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June 27, 2007

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

PUBLIC SCHOOL CONCESSIONS

In Letter To Assessors 2007/015, dated March 7, 2007, interested parties were invited to provide comments on draft language discussing Public School Concessions. Ultimately, the language will be incorporated into proposed Assessors' Handbook Section 260, *General Exemptions*, which staff is currently drafting. After reviewing comments on the proposed draft language, staff met with interested parties on April 23, 2007 in Sacramento.

Subsequent to the April 23 meeting, staff received a significant number of additional comments from interested parties who did not participate in the April meeting. Consequently, a second interested parties meeting will be held on August 9, 2007, 9:30 a.m., at the Board's headquarters in Sacramento, 450 N Street, Room 122. Attached is a matrix summarizing comments received to date on the proposed language and a revised copy of the draft language.

All documents regarding this project are posted to the Board's website at www.boe.ca.gov/proptaxes/pubschcons.htm. If you plan to attend the interested parties meeting on August 9, or if you would like to participate in the meeting by conference call, please contact Margie Wing at 916-324-0028 or at margie.wing@boe.ca.gov.

Sincerely,

/s/Dean R. Kinnee

Dean R. Kinnee, Chief
County-Assessed Properties Division

DRK:sk
Enclosure

PUBLIC SCHOOL CONCESSIONS
Except from Proposed AH 260, *General Exemptions*
ALTERNATIVE LANGUAGE

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
1	1	24	Winston & Strawn LLP (Moll, Marsh)	<p>Revise sentence: Under most circumstances <u>With one exception</u>, there are no taxable possessory interests in personal property.²</p> <p>Comment: Handbook language should not suggest that other types of possessory interests in personal property exist.</p>	Accepted
2	1	26	Regents of the University of California, Office of the General Counsel (Lee)	<p>Revise sentence: Taxable possessory interests may qualify for the public school exemption if the property is used exclusively for public school purposes.</p> <p>Comment: We recommend that the constitutional and statutory language be used, because assessors have erroneously interpreted the use of the phrase "public school purposes" to require that, in order for the exemption to be available for a particular location, teaching must be carried on there.</p>	<p>Not accepted –</p> <p>The primary determinant for the exemption is that the property is being used for a "public school purpose."</p> <p><i>Ross v. City of Long Beach</i> (1944) 24 Cal.2d 258</p> <p><i>Ytrup Homes v. County of Sacramento</i> (1977) Cal.App.3d 279</p> <p><i>Oats v. County of Sacramento</i> (1978) 78 Cal.App. 3d 745</p> <p><i>Connolly v. County of Orange</i> (1992) 1 Cal.4th 1105</p>

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
3	1	26	Winston & Strawn LLP (Moll, Marsh)	<p>Revise sentence: Taxable possessory interests may qualify for the public school exemption if the property is used exclusively for public school purposes <u>educational institution</u>.</p> <p>Comment: To align the Handbook language with that of the Constitution and Revenue and Taxation Code, as interpreted by the <i>Regents of the University of California</i> case cited earlier. That case uses the term "public educational institutions" as short-hand for the Constitutional and statutory phrase "public schools, community colleges, state colleges, and state universities."</p>	Not accepted – See comments for Item #2
4	2	5	Regents of the University of California, Office of the General Counsel (Lee)	<p>Comment: The University objects to both the wording of the definition of "campus" and to certain of the uses of the term in the remainder of the document. The University owns or operates in many locations throughout the state, not merely at the ten locations identified as a "campus." These locations include agricultural extension centers, office buildings, laboratories, field stations, and experimental farms among others. At many of these locations, students are rarely, if ever taught, even though the activities at those locations are central to fulfilling the public mission of the University.</p> <p>SBE REWRITE: For purposes of identifying public school concessionaires, <i>campus</i> means <u>a the primary location or auxiliary branch of a university, college, or public school where students are taught, but does not include incidental locations. A campus includes, but is not limited to, lecture halls, libraries, administration buildings, research facilities, athletic/recreation buildings and fields, student or staff residential areas, and any open areas surrounding such buildings. Campus is not limited to the primary location, but also includes satellite or extension sites or even individual buildings that may be spread throughout the state that are owned/used by public schools. However, these locations must be used for public school purposes. Incidental locations are not included in the definition of campus.</u> For example, some medical students may be required to obtain training in their medical specialties by becoming residents at private clinics located off campus. Under this scenario, <u>even though there is a the student-teacher relationship, this alone would not qualify the private clinics as a part of the campus or alone would not qualify the private clinics as a part of the campus nor</u> for the public school exemption.</p>	See SBE Rewrite

