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August 3, 2000

Honorable Robert C. Petersen, Assessor
Ms. Jessie Mudgett
Chief Deputy Assessor-Administration
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Attn: Ms. Jessie Mudgett

RE: *Qualification for the Public Schools Exemption for Student Housing--University of California, Santa Cruz*

Dear Ms. Mudgett:

This is in reply to your letter to Assistant Chief Counsel Larry Augusta dated May 15, 2000 regarding qualification for the public schools exemption of real properties leased and used for student housing by the University of California, Santa Cruz.

As discussed further below, it is our opinion that these properties or portions thereof are or will be exempt as properties used exclusively for state university purposes within the meaning of Article XIII, section 3, subdivision (d) of the California Constitution and, therefore, qualify for the public schools exemption.

Factual Background

As detailed in your letter and the leases sent by you, the University of California (“University”), for its Santa Cruz campus, has applied for the public schools exemption for three leased properties used for student housing: (1) 3 townhouse units in the development (“WP”), (2) 34 rooms¹ at the local Inn (“Inn”), and (3) 27,700 square feet for housing in a building located at (“1101”).

¹ The claim form filed in February 2000 for the 2000-2001 fiscal year states that 53 rooms will be used by the University. Fifty-three rooms were used for student housing under the old lease, which expired in June 2000, and 34 rooms will be used for student housing under the new lease dated June 1, 2000.

The WP townhouse lease, dated May 22, 1998, has a term commencing on June 1, 1998 and ending on June 30, 2000, with an option by the University to extend the lease for an additional two-year period. The new Inn lease, dated June 1, 2000, has a term commencing on September 5, 2000² and ending on June 11, 2001. The 1101 lease, dated May 28, 1998, has a term³ commencing on September 17, 1999 and ending on September 16, 2009.

Law and Analysis

Article XIII, section 3, subdivision (d) of the California Constitution exempts from property taxation “[p]roperty used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.” State universities, within the meaning of section 3, subdivision (d) includes the University of California. *Regents of University of California v. State Board of Equalization* (1977) 73 Cal.App.3d 660.⁴ Section 3, subdivision (d) contemplates an exemption for property, owned by a taxable person or entity, which is leased by one of the entities enumerated in subdivision (d) and used exclusively for qualifying purposes and uses of the lessee entity.

Property “used exclusively” for state university purposes includes property leased by the University of California which is intended for use as student housing and is occupied by University of California students. *Mann v. County of Alameda* (1978) 85 Cal.App.3d 505. The court in *Mann* held that students’ possessory interests in family rental housing owned by the University of California was exempt under section 3, subdivision (d), and that the students’ leasehold interests were property used exclusively for the University within the meaning of the exemption. The court in *Mann* also considered the exemption in section 3, subdivision (d) applicable both in instances in which property is owned by the state and in those in which property is not state-owned.

Revenue and Taxation Code section 202.2⁵ further provides in part that

Any reduction in property taxes on . . . leased property used exclusively for . . . state universities, including the University of California, . . . and granted the exemption set forth in subdivision (d) . . . of Section 3 of Article XIII of the California Constitution shall inure to the benefit of the lessee institution. If the lessor claims the exemption and if the lease or rental agreement does not specifically provide that the exemption contained in subdivision (d) . . . of Section 3 of Article XIII is taken into account in fixing the terms of the agreement,

² Article 2.1 of the lease provides that the lease term will begin on September 5, 2000 for 4 of the rooms and on September 13, 2000 for the remaining 30 rooms.

³ Per Exhibit C to the lease agreement.

⁴ This is reiterated by Revenue and Taxation Code section 202(a)(3) which provides for the exemption from property taxation of “[p]roperty used exclusively for . . . state universities, including the University of California.”

⁵ Unless otherwise indicated, all statutory references are to the Revenue and Taxation Code.

the lessee shall receive a reduction in rental payments or a refund thereof, if already paid, in an amount equal to the reduction in taxes.

If the lessor does not claim the exemption on property eligible for the exemption contained in subdivision (d) . . . of Section 3 of Article XIII, the lessee may file a claim for refund under Section 5096 with respect to taxes paid by the lessor on the property. For purposes of Sections 5097 and 5140, the lessee shall be deemed to be the person who paid the tax, and the refund shall be made directly to the lessee. . . .

Upon review of each of the lease agreements, the University has entered into these agreements for purposes of providing student housing for students at its Santa Cruz campus. The "Use Occupancy and Maintenance of the Premises" section of the WP lease provides that the premises will be used for residential purposes only. Article 10.1 of the Inn lease provides that the premises will be used for residential space for UC-Santa Cruz students. Finally, Article 10.1 of the 1101 lease also provides that the premises will be used for student housing.

The entirety of the properties leased by the University in each of these leases will be used exclusively for student housing.⁶ Since only a portion of the Inn and 1101 properties will be used for an exempt purpose, however, only that portion of each of these properties are or will be eligible for the exemption. Where a portion of a property is exempt because it is used exclusively for state university purposes and such property is clearly identifiable from a portion used for nonexempt purposes, as applicable to both the Inn and 1101 properties, exemption of that portion or portions is necessary and proper. As a result, the three parcels in the WP development and the portion of the Inn and 1101 properties leased by the University for student housing are or will be exempt from taxation under section 3, subdivision (d) of Article XIII of the California Constitution.

Regarding relief from property taxation under each of these leases, each of the 3 parcels in the WP development should be exempt in full from property taxation. As such, the exemption claim form filed by the University for parcels 002-584-36, 002-584-16, and 002-584-14, on behalf of the landlord, should be approved. Regarding the refund claim forms filed by the University for the Inn and 1101 properties, each of these claims should also be approved as the University, per the provisions of Article 5 of each of those lease agreements, has applied for and should receive the property tax refund due to the exemption, as provided in Section 202.2 above.

As mentioned above, the Inn lease provides for the lease of the 34 rooms from September 2000 until June 11, 2001, for a period less than the entire fiscal year. This distinction is not significant for lien date 2000 and related 2000-2001 fiscal year claim for refund purposes, however, as the Inn property was used by the University for an exempt purpose on the lien date, January 1, 2000, under the terms of the prior lease with the Inn. And since the property will again

⁶ Although your letter only inquired regarding the exemption for the student housing portion of the 1101 property leased, the portion of the lease related to the office and classroom space would also be eligible for the public school exemption as well.

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be used by the University for a qualifying purpose and use on the upcoming lien date, January 1, 2001, the university should also qualify for the exemption for the 2001-2002 fiscal year as well.

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.

Very truly yours,

/s/ Anthony Epolite

Anthony Epolite
Tax Counsel

ASE:tr

prop/prec/genexemp/00/15ase

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