

[Assembly Bill 1157](#) (Mullin)

Date: 06/29/17

Program: Property Taxes

Sponsor: Author

Revenue and Taxation Code Section 202

Effective: January 1, 2018

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This analysis is limited to this bill's property tax provisions.

Summary: Provides that the Public Schools Exemption and Government Owned Property Exemption applies to housing for public school district or community college district employees including the employee's possessory interest.

Summary of Amendments: The amendments since the previous analysis redraft the bill to explicitly address possessory interests (PIs).

Purpose: To aid in the effort to build affordable housing for public school district and community college district employees to support employee recruitment and retention.

Fiscal Impact Summary: No revenue impact.

Existing Law: The California Constitution exempts from property taxation property owned by the state or local governments¹ and property used exclusively for public schools, community colleges, state colleges, and state universities ("Public Schools Exemption").² Since public schools are tax-exempt governmental entities, a public school typically files a claim for the Public Schools Exemption only on property the public school uses but does not own.

PI: Government Employee Housing. The law does not provide a possessory interest exemption for an employee's interest in government-owned employee housing. Case law has found that a taxable PI may exist based on the facts of each case. As such, [Property Tax Rule 28](#) lists, as an example of commonly encountered taxable PIs, "[t]he possession of an employee in housing owned by a public agency, irrespective of whether occupancy of the housing is a condition of employment except when the facility also serves as the employee's work area to which the employer has full access."

PI: College and Public School Employee Housing. No property tax law provision explicitly relates to public school employee housing including any taxable PI an employee may hold. While the courts have addressed the subject, these cases concern housing provided at the collegiate level. The courts have ruled that school employee housing may be exempt under the Public Schools Exemption where the housing is reasonably necessary to further the primary educational purpose of the public school. Property "used exclusively for educational purposes" includes college or university-provided faculty and student housing because such housing furthers the primary educational purpose of a university or college and is reasonably necessary for the fulfillment of a generally recognized function of a complete and modern college or university.³

The Teacher Housing Act of 2016⁴ creates a state public policy supporting affordable rental housing on school district (K-12)-owned land restricted to occupancy for teachers and school district employees.

Proposed Law: This bill provides that the Public Schools Exemption [Article XIII, Section 3(d) and RTC Section 202(a)(3)] applies to state, county, city, school district, or community college district-owned properties used to provide rental housing for employees of public school districts (K-12) or community college districts. Additionally, the bill extends the exemption to include the public school or community college employee's PI in the housing.

¹ Article XIII, [Section 3](#)(a) and (b), Revenue and Taxation Code (RTC) [Section 202](#)(a)(4).

² Article XIII, Section 3(d) and RTC Section 202(a)(3).

³ *Mann v. County of Alameda* (1978) 85 Cal.App.3d 505.

⁴ Health and Safety Code Sections 53570 to 53574 (SB 1413, Stats. 2016, Ch. 732).

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Additionally, this bill provides that the government-owned property exemption [Article XIII, Section 3(b) and RTC Section 202(a)(4)] applies to state, county or city-owned properties used to provide rental housing for public school districts or community college district employees. Additionally, the bill extends the exemption to include the public school or community college employee's PI in the housing.

In General. Public Schools Exemption v. Private College Exemption. These are separate and distinct exemptions as noted below:

Private Colleges. The law⁵ provides a "College Exemption" applicable to nonprofit educational institutions of collegiate grade. The College Exemption is available to property used exclusively for educational purposes by a nonprofit educational institution of collegiate grade. The property may be either owned or leased.

Public Colleges/Public Schools. Colleges that are part of the public school system, such as community colleges, state colleges, state universities, including the University of California, are not exempt under the College Exemption. They are constitutionally exempt as government owned property. Additionally, they may be exempt under the Public Schools Exemption if the property is used for public school purposes and owned by a private person or entity. Typically, a formal claim requesting the "Public Schools Exemption" is necessary only when the public school does not own the property in question. [Public School Exemption claim](#), (BOE-268-A), may be filed by the public school, otherwise the property owner must file [Lessor's Exemption](#) claim, BOE 263.

Residential Housing and the Public Schools and College Exemption: Exclusive Use. Relevant to this bill, in the context of residential housing, the courts have not addressed exemption availability below the collegiate level. To qualify for exemption, property must be used exclusively for educational purposes. This purpose includes facilities that are reasonably necessary to further the primary educational purpose of a university or college, such as college- or university-provided faculty and student housing. However, the mere fact that apartments comprised mostly of student tenants are located near campus does not make the units eligible for the college or public schools exemption.⁶

Possessory Interests. In certain instances, a property tax assessment may be levied when a person or entity uses publicly-owned real property that, with respect to its public owner, is either immune or exempt from property taxation. These uses are commonly referred to as "possessory interests" and are typically found where an individual or entity leases, rents, or uses federal, state, or local government facilities and/or land.