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
5	2	5	Winston & Strawn LLP (Moll, Marsh)	<p>Delete paragraph: Definition of Campus For purposes of identifying public school concessionaires, <i>campus</i> means the primary school location or auxiliary branch of a university, college, or public school where students are taught, but not incidental locations. For example, some medical students may be required to obtain training in their medical specialties by becoming residents at private clinics located off campus. Under this scenario, the student teacher relationship alone would not qualify the private clinics as a part of the campus nor for the public school exemption.</p> <p>Comment: This definition extends to all property used exclusively for public educational institutions, whether on a campus or not. To suggest that the exemption should be limited in some way to a physical campus would therefore be contrary to the language of the Constitution and Revenue and Taxation Code. Indeed, the proposed definition, which includes the "primary location or auxiliary branch...where students are taught" would actually conflict with several court decisions.</p> <p>Moreover, modern public educational institutions are including more and more on-line internet courses and they day may not be far off when come public educational institutions may consist of nothing more than a few dispersed "branch" locations or "service centers."</p>	Not accepted – See SBE Rewrite for Item #4
6	2	19	Winston & Strawn LLP (Moll, Marsh)	<p>Revise sentence: The criterion for whether the public school exemption is available is that the taxable possessory interest must be used exclusively for a public school use <u>educational institution</u>.</p> <p>SBE REWRITE: The criterion for whether the public school exemption is available is that the taxable possessory interest must be used exclusively for a public school use <u>purpose</u>.</p>	Not accepted – See comments for Item #2 See SBE rewrite
7	2	23	Winston & Strawn LLP (Moll, Marsh)	<p>Revise sentence: However, the courts have also concluded that "such incidental use must be directly connected with, essential to, and in furtherance of, the primary use [<u>citation omitted</u>] and must be reasonably necessary for the accomplishment of the primary purpose for which the tax-exempt institution was organized."³</p> <p>SBE REWRITE: However, the courts have also concluded that "such incidental use must be directly connected with, essential to, and in furtherance of, the primary use [<u>citations</u>] and must be reasonably necessary for the accomplishment of the primary purpose for which the tax-exempt institution was organized [<u>citations</u>]."³</p>	See SBE rewrite.

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
8	2	30	Winston & Strawn LLP (Moll, Marsh)	<p>Revise sentence: Factors that the county assessor should consider, <u>that may be determinative that the exemption applies</u>, include, but are not limited to:</p> <p>SBE REWRITE: Factors that the county assessor should consider, <u>that may be determinative that the exemption applies</u>, include, but are not limited to:</p>	See SBE Rewrite
9	2	32	Regents of the University of California, Office of the General Counsel (Lee)	<p>Revise sentence: • Is the taxable possessory interest used exclusively for educational purposes? <u>keeping in mind that used exclusively does not mean used solely an activity reasonably necessary for the achievement of the public purposes of a public school, college or university?</u></p> <p>Comment: The assessors are directed to consider whether the possessory interest is "used exclusively for educational purposes." This direction, however, applies the wrong test for exemptions claimed under Article XII, section 3(d). It <u>is</u> an appropriate test for exemptions claimed under Article XII, section 3(e), which includes the phrase "educational purposes."</p> <p>SBE REWRITE: • Is the taxable possessory interest used exclusively for educational <u>public school</u> purposes? - keeping in mind that used exclusively does not mean used solely?</p>	See SBE Rewrite
10	3	1	Winston & Strawn LLP (Moll, Marsh)	<p>Delete paragraph: • Is the taxable possessory interest located on or off campus? Generally, taxable possessory interests located off campus do not fulfill a necessary school function. However, upon examination, even a taxable possessory interest located on campus may not be eligible for the exemption depending on how the property is used.</p> <p>Comment: See matrix #5 comments.</p> <p>SBE REWRITE: • Is the taxable possessory interest located on or off campus? Generally, taxable possessory interests located off on campus do not fulfill a necessary school function. However, upon examination, even a taxable possessory interest located on campus may not be eligible for the exemption depending on how the property is used.</p>	Not accepted – The bulleted items are suggested factors for "consideration" in determining eligibility for the exemption. While location is not a bright-line test for eligibility, it is a major factor. Even on campus concessions require a determination of facts before granting the exemption.

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
11	3	1	Regents of the University of California, Office of the General Counsel (Lee)	<p>Comment: There is advice that "taxable possessory interests located off campus" generally do not fulfill a necessary school function. This conclusion is not supported by legal authority. The University strongly disagrees with the conclusion, and requests that the assessors be encouraged to apply the standard tests under Article XII, sections 3(d) of 3(e) for exemption of possessory interests, wherever those interests are located. In particular, the advice conflicts with the holding in the case of <i>Mann v. County of Alameda</i>, which is cited in the advice, which referred to University-owned student housing whether on or off campus.</p>	Not accepted – See comments for Item #10
12	3	5	Regents of the University of California, Office of the General Counsel (Lee)	<p>Revise sentence: • Is the taxable possessory interest used for the benefit and convenience of the students and faculty <u>or is necessary for operation of the institution?</u>—again, keeping in mind that used for the benefit and convenience of the students and faculty does not mean used solely.</p> <p>SBE REWRITE: • Is the taxable possessory interest used for the benefit and convenience of the students and faculty <u>or reasonably necessary for operation of the public school?</u> - again, keeping in mind that used for the benefit and convenience of the students and faculty does not mean used solely?</p>	See SBE Rewrite
13	3	9	Winston & Strawn LLP (Moll, Marsh)	<p>Add sentence: <u>Other factors that may be relevant include, but are not limited to:</u> • Is access to the taxable possessory interest restricted functionally or physically? Does the location of the taxable possessory interest on the school property make it less likely for the general public to use?</p> <p>Comment: The remaining bullet points contain examples of facts that may assist in the determination of whether the exemption applies, although they are not themselves determinative of the issue.</p> <p>SBE REWRITE: <u>Other factors that may be relevant include, but are not limited to:</u></p> <ul style="list-style-type: none"> • Is access to the taxable possessory interest restricted functionally or physically <u>in any way</u>? Does the location of the taxable possessory interest on the school property make it less likely for the general public to use? 	See SBE Rewrite

