



## STATE BOARD OF EQUALIZATION

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April 7, 2014

President  
College

**Re: College – Student Housing Summer Rental  
Assignment No.: 14-038**

Dear Mr. :

This is in response to your letter requesting our opinion regarding whether accommodations leased by College (College), and provided to visiting students and non-student guests during the annual summer break, disqualify College for exemption from property taxation. If yes, you request that an alternative partial exemption formula be applied.

As you know, the college exemption is administered by the county assessors, not by the Board of Equalization. Thus, the county assessor makes the final determination regarding whether an organization's use of property is eligible for the college exemption. In this case, while we view providing temporary accommodations to visiting students and non-students for the purposes discussed below as incidental and reasonably necessary for the College's exempt purpose, whether the use disqualifies College from the college exemption will ultimately be decided by the assessor.

### **Facts**

College is a nonprofit institution of higher education. College currently benefits from the college exemption on leased student housing units via reduced rents from the property owner. During the annual summer break period of late May to mid-August, College proposes using the student housing units to provide overnight accommodations to both visiting students participating in College's summer education programs and non-student guests "wanting to become familiar with [College] and the local arts community." College will provide art classes, demonstrations, and art tours to non-student guests. College generates approximately \$10,000,000 in annual gross revenue, and the summer rentals are expected to generate an additional \$80,000 to \$125,000 in gross revenue.

### Law & Analysis

The California Constitution, Article XIII, section 3, subdivision (e) exempts from property taxation, "[b]uildings, land, equipment, and securities used exclusively for educational purposes by a nonprofit institution of higher education." Article XIII, section 5 provides that the exemption applies "to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption." These constitutional provisions are implemented by Revenue and Taxation Code<sup>1</sup> section 203, subdivision (a). The exemption is referred to as the "college exemption."

The Revenue and Taxation Code does not specifically define the phrase "used exclusively," but the courts have done so in a series of decisions. The Court of Appeal, following a rule of strict but reasonable construction, has held that "property used exclusively for the purposes of education" includes any facilities that are "reasonably necessary for the fulfillment of a generally recognized function of a complete modern college." (*Church Divinity School v. County of Alameda* (1957) 152 Cal.App.2d 496, 505-506.) Applying this rule, the court held that student and faculty housing and a parking lot qualified for the exemption. (*Id.* at pp. 503-508). "Used exclusively" has also been interpreted to include incidental use, but such incidental use "must be directly connected with, essential to, and in furtherance of the primary use [citations] and must be reasonably necessary for the accomplishment of the primary purpose for which the tax-exempt institution was organized [citations]." (*Honeywell Information Systems, Inc. v. Sonoma County* (1974) 44 Cal.App.3d 23, 28 (*Honeywell*)). It is also the *use* of the property which renders it exempt or nonexempt, not the use of income derived from it. (*Id.* at p. 29.) Thus, in *Honeywell*, private business use of a computer system 0.56 percent of the total time the system was available rendered the property ineligible for exemption.<sup>2</sup>

In *Board of Trustees v. Santa Clara County*, the Court of Appeal affirmed the trial court's grant of the college exemption to a university's campus golf course, which was used by faculty, students, alumni, and the general public. (*Board of Trustees v. Santa Clara County* (1978) 86 Cal.App.3d 79, 86.) It held that "property used for recreational, athletic or social purposes has long been held to be reasonably necessary for the fulfillment of the function of a modern institution of higher learning," (*id.* at p. 84) and "the limited and incidental use of the golf course by alumni and public members is fully consistent with the overall educational purposes and activities... and does not impair the exempt status of the property" (*id.* at p. 85).

The State Supreme Court has held that in determining whether a use is "reasonably necessary" the use's "absolute indispensability" is not the appropriate test. (*Cedars of Lebanon Hospital v. County of Los Angeles*, 35 Cal.2d 729, 745.) Moreover, it is well settled that "however strict the courts may be in determining whether the [primary] use of the property brings it within the exemption at all, if the court once holds that the property generally qualifies for the exemption, it will be extremely liberal in holding that some incidental use does not take it out of the exemption." (*Fellowship of Humanity v. Alameda County* (1957) 153 Cal.App.2d 673, 699.)

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<sup>1</sup> All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

<sup>2</sup> For this reason, if some portion of property here were determined not be used for exempt purposes, that property would not be eligible for exemption. (See Property Annotation 880.0099, Questions 3 and 4.) As well, use of a property for non-exempt purposes will render that portion of the property ineligible for the exemption even if the revenue derived from that non-exempt activity is a small percentage of total revenue.

In this case, rentals of student housing units to visiting students are within the exemption, as student housing is reasonably necessary for fulfillment of College's function<sup>3</sup> and visiting students, while temporary, are enrolled in educational programs. In addition, we believe the rental of student housing units to non-student guests is incidental to College's functions since the non-student guests are there for the purpose of gaining familiarity with the college and the local arts community. Based on the facts given, we believe this use is incidental and reasonably necessary for the fulfillment of College's exempt purpose.

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/Amanda Jacobs

Amanda Jacobs  
Tax Counsel

AJ:yg

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cc: Honorable  
County Assessor

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

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<sup>3</sup> See *Church Divinity School*, *supra*, 152 Cal.App.2d at pp. 506-507.