RTC Section 107 establishes parameters within which assessors and judicial authorities are to determine the existence of taxable possessory interests. Generally, those determinations are made according to the facts and circumstances in each individual case. Relevant to the issues raised by this bill, the general taxability of various possessory interests is noted below:

- **College and University Student and Staff Rental Housing: Not taxable to tenant.** In the case of rental housing for students and employees of colleges and universities, generally the courts⁷ and BOE's legal written opinions⁸ have found that the student-tenant or the employee-tenant occupying the housing is not subject to tax for a taxable possessory interest. The possessory interest is not taxable to the tenant if the occupancy can be considered reasonably necessary or incidental to an educational purpose.
- **Affordable Rental Housing: Not taxable to tenant.** In the case of affordable rental housing that is government-owned, the BOE has opined that there is no taxable possessory interest to the tenant occupying the property because it would defeat the public purpose of providing affordable and low-cost housing.⁹

⁵ Article XIII, Section 3(e), implemented by RTC Section 203.

⁶ Property Tax Annotation No. [690.0006](#) (CalSTRS-owned apartment via LLC).

⁷ See *Connolly et al v. Orange County* (1992) 1 Cal.4th 1105 for a detailed discussion concerning *English v. Alameda County* (1977) 70 Cal.App.3d 266 and *Mann v. Alameda County* (1978) at pp.1125-1127.

⁸ Property Tax Annotation No. [660.0225](#) (Student Housing), [660.0340](#) (University Staff), [785.000](#) (State University Exemption).

⁹ Property Tax [Annotation No. 660.0155](#) (Low-Income Housing).

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- **Privately Owned Homes on College/University Land: Land is taxable to the homeowner.** In the case of employee-owned homes on public university land, a taxable possessory interest exists in the land. *Connolly et al. v. Orange County* (1992) 1 Cal.4th 1105 holds that the public schools exemption is not available when an employee leases university-owned land underlying the employee-owned home.
- **Other Government-Owned Employee Housing: Possibly taxable.** Depending on the facts, federal-employee¹⁰ and state-employee residents of government owned employee housing may owe tax related to their possessory interest. Additionally, the courts have held that an irrigation district employee residing in a single-family residence owned by the district owes tax on the possessory interest.¹¹ With respect to military housing, both on-base and off-base, the courts have ruled that military personnel residing in the homes do not have a taxable possessory interest.¹² [Property Tax Rule 28](#) lists, as an example of commonly encountered taxable possessory interests, “[t]he possession of an employee in housing owned by a public agency, irrespective of whether occupancy of the housing is a condition of employment except when the facility also serves as the employee’s work area to which the employer has full access.”

Background: The [Teacher Housing Act of 2016](#) (Act) (SB 1413, Stats. 2016, Ch. 732) authorizes a school district to establish and implement programs that address staff housing needs. The Act provides clear authorization to school districts to develop housing on district-owned property to provide affordable housing to teachers and school district employees who need it. The Act created a state policy supporting housing for teachers and school district employees, as described in federal tax law, and permits the school districts and developers receiving local or state funds or tax credits for affordable rental housing to restrict occupancy to teachers and school district employees.

Commentary:

1. **As proposed to be amended,** the bill will modify the June 15 amendments to delete the extension of the employee possessory interest exemption to state, county, or city employees because the law does not provide a government-use based exemption such as the law allows for public school-use. Additionally, as proposed to be amended, the bill will make clear the exemption applies to rental housing. This is necessary to ensure the bill does not impact the current assessment of PIs related to college and university employees that own homes on leased land owned by the college or university. **The June 15 amendments** recrafted the previous amendments to better reflect the bill’s intent. However, the June 15 amendments also expanded the bill’s scope by creating a PI exemption for state, county, and city employees residing in employee housing. The Public Schools Exemption is a “use-based” exemption which the courts have held to apply to collegiate level employee housing. With the exception of RTC [Section 231](#)¹³, no such “use-based” exemption exists for government uses of privately owned land.
2. **Effect of this bill: Public School (K-12) and Community College Employee Housing.** This bill seeks to provide clear authorization that the Public Schools Exemption may extend to housing provided below the collegiate level; i.e., to public school district (K-12) employees, as well as to community college district employees. The development of employee housing at the K-12 public school level is an emerging issue, as few employee housing projects at the K-12 public school level have been built in California. To date, the courts have affirmed that the Public Schools Exemption¹⁴ and the College Exemption¹⁵ apply to college and university employee housing (including an individual employee’s PI). The courts have not addressed residential housing below the collegiate level. Generally, based on the reasoning in such cases as *Mann v. Alameda County* (1978) 85 Cal.App.3d 505, *Church*

¹⁰ *United States v. Fresno County* (1975) 50 Cal.App.3d 633 (National forest service employees).