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
14	3	9	Winston & Strawn LLP (Moll, Marsh)	<p>Add sentence: • Is access to the taxable possessory interest restricted functionally or physically? Does the location of the taxable possessory interest on the school property make it less likely for the general public to use? <u>However, the presence of gratuitous licensees and visitors on the property of schools and hospitals has never been held to affect the tax exempt status of such institutions. (The Church Divinity School of the Pacific, supra, 152 Cal.App.2d at 505).</u></p> <p>Comment: No other California appellate court decision, statute or rule limits the exemption if the general public might use the property as well. The Handbook language should not suggest that access by the general public might disqualify the property from the exemption.</p>	<p>Not accepted –</p> <p>The bulleted items are suggested factors for "consideration" in determining eligibility for the exemption. The text makes clear that "exclusively used for a public school use" does not mean "solely used for a public school use." However, the concession must be primarily used by students and faculty. Therefore, a factor for consideration is availability of the concession to the general public.</p>
15	3	13	Winston & Strawn LLP (Moll, Marsh)	<p>Delete sentence: • Is the primary purpose of the taxable possessory interest just to generate income for the school?</p> <p>Comment: No California appellate court decision, statute or rule limits the exemption under a "primary purpose" test that includes consideration of revenue generation. The exemption test is whether the property is used exclusively for educational institutions. The Handbook language should not be altered to suggest that a test, not founded in law, exists.</p>	<p>Not accepted –</p> <p>If a tax-exempt property is used merely as a revenue generating device, then the exemption cannot be granted. <i>Honeywell Information Systems, Inc. v. County of Sonoma</i> (1974) 44C.A.3d 23.</p>

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
16	3	16	Los Angeles County Assessor (Auerbach)	<p>Revise and move paragraph: It is incumbent upon the possessor <u>owner</u> of a taxable possessory interest, <u>fixtures or personal property</u> to provide information to the county assessor to show why the property should be exempt from property taxation under the public school exemption. <u>The affidavit prescribed by section 254 of the Revenue and Taxation code must be filed to obtain the exemption.</u></p> <p>When a county assessor determines that a taxable possessory interest meets the qualifications for the public school exemption, then two possible methods of exemption exist:</p> <ol style="list-style-type: none"> 1. If the taxable possessory interest is located on public school owned property, then the property is exempted pursuant to article XIII, section 3, of the California Constitution. No claim form is required. The county assessor is not required to value the property and place it on the roll before exempting it. However, there are no statutes that prohibit the county assessor from placing the taxable possessory interest on the roll and then exempting it. 2. If property that is owned by a private individual or entity is used exclusively for educational purposes, then the property may be exempted pursuant to Revenue and Taxation Code section 254. An annual affidavit claiming the exemption is required. The county assessor is required to value the property and place it on the roll before exempting it. <p><u>The assessed value and exempt value must be shown on the assessment roll as required by Property Tax Rule 252(a)(8) if the property is located in a tax rate area that includes ad valorem special assessments. Also, for the effective and uniform application of this exemption, we suggest that all property which is exempt under the public school exemption be shown on the assessment roll.</u></p> <p>Comments:</p> <ol style="list-style-type: none"> 1. The topic should be moved because it applies to all types of property, not just possessory interests, thus it belongs after the discussion of the types of property and uses that may qualify for exemption. 2. Section 254 requires the filing of the affidavit by the person claiming the exemption, therefore the owner of the possessory interest or any other property classification is required by that section to file. 3. Property tax rule 252(a)(8) requires that when there are ad valorem special assessments, the value and the exempt value must be shown on the assessment 	<p>See SBE Rewrite</p> <p>Section 254 states that <i>any person</i> claiming the exemption shall submit an affidavit; it does not specify the person must be the <i>owner</i>.</p> <p>SBE holds that it is the <i>possessor</i> who must file the affidavit. Property Tax Rule 20, subdivision (c)(4) defines "possessor" as the party or parties who hold the possessory interest, and any successors or assigns to such party or parties.</p>

NO.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
16 Cont.			<p>roll. Additionally, at least in Los Angeles County, there are direct assessments that are assessed on 100% exempt property. It would not be appropriate for a possessory interest owned by USC and exempt under Article 13, section 3(e) to pay these direct assessments and the owner of a 100% exempt possessory interest at UCLA not to be required to pay.</p> <p>4. Last, for effective administration of these types of exemptions, large counties have separate exemption and valuation divisions. The typical process requires the valuation division to assess all property and the exemption division to make a determination of whether the property qualifies for exemption. By not requiring the assessment of the possessory interest and filing of an affidavit or claim for exemption, you are setting up a process that leads to appraisers that are not trained in exemption requirements making decisions on a very complicated exemption.</p> <p><u>SBE REWRITE: Exemption Process</u></p> <p>It is incumbent upon the possessor of a taxable possessory interests, fixtures, or personal property to provide information to the county assessor to show why the property should be exempt from property taxation under the public school exemption. <u>The affidavit prescribed in section 254 must be filed to obtain the exemption.</u></p> <p>When a county assessor determines that a taxable possessory interest meets the qualifications for the public school exemption, then two possible methods of exemption exist:</p> <p>1. If the taxable possessory interest is located on public school owned property, then the property is exempted pursuant to article XIII, section 3, of the California Constitution. No claim form is required. The county assessor is not required to value the property and place it on the roll before exempting it. However, there are no statutes that prohibit the county assessor from placing the taxable possessory interest on the roll and then exempting it.</p> <p>2. If property that is owned by a private individual or entity is used exclusively for educational purposes, then the property may be exempted pursuant to Revenue and Taxation Code section 254. An annual affidavit claiming the exemption is required. The county assessor is required to value the property and place it on the roll before exempting it.</p>	

