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STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082  
TELEPHONE (916) 322-6083  
FAX (916) 323-3387  
www.boe.ca.gov

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March 24, 2004

Mr. Gary Townsend  
Chief Deputy Assessor  
Los Angeles County Assessor's Office  
500 W. Temple Street, Room 225  
Los Angeles, CA 90012-2770

Re: ***Revenue and Taxation Code Section 202 -  
Free Museum Exemption Use Requirement***

Dear Mr. Townsend:

This is in response to a recent request that we review the "Parking Facility" portion of Mr. 's February 10, 2004, letter to you concerning the portion of property used by The Museum for parking and the use requirement of Revenue and Taxation Code section 202(a)(2), the free museum exemption. As hereinafter indicated, for purposes of the exemption, "museum" means a building the predominant purpose of which is to house and display objects of lasting value. Although other uses are not precluded, the building must be primarily used as a museum. It would follow then, that "property used for ..... free museums," as used in section 202(a)(2), would encompass properties the predominant purpose of which is to support "museum(s)", as defined.

For the reasons hereinafter set forth, in our view, the leased land upon which the museum is located is not eligible for the free museum exemption because it is also used for the parking garage, which is not eligible for the exemption. Of course, the free museum exemption is administered solely by county assessors, and it will be the Los Angeles County Assessor who will make the final determinations.

**Facts**

According to the letter, the Museum owns and operates a museum on leased land. As the Museum does not own the underlying land, it is seeking exemption of the leased land under Article XIII, section 3, subsection (d) of the California Constitution and Revenue and Taxation Code section 202(a)(2), the free museum exemption:

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

Constitution, except as otherwise provided in subdivision (a) of Section 11 thereof:

X X X

(2) Property used for free public libraries and free museums.

It is our understanding that the museum is above the underground parking garage, both of which are on the leased land.

**February 10, 2004 Letter**

The Museum maintains an underground parking garage to meet the requirements of the Museum’s conditional use permit. In granting ongoing permission for the operation of the museum, the Planning Commission of the City of (“B”) requires the Museum to provide parking facilities on the Property to mitigate the traffic and parking impact that the Museum has on the surrounding area. Specifically, B requires that the Museum maintain a valet parking system, that it provide free parking to its employees, and that it provide parking to museum patrons at rates no greater than the rates charged by the city on public lots. Additionally, B requires the Museum to offer two hours of free validated parking to museum patrons.

From the time the museum opened, the Museum has contracted with third-party parking companies to operate its parking facility in keeping with these requirements. This arrangement frees the Museum from having to staff and operate the facility itself, but imposes significant costs on it. In order to defer some of the costs of running the facility, the Museum previously had allowed both museum patrons and the general public to park in the facility. To this same end, the Museum has allowed the garage operator to operate the facility at times when the museum itself is not open to the public.

Even with the garage generally accessible to the general public, however, records indicate that the vast majority of people who use the garage are museum patrons. At the request of the Museum, the garage operator recently compared for 2003 the collected number of validated tickets and “revenue” tickets (tickets that generate receipts, including validated tickets where the patron stayed for more than two hours and unvalidated tickets issued to patrons and the general public). A report of that analysis is attached and titled Parking Garage Usage Analysis. The operations of the garage reflected in that analysis are typical of its operations in all the relevant years.

All of the validated tickets represent use of the garage by museum patrons. If one ascribes *all* of the revenue tickets to non-patrons, museum patrons would still account for **59.5%** of the usage of the garage. To a mathematical certainty, therefore, patron use is the primary use of the parking facility. However, the garage manager believes that between 75-85% of the revenue tickets are *also* attributable to museum patrons. Even attributing a conservative one-third of the revenue tickets to museum patrons places the patron use at

**72%**. Clearly, therefore, the primary use to which the parking facility is put is providing parking for museum patrons.

Additionally, records indicate that the parking facility has *never* operated at a profit. See the parking operations analysis attached. As shown in the records that the Museum has been able to assemble, the parking facility *lost* an average of (\$1,841.73) per month in 1997, (\$4,607.71) per month in 2001, (\$4,651.82) per month in 2002, and (\$4,148.70) per month in 2003. These losses resulted because, as explained above, the vast majority of people using the facility are museum patrons who receive free validated parking. Because so few people using the garage actually pay to use it, the garage has only minimal gross receipts; it averaged \$726.17 per month in 1997, \$460.70 per month in 2001, \$426.08 per month in 2002, and \$248.33 per month in 2003.

Representatives of the Major Exemptions Section have argued that the parking facility is not eligible for exemption because it was made open to the public and because it remained open when the museum itself was closed. As we explained in our telephone conversation, however, these operations do not detract from the simple fact that the parking facility was, in fact, used *primarily* for museum purposes. The overwhelming majority of people parking in the facility were museum patrons, and records show that the Museum incurs substantial losses every single month in order to provide this subsidized parking. Given these losses, it is our conclusion that the Museum continued to operate the garage to meet the requirements of its use permit and to provide parking for its patrons.

Without doubt, the Museum has always operated the parking facility primarily for use by its patrons and in a manner incidental to its mission of displaying its collection to the public. Accordingly, the free museum exemption should be granted on all the property with regard to all prior tax years.

With regard to the current tax year and to future tax years, the application of the exemption is even more plain. On December 1, 2003, the Museum closed the parking facility to the public, making it open only to museum patrons during museum hours.

