

Memorandum

To: Ms. Lisa Thompson
Principal Property Appraiser
Property and Special Taxes Department

Date: June 13, 2006

From: Sophia Chung
Tax Counsel IV

Subject: *Claim for Organizational Clearance Certificate
University Student Union of California State University, Northridge*

This is in response to your request dated September 26, 2005, for a legal opinion concerning whether University Student Union of California State University, Northridge ("Student Union") qualifies for a welfare exemption Organizational Clearance Certificate. For the reasons set forth below, it is our opinion that Student Union does not qualify for the welfare exemption, but may be eligible for the state college exemption under California Constitution, article XIII, section 3, subdivision (d), and Revenue and Taxation Code section 202, subdivision (a)(3).¹

Student Union is a student union of the California State University system. It is a duly formed California nonprofit public benefit corporation, and has been granted Internal Revenue Code section 501, subdivision (c)(3), and section 509, subdivision (a)(3), status. Student Union has filed a BOE-277, Claim for Organizational Clearance Certificate - Welfare Exemption. The activities in which Student Union is engaged in are stated to be "Programs, Activities, Services, Conveniences and Employment Opportunities for the Students at California State University, Northridge."

Student unions of the California State University system are authorized and organized pursuant to the California Education Code, and the regulations adopted thereunder. (See Ed. Code, §§ 89300 et seq., and Cal. Code of Regs., tit. 5, §§ 42400 et seq.) Education Code section 89300 provides, in part:

A student body organization may be established at any state university under the supervision of the university officials for the purpose of providing essential activities closely related to, but not normally included as a part of, the regular instructional program of the university. The organization may also operate a campus store, a cafeteria, and other projects not inconsistent with the purposes of the university, and property of the university may be leased to the organization for those purposes.

Student Union's articles of incorporation state that it shall be operated as an integral part of the educational program of California State University, Northridge in conformance with the Education Code, and the regulations adopted thereunder. Accordingly, it is our opinion that Student Union is a duly formed auxiliary organization of California State University, Northridge.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise specified.

Student Union Does Not Qualify for the Welfare Exemption

For the reasons set forth below, it is our opinion that Student Union does not qualify for the welfare exemption.

Article XIII, section 4, subdivision (b) of the California Constitution provides that the Legislature may exempt from property taxation in whole or in part: property used exclusively for religious, hospital, or charitable purposes and owned by corporations or other entities that are organized and operating for those purposes, that are nonprofit, and no part of whose net earnings inure to the benefit of any private shareholder or individual. Revenue and Taxation Code section 214, and related sections, implement this exemption, commonly known as the welfare exemption. The legislature has authorized the eligibility of property used for organized school purposes for the exemption if the property is used exclusively for schools of less than collegiate grade (see, section 214, subdivision (b), and section 214.5) or if property is used exclusively for schools both of and less than collegiate grade (section 214.5). Thus, allowing the welfare exemption for property owned by an organization that provides services for students of "collegiate grade" at a state college would conflict with the legislative intent expressed in the existing welfare exemption statutes. (An exception to the less than collegiate grade limitation is found in section 214, subdivision (e), however, the exception does not apply here, because it pertains to educational institutions coming within the college exemption (section 203), and not to state colleges which are exempted under section 202.)

Furthermore, it is our opinion that Student Union is not organized for a qualifying purpose under section 214. Specifically, section 214 requires that an organization's primary purpose must be either religious, hospital, scientific, or charitable. Under section 214, subdivision (j), some educational activities are deemed charitable. However, as indicated by the California Supreme Court in *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d 13, and now codified in section 214, subdivision (j), in order for an educational activity to be charitable, that activity "must benefit the community as a whole or an unascertainable and indefinite portion thereof." It is our opinion that providing programs, activities, services, conveniences and employment opportunities for the students of a particular state college does not primarily benefit the community as a whole or an unascertainable and indefinite portion thereof. Instead, services provided by Student Union primarily benefit the students attending California State University, Northridge—not the community as a whole, nor an unascertainable and indefinite portion thereof.

In conclusion, it is our opinion that Student Union does not qualify for the welfare exemption, and therefore, an Organizational Clearance certificate should not be issued.

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