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
16 Cont.				<u>The assessed value and exempt value should be shown on the assessment roll as required by Property Tax Rule 252, subdivision (a)(8), if the property is located in a tax-rate area that includes ad valorem special assessments.</u>	
17	3	16	Winston & Strawn LLP (Moll, Marsh)	Revise sentence: 1.— If the taxable possessory interest is located on public school <u>educational institution</u> -owned property, then the property is exempted pursuant to article XIII, section 3, of the California Constitution....	Not accepted – See SBE Rewrite for Item #16 (paragraph deleted)
18	3	21	Regents of the University of California, Office of the General Counsel (Lee)	Revise sentence: If property that is owned by a private individual or entity is used exclusively for educational purposes, then the property may be exempted pursuant to Revenue and Taxation Code section 254. ⁵ <u>a taxable possessory interest is used exclusively for a public school, community college, state college or state university, then that possessory interest may be exempted pursuant to Revenue and Taxation Code section 254.</u>	Not accepted – See SBE Rewrite for Item #16 (paragraph deleted)
19	3	21	Winston & Strawn LLP (Moll, Marsh)	Delete paragraph: 2. If property that is owned by a private individual or entity is used exclusively for education purposes, then the property may be exempted pursuant to Revenue and Taxation Code section 254. ⁵ <u>An annual affidavit claiming the exemption is required. The county assessor is required to value the property and place it on the roll before exempting it.</u> Comment: This language does not involve a possessory interest at all because the property is owned by a private individual or entity.	Accepted – (paragraph deleted) however, see SBE Rewrite for Item #16
20	3	21	Winston & Strawn LLP (Moll, Marsh)	Revise sentence: 2. If property that is owned by a private individual or entity is used exclusively for education purposes, then the property may be <u>is</u> exempted pursuant to Revenue and Taxation Code section 254. ⁵ Comment: The Constitution and Revenue and Taxation Code are written in absolutes—if the property is used exclusively for public educational institutions, then it <u>is</u> exempt. The Constitution and statute provide no exceptions, and the Handbook language should not be altered to suggest that exceptions exist.	Not accepted – (paragraph deleted); however, see SBE Rewrite for Item #16

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
21	3	24	Winston & Strawn LLP (Moll, Marsh)	<p>Revise paragraph: Public school officials have historically contracted with profit-making vending machine companies to put their machines <u>dispensing, among other things, food, drinks, personal items, and school supplies</u> on school grounds or campuses <u>for the benefit of students and faculty, and</u> whereby the school will benefit from a portion of the sales. The vending machines are easily movable and generally are classified as personal property. <u>Such vending machines that are used exclusively for the public educational institution qualify for the exemption.</u></p> <p>Comment: All property used for such purposes is exempt and no authority limits such permissible activities to food dispensing.</p> <p>SBE REWRITE: Public school officials have historically contracted with profit-making vending machine companies to put their machines <u>dispensing, among other things, food, drinks, personal items, and school supplies</u> on school grounds or campuses whereby <u>for the benefit of students and faculty. These contracts generally include provisions that the school will also benefit financially from a portion of the sales. The vending machines are easily movable and generally are classified as personal property and when used exclusively for public school purposes, they qualify for the exemption.</u></p>	See SBE Rewrite

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
22	4	1	Winston & Strawn LLP (Moll, Marsh)	<p>Move text: Pursuant to section 202.6, personal property is exempt if it is used exclusively in the performance of activities by a student body organization authorized by sections 76060 et seq. of the Education Code.</p> <p>One of the activities authorized by the Education Code is a student body organization selling food on school grounds.⁴ Consequently, vending machines located on public school property may be eligible for the public school exemption under the following circumstances:</p> <ul style="list-style-type: none"> •The governing body of the school authorized the student organization to sell food in vending machines on school premises. •The vending machine dispenses items that can be classified as food. •The student body organization receives a portion of the receipts from the vending machine service. <p>In addition, †The public school exemption provisions contained in section 202(a)(3)⁷ allows for the exemption of any property used exclusively for a public school purposes, regardless of ownership. Therefore, vending machines owned by a for-profit business are eligible for the exemption as long as the property is being used by for public schools purposes. (See below for a discussion regarding the taxable possessory interest created in the public school real property upon which vending machines sit.)</p> <p><u>In addition, Pursuant pursuant to section 202.6, personal property is exempt if it is used exclusively in the performance of activities by a student body organization authorized by sections 76060 et seq. of the Education Code.</u></p> <p><u>One of the activities authorized by the Education Code is a student body organization selling food on school grounds.⁶ Consequently, vending machines located on public school property may be eligible for the public school exemption under the following circumstances:</u></p> <ul style="list-style-type: none"> <u>• The governing body of the school authorized the student organization to sell food in vending machines on school premises.</u> <u>• The vending machine dispenses items that can be classified as food.</u> <u>• The student body organization receives a portion of the receipts from the vending machine service.</u> 	Accepted

¹ Education Code section 48931.

