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December 11, 2002

The Honorable Larry Stone
Santa Clara County Assessor
County Government Center
70 West Hedding Street, East Wing
San Jose, CA 95110

Attention: Ms. _____, Exemption Administrator

Re: *Qualification for the College Exemption of _____ College Parking Property*

Dear Mr. Stone,

This is in response to your letter of September 10, 2002 and facsimile of November 27, 2002 to Ms. Colleen Dottarar of the Board's Exemptions Unit. Your request for a legal opinion concerning the qualification for the college exemption of certain parking property used by College was forwarded to me this week for a response. _____ College has claimed the college exemption for this parking property, which it has leased and uses for student parking. However, the College's Parking Easement Agreement with the property owner, a shopping mall, also allows the property to also be used for parking by the mall for shoppers. As discussed below, the Agreement's language quoted in your correspondence authorizes an ongoing, regular use of the College's parking property by the shopping mall. Property used by both qualifying and nonqualifying organizations cannot satisfy the threshold exemption requirement of exclusive use. (Cal. Const., art. XIII, § 3(e).) Accordingly, staff concludes that the property would not be eligible for the college exemption, if it is also used on a regular basis by a for profit business entity for nonqualifying commercial parking purposes; however, additional site inspections are advised to document the actual use of the property.

Relevant Facts

You have submitted correspondence and between the assessor's office and College (hereinafter College) and related documents for our review, with the exception of a photocopy of the Parking Easement Agreement between _____ College and the shopping mall. The College entered into a 10-year Parking Easement Agreement (hereinafter Agreement) for the purpose of leasing parking property from the _____ Mall _____ in the City of _____ as of May 1, 2001. The College filed a claim for the college exemption for this parking property with your office on April 15, 2002. Your correspondence of September 10, 2002 indicates that the parking property is used by students attending the College from Monday through Friday and by shopping mall customers on the weekends. In that regard, the Agreement provides that the use of the parking property by the College is prohibited during specified time periods.

“Grantee shall have no use of the Easement between the Friday after Thanksgiving and New Years’ Day (inclusive of both dates) as follows: Monday through Friday: for the period between the hours of 4:30 p.m. and 9:30 p.m., Saturday and Sunday all day.” (Sept. 10, 2002 letter from Assessor Lawrence Stone to the Board’s Exemption Division, citing section 4.1 of part 6 of the Agreement Data Sheet.)

You have provided a photocopy of a photograph taken during a field inspection of this property on July 12, 2002 of the sign posted at the parking property, which reads as follows:

MONDAY-FRIDAY
XXXX College student parking only
SATURDAY-SUNDAY
Open for Mall Customers
WARNING

Any Non-XXXX students parking in this lot Monday – Friday will be towed.

Correspondence from your office dated May 10, 2002, informed the College that the parking property is not eligible for the college exemption because it does not meet the requirement of exclusive use. The College expressed its disagreement with your determination that the property is not qualified for the exemption in its letter of May 16, 2002 to your office.

The main basis of your denial was the exclusive use requirement for the college exemption. You stated that on weekends and during the Christmas holiday period, the Mall had use of the parking lot and thus voided our exemption. First of all, the weekends you referred to only apply to the same holiday period of approximately five weeks, not all year long. Secondly, the use of our parking lots by the Mall during the holiday period is only a possibility, requiring 48 hours notice.

* * *

In other words, the Mall might use our parking lots during a five-week holiday period at nights and weekends when does not need the parking spaces. (is on holiday for half of this period in any event.) Should this potential use, when has no cars on the lot (keep in mind that we also provide parking on the parcel we own for the campus) disallow our exemption under the “exclusive use” provision? I would argue no, as effectively has exclusive use for the intent and benefit of and its educational mission. To deny the college exemption on the “exclusive use” premise is taking too much of a literal interpretation of the tax code and not looking at what is the economic substance of the lease agreement. [All terms underlined in this paragraph and the one above were underlined in the original correspondence.]

* * *

In all fairness, I firmly believe that the denial of the college exemption is unduly harsh and not within the intent of the tax code. (May 16, 2002 correspondence from _____, Director of Real Estate for _____ College to Ms. _____.)

Thus, _____ College asserts that your office has been over restrictive in interpreting the exclusive use requirement for the exemption.

Law and Analysis

The California Constitution exempts buildings, land, equipment ... used exclusively for educational purposes by a nonprofit institution of higher education. (art. XIII, § 3(e).) The constitutional provision is implemented by section 203 of the Revenue and Taxation Code.