¹¹ *McCaslin v. DeCamp* (1967) 248 Cal.App.2d 13 (Irrigation District employee).

¹² *United States v. Humboldt County* (1980) 628 F.2d 549 (Military personnel).

¹³ Property exclusively of a governmental character (jail, courthouse) owned by a nonprofit corporation and leased to a governmental entity.

¹⁴ Article XIII, Section 3(d).

¹⁵ Article XIII, Section 3(e).

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Divinity School v. Alameda County (1957) 152 Cal.App.2d 496, and *English v. Alameda County* (1977) 70 Cal.App.3d 226, property is being "used exclusively" for college/university purposes so long as the unit is rented to a student, faculty member, or staff member of the college/university. Explicitly stating that the Public Schools Exemption shall apply to property that provides housing for employees of public schools at the K-12 level and community colleges gives proponents a measure of certainty that public schools below the collegiate level are similarly eligible, avoiding a PI assessment to the employee-tenant residing in the unit. While no provision of law explicitly addresses universities and college employee-provided housing, a long history of case law exists.

3. **Effect of this bill: Possessory Interests.** This bill is intended to ensure that neither the employee-tenant nor any school district or community college receives a property tax bill related to the housing. In the case of other *affordable* rental housing properties, the BOE has previously opined that issuing a tax bill to an occupant-tenant for their PI would defeat the public purpose of providing affordable housing. (However, this bill does not limit its provisions to housing rented at an affordable cost). To issue a tax bill to any public school district or community college district because it allows employees from other districts to occupy the housing (or because it leases land it owns to another school district for housing) would similarly appear to defeat the educational public purpose of the Public Schools Exemption. As noted previously, if a PI related tax bill was issued to any public school (or county, in the case of county-owned land), that public school could claim the "Public School Exemption" on units occupied by its employees, given that ownership is not a requirement.
4. **Providing affordable housing at the public school level may serve an educational purpose that is reasonably necessary.** In the context of residential housing, the difficulty in recruiting and retaining satisfactory employees are facts that the courts have held constitute a reasonable necessity.¹⁶ Furthermore, the Teacher Housing Act of 2016 has created a state public policy supporting affordable housing for teachers and school district employees.
5. **One Site - Multiple Districts.** In part, this bill seeks to provide clear authorization that the Public Schools Exemption extends to property that provides housing to employees of more than one public school district or community college district at the same site. In a 2005 BOE un-annotated legal opinion, BOE staff stated that the Public Schools Exemption only applies to property housing the employees of the public school seeking the exemption (in this case a community college). This opinion related to the construction of rental apartments for employees located on a community college campus where tenant eligibility priority extended to employees from nearby high school districts. The opinion stated that the housing provided to employees of other districts would be ineligible. However, upon review, it appears that this statement was incorrect. To the extent school employees from other districts reside at the property, the other school district could claim the exemption on units its employees occupy as property "used" by the district. This is possible because the Public Schools Exemption (1) can apply on a per unit basis, (2) has no ownership requirement, and (3) has no location limitations. Thus, staff views the proposed "or any combination thereof" employee housing amendment (RTC Section 202(b)(2) and (b)(3)) as falling within the scope of existing law.

Costs: This bill would result in absorbable costs to update publications.

Revenue Impact: As proposed to be amended, this bill has no revenue impact. Given the affordable housing crisis, providing affordable housing at the public school and community college level may serve an educational purpose that is reasonably necessary. In the context of residential housing, the difficulty in recruiting and retaining satisfactory employees are facts that the courts have held constitute a reasonable necessity.

As noted previously, with regard to a single property site serving multiple public school employers, each public school could claim the public schools exemption on any rental unit occupied by its employee. The same is true for public school employee housing located on state, county, or city-owned land. Thus, these provisions also have no revenue impact.

¹⁶ *Church Divinity School v. Alameda County* (1957) 152 Cal.App.2d 496.

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