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
23	4	12	Winston & Strawn LLP (Moll, Marsh)	<p>Revise paragraph: The Education Code authorizes school districts to furnish food service. Therefore, vending machines dispensing food items are a service that is directly related to, and in furtherance of, a primary purpose of the school district. Furthermore, the court in <i>California School Employees Assoc. v. Sequoia Union High School Dis.</i> held that providing food to students in secondary schools is an educational activity within the provisions of the Education Code. Thus, such vending machines are exempt from taxation.</p>	Not accepted – Text accurately states the Court findings.
24	4	27	Winston & Strawn LLP (Moll, Marsh)	<p>Revise sentence: However, if such property is used exclusively for public schools <u>educational institution</u>, it is exempt from property taxation under article XIII, section 3(d) of the Constitution.</p>	Not accepted – See comments for Item #2
25	4	29	Winston & Strawn LLP (Moll, Marsh)	<p>Revise sentence: This constitutional provision does not require that the public school own the property, only that the property is exclusively used for public school purposes <u>educational institution</u>.</p>	Not accepted – See comments for Item #2
26	4	32	Winston & Strawn LLP (Moll, Marsh)	<p>Revise sentence: Private non-profit or for-profit concessionaires—such as fast food restaurants, coffee shops, pubs, or individually owned food stands—may be <u>are</u> eligible for exemption as long as they are located on the campus.</p> <p>Comment: These types of organizations are certainly "<u>eligible</u>" for the exemption. The statement does not state that they actually "are exempt." The use of the term "campus" is not appropriate. The defined term "campus" would exclude food services in dormitories, etc.</p>	Not accepted – See comments for Item #4 and Item #10
27	5	1	Winston & Strawn LLP (Moll, Marsh)	<p>Delete sentences: When determining eligibility of food concessionaires, the county assessor should, among other factors, consider the physical access to the property. For example, is the fast food restaurant located on the edge of a campus where it is easily accessed by the general public, or is it located on a part of the campus that would make it less likely to be used by the general public; for instance, no parking is available. Because of statutory provisions and case law precedence, it is less difficult for on campus food concessionaires to qualify for the public school exemption than most other types of concessionaires.</p> <p>Comment: Access by the general public is irrelevant.</p>	Not accepted – See comments for Item #14

NO.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
36	7	4	Winston & Strawn LLP (Moll, Marsh)	<p>Delete paragraph: Off Campus Businesses – Restaurants or other food services and retail stores that lease property owned by a public school, but are located off campus, are subject to possessory interest taxation. Although it can be argued that such businesses in close proximity to the campus provide conveniences to the students and that a large percentage of the business is generated from the students, such establishments are not exclusively used for public school purposes.</p> <p>Comment: The test for exemption is whether the property is used exclusively for educational purposes. One could easily imagine a situation where, because of limited facilities, a concessionaire could not prepare food products for sale on the campus, but prepared them instead on another plot of public educational institutional owned property nearby where its kitchen was located and brought them to the campus to sell. It would be improper to say that the kitchen was not exempt, but the "on-campus" sales station was. Likewise, this paragraph could improperly tax a storage facility for a bookstore, or other obviously exempt concessionaire used property, which should be exempt. This language would also preclude the exemption of a student cafeteria located in student housing which did not fall within the definition of "campus."</p>	Not accepted – See Item #35
37	7	23	Regents of the University of California, Office of the General Counsel (Lee)	<p>Revise sentence: In other words, if the use of property for <u>faculty-owned</u> housing is an exclusive use of property for public school purposes under section 3(d) of the California Constitution, then even a faculty member who bought a home on private land and used it as his or her family residence could also claim an entitlement to an exemption because that property too would be property used for faculty housing.</p>	Accepted
38	--	--	Madera County Assessor's Office (Brough)	<p>Comment: It occurred to me that there might be some theoretically logical system of thought which would conclude, therefore, that commercial activity, such as a jewelry store on a college campus, should not be exempted or be nonassessable if located on a college campus.</p> <p>I find the rationale of the arguments in the proposed handbook to be very weak. I think it's because of the word "exclusively."</p>	Discussion Item

1 (Excerpt from Proposed Assessors' Handbook Section 260, *General Exemptions*)

2 **PUBLIC SCHOOL CONCESSIONS**

3 **GENERAL PROVISIONS**

4 Article XIII, section 3, of the California Constitution provides:

5 The following are exempt from property taxation:

6 ... (d) Property used for libraries and museums that are free and open to the public
7 and property used exclusively for public schools, community colleges, state
8 colleges, and state universities.

9 The Court of Appeals in *Regents of University of California v. State Board of Equalization*¹ held
10 that when referring to article XIII, section 3, and public educational institutions:

11 We discern in the provisions of article XIII, section 3, a purpose to grant
12 exemption from the ad valorem tax of property used by any public educational
13 institution, a purpose which may be accomplished simply by interpreting "state
14 universities" literally; that is, to mean *all* of the public universities, including the
15 University of California.

16 Further, Revenue and Taxation Code section 202 provides:

17 (a) The exemption of the following property is as specified in subdivisions (a),
18 (b), (d) and (h) of Section 3 of Article XIII of the Constitution...

