counsel

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cc: Honorable
County Assessor

Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70