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May 19, 1992

TO COUNTY ASSESSORS:

No. 92/38

PUBLIC SCHOOLS EXEMPTION: POSSESSORY INTERESTS
CONNOLLY ET AL. v. COUNTY OF ORANGE, 1 CAL. 4th 1105

In its recent decision in the above matter, the California State Supreme Court held that when a lessee of university property uses that property as a site for a privately owned residence, the property is not "used exclusively for public schools, community colleges, state colleges, and state universities" as required by Article XIII, Section 3(d) of the California Constitution. Therefore, such a property is not eligible for exemption from possessory interest taxes.

In this case, the plaintiffs are faculty members and employees of the University of California, Irvine, who have built their privately owned homes on land owned by the university. The court held that such use of university property does not fulfill the public purpose contemplated by Article XIII, Section 3(d) of the California Constitution and that granting a tax exemption to a faculty member's private long-term leasehold interest in these circumstances would clearly extend the Section 3(d) exemption beyond its intended reach.

The court went on to state that:

"Although plaintiffs have not claimed in this proceeding that their property interest in their privately owned homes is exempt from taxation under section 3(d), if their leasehold interest in the property on which the homes are situated is entitled to an exemption because the property is being used for faculty housing, then it is difficult to understand on what basis an exemption could be denied to the faculty members' property interest in the homes themselves. Furthermore, if, as plaintiffs maintain, the use of property for faculty housing is an exclusive use of property for university purposes under Section 3(d), then a faculty member who bought a home on private property and used it as his or her family residence also could claim an entitlement to an exemption because that property too would be property used for faculty housing. As these examples demonstrate, plaintiffs proposed interpretation of section 3(d) proves too much."

TO COUNTY ASSESSORS

-2-

May 19, 1992

This case differs significantly from English v. County of Alameda, 70 Cal.App. 3d 226, and Mann v. County of Alameda, 85 Cal.App. 3d 505. In both Mann and English, both the land and improvements were owned by the educational institutions and the courts held that the occupants' possessory interests were tax exempt because the use was reasonably necessary to the accomplishment of the purpose of the institutions which owned the property.

Enclosed is a copy of Connolly v. County of Orange for your review. If you have any questions, please contact our Exemption Unit staff at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:eh
Enclosure
AL-34-0528E