19 (3) Property used exclusively for public schools, community colleges, state
20 colleges, and state universities, including the University of California.

21 **DEFINITION OF POSSESSORY INTERESTS**

22 A taxable possessory interest may be created when a lease, contract, permit, or other government
23 authorization allows a private right to the possession and use of publicly owned real property for
24 a period of time. With one exception, there are no taxable possessory interests in personal
25 property.² Like other taxable property, possessory interests may be eligible for exemption,
26 depending upon their use. Taxable possessory interests may qualify for the public school
27 exemption if the property is used exclusively for public school purposes. Where a taxable
28 possessory interest is included in the following discussions, it is assumed that the property in
29 question meets the criteria of a taxable possessory interest in that the possession of, claim to, or
30 right to the possession of the property is:

¹ (1977) 73 Cal.App.3d 660, 668.

² Revenue and Taxation Code section 201.5 provides that a taxable possessory interest exists in property owned by the California Pollution Control Financing Authority, whether real or personal.

- 1 1. Independent,
- 2 2. Durable,
- 3 3. Exclusive of rights held by others, and
- 4 4. Provides a private benefit to the possessor.

5 **DEFINITION OF CAMPUS**

6 For purposes of identifying public school concessionaires, *campus* means a location or auxiliary
7 branch of a university, college, or public school but does not include incidental locations. A
8 campus includes, but is not limited to, lecture halls, libraries, administration buildings, research
9 facilities, athletic/recreation buildings and fields, student or staff residential areas, and any open
10 areas surrounding such buildings. Campus is not limited to the primary location, but also
11 includes satellite or extension sites or even individual buildings that may be spread throughout
12 the state that are owned/used by public schools. However, these locations must be used for
13 public school purposes. Incidental locations are not included in the definition of campus. For
14 example, some medical students may be required to obtain training in their medical specialties
15 by becoming residents at private clinics located off campus. Under this scenario, even though
16 there is a student-teacher relationship, this alone would not qualify the private clinics as a part of
17 the campus or for the public school exemption.

18 **QUALIFYING AS A PUBLIC SCHOOL CONCESSIONAIRE**

19 The criterion for whether the public school exemption is available is that the taxable possessory
20 interest must be used exclusively for a public school purpose. The courts have held that the term
21 *used exclusively* does not mean that the property exempted must be used *solely* for the purposes
22 stated, to the exclusion of any other uses. The property may also be used for certain types of
23 incidental uses as well. However, the courts have also concluded that "such incidental use must
24 be directly connected with, essential to, and in furtherance of the primary use [citations] and
25 must be reasonably necessary for the accomplishment of the primary purpose for which the tax-
26 exempt institution was organized [citations]."³

27 Court cases have held that "used exclusively for educational purposes" includes any property that
28 is considered necessary to fulfill the functions of a complete, modern college or university.⁴ The
29 county assessor must examine the facts and circumstances for each taxable possessory interest to
30 determine eligibility for the public school exemption. Factors the county assessor should
31 consider that may be determinative that the exemption applies, include, but are not limited to:

- 32 • Is the taxable possessory interest used exclusively for public school purposes - keeping in
33 mind that used exclusively does not mean used solely?

³ *Honeywell Information Systems v. County of Sonoma* (1974) 44 Cal.App.3d 23, 28; see also *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

⁴ *Mann v. County of Alameda* (1978) 85 Cal.App.3d 505, 508.

1 • Is the taxable possessory interest located on or off campus? Generally, taxable possessory
2 interests located on campus fulfill a necessary school function. However, upon examination,
3 even a taxable possessory interest located on campus may not be eligible for the exemption
4 depending on how the property is used.

5 • Is the taxable possessory interest used for the benefit and convenience of the students and
6 faculty or reasonably necessary for operation of the public school - again, keeping in mind
7 that used for the benefit and convenience of the students and faculty does not mean used
8 solely?

9 Other factors that may be relevant include, but are not limited to:

10 • Is access to the taxable possessory interest restricted in any way? Does the location of the
11 taxable possessory interest on the school property make it less likely for the general public to
12 use?

13 • Is the primary purpose of the taxable possessory interest just to generate income for the
14 school?

15 **EXEMPTION PROCESS**

16 It is incumbent upon the possessor of taxable possessory interests, fixtures, or personal property,
17 to provide information to the county assessor to show why the property should be exempt from
18 property taxation under the public school exemption. The affidavit prescribed in section 254
19 must be filed to obtain the exemption.

20 The assessed value and exempt value should be shown on the assessment roll as required by
21 Property Tax Rule 252, subdivision (a)(8), if the property is located in a tax-rate area that
22 includes ad valorem special assessments.

23 **VENDING MACHINES**

24 Public school officials have historically contracted with profit-making vending machine
25 companies to put their machines dispensing, among other things, food, drinks, personal items,
26 and school supplies on school grounds or campuses for the benefit of students and faculty. These
27 contracts generally include provisions that the school will also benefit financially from a portion
28 of the sales. The vending machines are easily movable and generally are classified as personal
29 property and when used exclusively for public school purposes, they qualify for the exemption.