The California Courts have held that tax exemption constitutional provisions and statutes are to be construed strictly, but reasonably. (*Cedars of Lebanon Hospital v. County of Los Angeles* (1950) 35 Cal.2d 729, 734-735.) The *Cedars* Court ruled that the rule of strict construction does not require that the narrowest possible meaning be given to the exempting language, rather a fair and reasonable interpretation is required, with due regard for the ordinary acceptance of the language employed and the object sought to be accomplished. Accordingly, the term, "exclusively used" may not be given a literal interpretation so as to mean that the property exempted must be used solely for the [exempt] purposes stated to the total exclusion of any other use. (*Cedars, supra* at page 736.) The Courts, applying the rule of strict but reasonable construction, have construed "property used exclusively for the purposes of education" to include 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.) Under this test, the courts have exempted housing for faculty and students, parking property (*Church Divinity School, supra* at pages 505-506) and a golf course, used primarily by alumni, but also by students and faculty. (*Board of Trustees of the Leland Stanford Junior University v. County of Santa Clara* (1978) 86 Cal.App.3d 79.)¹

In *Honeywell Information Systems, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23, the court denied the public school exemption for a computer system leased to a public school, that was subleased to and used on a regular basis by parochial schools and private businesses, even though their use of this equipment represented only 3.5% of the total use. The court held that the nonqualifying use by the parochial schools and private businesses was not reasonably necessary to further the educational purposes of the public schools, but was merely a revenue-generating device.

¹ The Court rejected the argument that less than 50% use of the golf course by Stanford students destroyed its exclusiveness because of the "special relationship of a university to its alumni."

Consistent with the above judicial precedent construing the exclusive use requirement, a qualified nonprofit organization's primary use of its property must be for exempt purposes and any other uses of the property must be related to and reasonably necessary to the accomplishment of the organization's exempt purposes. As such, any regular use of a nonprofit organization's property by nonqualified entities for purposes unrelated to the exempt purpose of the organization constitutes non-exclusive use that will disqualify the property from exemption. (Assessor's Handbook, AH 267, Welfare, Church and Religious Exemptions, April 2002, pages 24-27.)

With respect to issue at hand, the facts indicate that _____ College leases the parking property from the shopping mall to provide overflow parking for its students, but the mall may also use this entire property for its customers during specified times. The College's use of this property for student parking would qualify for exemption if there were no other nonqualifying use. The College is a qualifying nonprofit institution of higher education, and such property use is reasonably necessary for the fulfillment of a generally recognized function of a complete modern college." (*Church Divinity School, supra*) However, the shopping mall, a nonqualifying [for-profit] business enterprise, may also use the same property for its commercial parking purposes, per the terms of its Agreement with the College. When an entire parking lot is used both by qualifying and nonqualifying organizations, the property is not used exclusively for exempt purposes, and the entire property is ineligible for the exemption.² (Property Tax Annotation 880.0025, May 28, 1992 letter of James K. McManigal, Jr., attached here.)

As noted previously, there appears to be a factual dispute as to whether the shopping mall is, in fact, using the parking property for its customers, and concerning the amount and frequency of such use authorized by the Agreement. Mr. _____ contends that the shopping mall's use of the parking property during the holiday shopping season is only a possibility. (May 16, 2002 correspondence from _____, Director of Real Estate for _____ College to Ms. _____.) Mr. _____ also asserts that if the mall uses the property, its use would be limited to a five-week period, including the holiday shopping season from Thanksgiving through January 1; and, therefore, would not occur every weekend throughout the year. However, the latter contention is rebutted by the language on the sign posted on the property stating that, "SATURDAY-SUNDAY Open for _____ Mall Customers." If weekend parking for mall customers were allowed only during the holiday shopping season, this information would also be provided on the sign posted on the parking property. Nonetheless, additional site inspections of the property are advisable during the current holiday shopping season and also during weekends after January 1, 2003, in order to verify the actual use of the parking property.

² It is possible for parking lots used by both qualifying and nonqualifying organizations to qualify for a partial exemption under the following facts. If a portion of a parking lot is used exclusively by a qualifying organization, and if the remaining separate portion is used exclusively or otherwise by a nonqualifying organization, the portion of the parking lot used exclusively by the qualifying organization is eligible for the exemption.

Conclusion

As noted above, the Agreement provides for an ongoing, regular use of the College's parking property by the shopping mall that is not related to and reasonably necessary for the accomplishment of the educational purpose of the College. Such use of the property by this for profit business entity for nonqualifying commercial parking purposes would cause the property not to satisfy the requirement that the property must be used exclusively for educational purposes by a nonprofit institution of higher education. (art. XIII, § 3(e); § 203 of the Rev. & Tax. Code.) Assuming that such use is verified by your staff, the parking would not be qualified for the college exemption, consistent with long-standing judicial precedent discussed above.

Attached are two Board property tax annotations that interpret the exclusive use requirement. The first annotation (880.0225) concerns the qualification for the welfare exemption of a parking lot property used by both qualifying and nonqualifying organizations. The second annotation (250.0015) is the staff's analysis of the qualification for the college exemption of portions of college-owned property by used by individuals and/or organizations that are not qualified users.

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. Therefore, they are not binding on your office, or any person or public entity. The final decision whether this property qualifies for the college exemption rests with your office.

Sincerely,

/s/ Mary Ann Alonzo

Mary Ann Alonzo
Senior Tax Counsel

MAA:tr
prop/prec/welexqal/02/32maa

Attachments [Annotations 880.0225 (C 5/28/92) and 250.0015 (C 6/16/87, C 7/27/90)]

cc: Mr. David Gau, MIC: 63
Mr. Dean Kinnee, MIC: 64
Ms. Lisa Thompson, MIC: 64
Mr. Gordon Ferguson, MIC: 64