



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
 PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
 1-916-322-1982 • FAX 1-916-323-3387
www.boe.ca.gov

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February 24, 2016

**Re: *College Exemption – Real Property Leased for Cellular Service Equipment
 Assignment No.: 15-407***

Dear Mr. _____ :

This is in response to your letter requesting our opinion regarding whether property leased by the University of _____ (University) to cell phone carriers who install cellular equipment on University property, disqualifies University for exemption from property taxation under Revenue and Taxation Code¹ section 203, subdivision (a) (also known as the "college exemption"). The Office of the Assessor-Recorder (Assessor) has asked that during our analysis we consider several additional factors the Assessor believes are relevant.²

As you know, the college exemption is administered by the county assessors, not by the BOE. Thus, the county assessor makes the final determination regarding whether an organization's use of property is eligible for the college exemption. In our view, however, leasing property to cell phone carriers for the purposes discussed below is incidental to and reasonably necessary for the University's exempt purpose and does not disqualify such property from the college exemption.

Facts

University is a nonprofit institution of higher education and currently benefits from the college exemption. University leases a small amount of its real property to cell phone carriers, who then install cellular equipment on the property. The current cell equipment installations on University property are limited to antennas affixed to the sides or rooftops of campus buildings, and cover approximately 731 square feet of the University campus's approximately 2 million square feet. The total value of the leases is approximately \$100,000.

While University has landline telephone access in administration buildings, it no longer maintains landlines in its dorm rooms because the majority of students use cell phones instead of landlines. Additionally, student housing leaders, security officers, and facilities engineers use cell phones as a means of communication. The cellular services also include data transmissions,

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

² Assessor's request was sent via email on January 22, 2016 from the _____ to the Board of Equalization (BOE). We have been informed that the _____'s office has contacted you regarding their submission.

which allow students and University staff to connect to the internet for educational and social purposes. Without the cellular service equipment at issue, the cellular reception would be limited or nonexistent in many areas. As a result, University determined that students were likely to be dissatisfied with their experience at University unless it provided sufficient cell phone service.

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 section 203, subdivision (a), the college exemption. If an assessor determines a use to be disqualifying, only the portions of the property so used will be ineligible for exemption. (See Property Tax Annotation 250.0015 (June 16, 1987; July 27, 1990).³)

The Revenue and Taxation Code does not specifically define the phrase "used exclusively," but 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.)

In *Board of Trustees v. Santa Clara County* (1978) 86 Cal.App.3d 79 (*Board of Trustees*), 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. (*Id.* at p. 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 of property is "reasonably necessary" for the exempt purpose, the use's "absolute indispensability" to the exempt purpose is not the appropriate test. (*Cedars of Lebanon Hospital v. County of Los Angeles* (1950) 35 Cal.2d 729, 745.) Moreover, it is well settled that "however strict the

³ Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

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 (*Fellowship of Humanity*).)

In this case, it is our opinion that leasing University property to cell phone carriers who install cellular equipment on the campus does not disqualify University from receiving the college exemption on that property, as the provision of adequate cellular services is reasonably necessary for fulfillment of University's function as a complete modern college. University students and staff use cellular services for a variety of academic, recreational, and social purposes. Because such purposes have long been held to be reasonably necessary for fulfillment of university functions (see *Board of Trustees, supra*, 86 Cal.App.3d at p. 84), we believe that the provision of adequate wireless voice and data access is incidental to and reasonably necessary for the fulfillment of the function of University as a modern institution of higher learning.

In addition, we believe that any increased quality of cellular reception to the general public in the surrounding area does not impair the exempt status of the property. Because University property is primarily used for exempt purposes, and the use at issue here is reasonably necessary for fulfillment of that purpose, limited and incidental use should be viewed liberally. (See *Fellowship of Humanity, supra*, 153 Cal.App.2d at p. 699; see also *Board of Trustees, supra*, 86 Cal.App.3d at p. 85.) For this reason, we are of the opinion that as long as the cellular equipment serves the University, use by the general public, by itself, will not disqualify the leased land from exemption.

Furthermore, we do not believe it is necessary for the University to demonstrate that placing cellular equipment on its real property, as opposed to having the equipment placed offsite, better serves its exempt purpose. There is nothing in section 203 or the related case law that requires educational institutions demonstrate that a particular use of its property is the most efficient or least intrusive means for fulfilling a particular function. Put another way, the issue for exemption purposes is not whether it is reasonably necessary for exempt property to be used in a particular manner but rather whether the manner in which exempt property is being used is reasonably necessary to fulfill the exempt purpose.

Likewise, University's activity is distinguishable from the activity discussed in Letter to Assessors 2008/054 (Sept. 16, 2008), which examined cell tower leases on property exempt from property tax under the church, religious, or welfare exemptions. Under those exemptions and under those circumstances, we found it difficult to conclude that leasing property for installation of a cell tower is incidental to and reasonably necessary for religious worship or religious purposes. In contrast, as noted above, we believe this use is incidental to and reasonably necessary for the fulfillment of University's exempt purpose.

Moreover, the fact that University is compensated for its leases is not a barrier to exemption. Courts have made a distinction between profit-making activities that are incidental to an organization's exempt purpose, and those that are unrelated business activities conducted in a manner similar to a commercial enterprise. (See *Santa Catalina Island Conservancy v. County of Los Angeles* (1981) 126 Cal.App.3d 221, 243-244; *San Francisco Boys' Club, Inc. v. County of Mendocino* (1967) 254 Cal.App.2d 548, 559; see also *Christ the Good Shepherd Lutheran*

Church v. Mathiesen (1978) 81 Cal.App.3d 355, 363.) Unlike the computer system at issue in *Honeywell*, the cellular equipment in use on University's campus is "directly connected with, essential to, and in furtherance" of the university's primary purpose. Thus, any income University receives from the leases does not diminish the fact that University uses the cellular equipment to serve an 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,

Amanda Jacobs
Tax Counsel

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cc: Honorable
County Assessor

Mr. Dean Kinnee (MIC:63)
Mr. David Yeung (MIC:61)
Mr. Todd Gilman (MIC:70)