30 The public school exemption provisions contained in section 202(a)(3)⁵ allows for the exemption
31 of any property used exclusively for public school purposes, regardless of ownership. Therefore,
32 vending machines owned by a for-profit business are eligible for the exemption as long as the
33 property is being used for public school purposes. (See below for a discussion regarding the
34 taxable possessory interest created in the public school real property upon which vending
35 machines sit.)

⁵ For ease of reference in this manual, we may refer to subdivisions as, for example, section 202(a)(3).

1 In addition, pursuant to section 202.6, personal property is exempt if it is used exclusively in the
2 performance of activities by a student body organization authorized by sections 76060 et seq. of
3 the Education Code.

4 One of the activities authorized by the Education Code is a student body organization selling
5 food on school grounds.⁶ Consequently, vending machines located on public school property
6 themselves may be eligible for the public school exemption under the following circumstances:

- 7 • The governing body of the school authorized the student organization to sell food in vending
8 machines on school premises.
- 9 • The vending machine dispenses items that can be classified as food.
- 10 • The student body organization receives a portion of the receipts from the vending machine
11 service.

12 The Education Code authorizes school districts to furnish food service. Therefore, vending
13 machines dispensing food items are a service that is directly related to, and in furtherance of, a
14 primary purpose of the school district. Furthermore, the court in *California School Employees*
15 *Assoc. v. Sequoia Union High School Dis.*⁷ held that providing food to students in secondary
16 schools is an educational activity within the provisions of the Education Code. Thus, such
17 vending machines are exempt from taxation.

18 PRIVATE FOOD CONCESSIONAIRES

19 Real and personal property used for low-cost food facilities that primarily serve students and
20 faculty and are operated by a school, an auxiliary nonprofit corporation, or a student body
21 organization are exempt. Typically, there is little confusion as to the exempt nature of property
22 associated with residence dining halls, on-campus eateries, or snack bars operated by the school,
23 nonprofit corporation, or student body organizations.

24 Further, it is not uncommon for private concessionaires to have contracts with public schools,
25 community colleges, state colleges, state universities, and the University of California to provide
26 food service to students on school properties. A taxable possessory interest may be created when
27 such concessionaires occupy and/or lease space on public school property. However, if such
28 property is used exclusively for public schools, it is exempt from property taxation under
29 article XIII, section 3(d) of the Constitution. This constitutional provision does not require that
30 the public school own the property, only that the property is exclusively used for public school
31 purposes.

32 Private non-profit or for-profit concessionaires – such as fast food restaurants, coffee shops,
33 pubs, or individually owned food stands may be eligible for exemption as long as they are
34 located on the campus. On-campus sites may include areas such as recreational facilities, dining

⁶ Education Code section 48931.

⁷ *California School Employees Assoc. v. Sequoia Union High School Dis.* (1969) 272 Cal.App.2d 98.

1 halls, or food courts. When determining eligibility of food concessionaires, the county assessor
2 should, among other factors, consider the physical access to the property. For example, is the fast
3 food restaurant located on the edge of a campus where it is easily accessed by the general public,
4 or is it located on a part of the campus that would make it less likely to be used by the general
5 public; for instance, no parking is available. Because of statutory provisions and case law
6 precedence, it is less difficult for on-campus food concessionaires to qualify for the public school
7 exemption than most other types of concessionaires.

8 Food concessionaires located on public school-owned property that do not exclusively serve
9 public school purposes are generally not eligible for the exemption.

10 **OTHER POSSESSORY INTERESTS THAT MAY QUALIFY FOR EXEMPTION**

11 Other examples of taxable possessory interests that may be eligible for the public school
12 exemption include:

- 13 • Real Property Occupied by Vending Machines – Where vending machines are exempt from
14 personal property taxation when used for public school purposes, the county assessor should
15 also look at the actual physical location of the vending machines on the public school
16 property. If the vending machine is located on property owned by the public school, then
17 taxable possessory interests may be created. However, similar to the possible exempt status
18 of vending machines, the taxable possessory interest in the real property may also be exempt
19 as property used exclusively for public school purposes (article XIII, section 3(d) of the
20 California Constitution; Revenue and Taxation Code section 202(a)(3)).
- 21 • Bookstores – Taxable possessory interests in real property located on public university
22 campuses that are used exclusively for retail bookstore purposes where the patrons are
23 primarily students, faculty, and staff of the college typically are exempt. Such bookstores
24 generally sell items such as course textbooks, student supplies, and occasionally personal
25 computers. Bookstore property used exclusively for public school purposes is exempt from
26 possessory interest taxation, regardless of the for-profit status of the possessor of the taxable
27 possessory interest.

28 However, section 202(c) provides, in part:

29 ...a property tax under this division shall be imposed upon that portion of the
30 bookstore property determined to be generating the unrelated business taxable
31 income...to the extent property is:

32 ...(2) Is primarily devoted to bookstore use that produces income that is taxable
33 as unrelated business taxable income.