### Analysis

Article XIII, section 1 of the California Constitution sets forth the general principles of property taxation in California. Those properties which are exempt from property taxation are enumerated, in large part, in Article XIII, section 3. Among exempted properties, subsection (d) of section 3 lists “[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.” Section 202, subdivision (a)(2) is the implementing statute exempting “property used for free public libraries and free museums.” Note that subsection (d) of section 3 and section 202 (a)(2) exempt properties “used” for free public libraries and free museums and, therefore, include properties leased and used for free libraries and free museums. While subsection (d) of section 3 and section 202(a)(2) exempt

properties used for free public libraries and free museums, in order to be eligible for the exemption, the properties must be so used on the lien date.

**A. Property Used for Museums that are Free and Open to the Public**

“Property used for museums that are free and open to the public” was construed by the court of appeal in *Fellowship of Friends v. Yuba County* (1991) 235 Cal. App. 3d 1190. In that case, a religious organization collected, as part of its beliefs, fine art and other artifacts at its academy on its rural “Renaissance” property. On deciding to open the collection to the public, the collection was displayed in designated rooms comprising approximately 60 percent of the total floor space but unsegregated from the rest of the academy. Other uses of the academy were for the living area of taxpayer’s founder, accommodations for security personnel, and activities, such as dinners, lectures, music recitals and weddings.

The academy was open two days a week, by appointment; limited advertising of the academy to the public as a museum existed; and no signs directed the public to the academy as a museum or were placed on the academy to identify it as a museum. Over three years, the collection attracted less than 300 public visitors per year.

Taxpayer claimed exemption for the portion of the academy housing the collection in those years as a free public museum pursuant to subsection (d) of section 3 and section 202(a)(2); and when the county denied its claims, it paid applicable taxes and filed a suit for refund. The trial court agreed that the exemption was inapplicable, holding that the taxpayer had failed to establish that the “predominant use” of the property was for public museum purposes.

On appeal, the court of appeal affirmed, holding that “museum,” as used in subsection (d) of section 3 of Article XIII, means a building the predominant purpose of which is to house and display objects of lasting value. That definition did not preclude other uses, but it required use as a museum to be primary. Since evidence of taxpayer’s limited hours, appointment policy, isolated location, and lack of publicity suggested only a limited use of the property as a museum, the exemption was inapplicable.

It would follow that “property used for ... free museum(s)”<sup>1</sup> as used in section 202(a)(2), would encompass properties the predominant purpose of which is to support “museum(s)”, as defined.

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<sup>1</sup> Thus, the definition of “property used for ... free museum(s)” is separate and distinct from that of “property used exclusively for public schools, etc.” (Revenue and Taxation Code section 202(a)(3)) and from that of “property used exclusively for religious, hospital, scientific, or charitable purposes, etc.” (Revenue and Taxation Code section 214). (Emphasis Added.)

### **B. Leased Land Used for a Museum<sup>2</sup>**

For a museum and the leased land underlying the building to be eligible for the free museum exemption, the building itself would have to be eligible for/meet the requirements for the free museum exemption. That is, the building would have to be primarily used as a museum, and the museum would have to be free and open to the public on a regular basis. In such case, the leased land underlying the building also would be primarily used for the museum and hence, eligible for the free museum exemption. If the building did not meet the requirements for the free museum exemption, the leased land underlying the building would not be eligible for the free museum exemption.

### **C. Leased Land Used for a Museum and Also for a Parking Garage**

For leased land supporting a parking garage as well as a museum to be eligible for the free museum exemption, the building itself would have to be eligible for/meet the requirements for the free museum exemption and the parking garage would have to be primarily used for qualifying museum parking. According to the February 10, 2004, letter, the parking garage has been primarily used for museum parking, but the Assessor would have to make this determination. In addition, however, even if it were concluded that the building was eligible for/met the requirements for the free museum exemption and that the parking garage was primarily used for museum parking, in our view, the leased land would not be eligible for the free museum exemption because of the charges made for parking in the garage. It has been our longstanding construction of the free museum exemption, as well as the free public library exemption, that no part of property or properties used for commercial purposes can be eligible for the exemptions. In this instance, according to the February 10, 2004, letter, charges have been made for parking, the Museum has allowed both museum patrons and the general public to park in the parking garage, and the Museum has allowed the parking garage operator to operate the facility when the museum is not open to the public.

In our view, it is whether a museum or museum-related property or facility is free and open to the public that is determinative, not whether charges made by a museum (or public library) are such that the organization does or does not operate at a profit. "Free" means that the public incurs no costs or charges.

With respect to the January 1, 2004, lien date and the 2004-2005 fiscal year, if, in addition to opening the parking garage only to museum patrons during museum hours, charges for parking were no longer made on and after December 1, 2003, and if the building and the parking garage meet the requirements for the free museum exemption, it would appear that the free museum exemption would be available for the 2004-2005 fiscal year. Again, the Los Angeles County Assessor would have to make this determination.

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<sup>2</sup> Assuming that the leased land supported a museum only, not a museum above a parking garage.

**Conclusion**

The free museum exemption is administered solely by county assessors. Thus, it is the county assessor of the county in which leased property is located, in this instance, the Los Angeles County Assessor, who will make the final determination as to whether any portion of the leased land used for the museum and for the parking garage is eligible for the free museum exemption.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board of Equalization based upon present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

*/s/ James K. McManigal, Jr.*

James K. McManigal, Jr.  
Senior Tax Counsel

Enclosure [Annotation 445.0030 (C 5/30/96)]

JKM;lbg

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cc: Honorable Rick Auerbach  
Los Angeles County Assessor  
500 West Temple Street, Room 320  
Los Angeles, CA 90012-2770

Mr. Al Ramseyer  
Los Angeles County Assessor's Office

Mr. David Gau, MIC:63  
Mr. Dean Kinnee, MIC:64  
Ms. Mickie Stuckey, MIC:62  
Mr. Todd Gilman, MIC:70