34

- 1 • Student Housing Leasehold Interest—Students' and faculty's leasehold interests in apartments
2 or other housing owned by a public school are exempt. In *Mann v. County of Alameda*,⁸ the
3 court ruled that public university-owned housing available to full-time students who are
4 married, or full-time single students with children, is property used exclusively for public
5 school purposes. Such housing furthers the primary educational purposes of a university or
6 college and is considered property that is reasonably necessary for the fulfillment of a
7 generally recognized function of a complete modern college or university.⁹
- 8 • Land and Improvements for Student Housing—Land leased from a public university by a
9 master lessee is exempt from possessory interest taxation if the apartments developed on the
10 land are used for student housing, regardless of the for-profit nature of the lessee. In such a
11 situation, taxable possessory interests also may be created on the lessee's interest in the
12 government-owned improvements because the improvements constitute taxable
13 improvements on tax-exempt land. Nonetheless, if used for student housing, the taxable
14 possessory interest will be exempt from property taxation. Further, if the sublease of an
15 individual unit in an apartment project creates a taxable possessory interest,¹⁰ all possessory
16 interests in this scenario still may be exempt as property used exclusively for the public
17 university within the meaning of article XIII, section 3(d) of the California Constitution.

18 In determining whether or not a lessee qualifies for the public school exemption on its
19 possessory interest, the primary determinant is whether it is used exclusively for public school
20 purposes. To make this determination, the assessor may consider factors such as whether the
21 possessory interest:

- 22 • Provides a convenience to the students and faculty; and
- 23 • Is located on public school property.

24 The public school exemption may be eligible to food concessionaires, ATM machines,
25 bookstores, student housing, etc. However, today's campuses frequently have a myriad of
26 concessions that present a county assessor with more difficult challenges in determining
27 eligibility for the public school exemption. Concessions such as travel agencies, full-service
28 banks, sporting goods stores, and beauty salons are less likely to qualify. However,
29 determinations must be made on a case-by-case basis. For instance, a campus that has a
30 cosmetology program may require a beauty salon for student training.

31 **POSSESSORY INTERESTS NOT EXEMPT**

32 Public school districts, community colleges, state colleges, state universities, and the University
33 of California may also own property located off school premises or campuses. When such

⁸ *Mann v. County of Alameda, supra.*

⁹ *Connolly v. County of Orange* (1992) 1 Cal.4th 1105, 1127, where the California Supreme Court held that housing privately owned, as distinguished from here where the students and faculty leased from the university, are not considered to be exclusively used for the benefit of the school.

¹⁰ This assumes that the sublease is for a period greater than half of the remaining term of the master lease.

1 property is leased to others and is used in a manner that is not exclusively for public school
2 purposes, the taxable possessory interest is not exempt.

3 Examples of taxable possessory interests include:

4 • Off-Campus Businesses – Restaurants or other food services and retail stores that lease
5 property owned by a public school, but do not exclusively serve a public school, community
6 college, state college or state university purpose, are subject to possessory interest taxation.
7 Even though it can be argued that some businesses that are in close proximity to the campus
8 provide conveniences to the students and that a large percentage of the business is generated
9 from the students, such establishments are not exclusively used for public school purposes.

10 • Privately Owned Residences – A lessee of a public university property that uses the property
11 as a site for a privately owned residence creates a taxable possessory interest. In *Connolly v.*
12 *County of Orange*,¹¹ the California Supreme Court considered the case of faculty members
13 and employees of the University of California who built their privately owned homes on land
14 owned by the university. The Supreme Court held that such use of university property does
15 not fulfill the public purpose contemplated by article XIII, section 3(d) of the California
16 Constitution, and that granting a tax exemption to a faculty member's private long-term
17 leasehold interest would clearly extend the constitutional provision exemption beyond its
18 intended reach.

19 In denying the exemption, the court stated that if the faculty's leasehold interests in the
20 property on which the privately owned homes were situated were entitled to an exemption
21 merely because the homes were being used for faculty housing, then there would never be a
22 basis to deny an exemption to the faculty member's property interest in the homes
23 themselves, which would be beyond the scope of the constitutional exemption. In other
24 words, if the use of property for faculty-owned housing is an exclusive use of property for
25 public school purposes under section 3(d) of the California Constitution, then even a faculty
26 member who bought a home on private land and used it as his or her family residence could
27 also claim an entitlement to an exemption because that property too would be property used
28 for faculty housing.

29 • Leased Unimproved Land – When a school district (lessor) leases its tax-exempt unimproved
30 land to a corporation (lessee), even when the corporation is a public facilities corporation
31 solely owned by the district, a taxable possessory interest may be created that is assessable to
32 the lessee.¹²

33 – If such a public facilities corporation subsequently subleases the unimproved land back to
34 the tax-exempt school district, then such a leaseback to the lessor does not affect the
35 lessee's taxable possessory interest because, after the sublease, the lessee would still have
36 constructive possession. *Constructive possession* is when "a person, although he is not in
37 actual possession of land or improvements, has a right to possession and no person

¹¹ *Connolly et al, v. County of Orange, supra.*

¹² *City of Desert Hot Springs v. County of Riverside* (1979) 91 Cal.App.3d 441.

1 occupies the property in opposition to such right."¹³ The courts have held that the
2 sublessee's lease is pursuant to, and subordinate to, the rights of the lessee.

- 3 – If the public facilities corporation acquires unimproved property and leases it to a tax-
4 exempt school district, even if the term is in excess of 35 years, the property is taxable
5 and cannot be exempt as property owned by the school district. An exception occurs
6 when property that is owned by the public facilities corporation (or any other private
7 person or entity) is leased to a school district and then used for public school purposes. In
8 this instance, the property would be eligible for the public school exemption.

¹³ *City of Desert Hot Springs v. County of Riverside, supra.*