STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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January 13, 1988

Honorable Alan B. Flory
Yolo County Assessor
625 Court Street, Room 104
Woodland, CA 95695

Dear Mr. Flory:

This is in response to your letter to Mr. James J. Delaney in which you request our opinion with respect to the taxability of privately owned student housing built on land leased from the Regents of the University of of California and located on the Davis campus.

According to the lease, the Lessor (The Regents of the University of California) has determined that there is a need for student housing at the Davis campus and has decided to utilize ten acres of unimproved land on the campus for that purpose. In general, the Lessee is to build and operate a 200-unit student family housing apartment complex, storage facility, laundry and day care center for Permitted Tenants (¶ 7.1). Permitted Tenants means a family, at least one member of which is an enrolled full-time student at a degree-granting accredited institution of higher learning, as determined by the U.C. Davis Administration, applying the definition of "full-time" established by the student applicant's institution (¶ 39.9). In the event there are surplus rental units available beyond that requested by Permitted Tenants, the Lessee may rent such units to other than Permitted Tenants only with the permission of the Chancellor of the Davis campus. In deciding whether or not to grant such permission, the Chancellor shall take into consideration university, including university student, faculty and staff, interests, but permission shall not be unreasonably withheld or delayed (¶ 7.3.1). A tenant may sublease to one who is not a student, faculty or staff member of U.C. Davis only after establishing to the satisfaction of the Chancellor of the Davis campus that a reasonable effort was made to first sublet to such a tenant (¶ 7.3.2 ii). One who ceases to be a Permitted Tenant before the expiration of his lease shall be permitted to remain a tenant until the expiration of his or her lease. Such tenant may not sublet the unit except to a Permitted Tenant (¶ 7.3.3).

The term of the lease is 50 years (¶ 2.1) The only monetary consideration to be paid by the Lessee is $50 as it is the Lessor's stated intent that the economic value otherwise attributable to the leased land be passed on to the Permitted Tenants in the form of lowered rents and that this objective be accomplished by the rent setting formula in paragraph 5 (¶ 3.1). Included in the rent setting formula are Lessee's operating expenses which include property taxes all of which are payable by Lessee (¶ 5.1.2, 8.1). Lessee is the owner of the project improvements until expiration or earlier termination of the lease at which time they are to be demolished at Lessee's expense or kept by Lessor as Lessor elects (¶¶ 10.5, 10.6).

Revenue and Taxation Code section 107 defines "possessory interests" to mean (a) the possession of, claim to, or the right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person and (b) taxable improvements on tax-exempt land. See also Property Tax Rule 21(a) and (b).

Under the foregoing definitional provisions, it is clear that the Lessee obtained a taxable possessory interest in the ten acres of land owned by the Lessor at the Davis campus as of the effective date of the lease, November 28, 1984. It is also clear under those provisions that the Lessee's interest in the improvements is a possessory interest either because Lessee's ownership in the improvements terminates at the same time Lessee's leasehold interest in the land terminates or because the improvements constitute taxable improvements on tax-exempt land. Further, when the Lessee subleases individual units in the apartment project to tenants, such tenants will have possessory interests as sublessees of Lessee's possessory interest.

In cases such as this where the land in question is owned by a state university as is the University of California, the applicability of article XIII, section 3, subdivision (d), of the California Constitution is at issue. That provision exempts from property tax ". . . property used exclusively for public schools, community colleges, state colleges, and state universities."

The question, therefore, is whether the possessory interests in land and improvements which were created in this case are property "used exclusively for" the University of California, within the meaning of section 3, subdivision (d).

In a similar case, the Court of Appeal held that the possessory interests of students in family housing owned by the University of California were exempt under section 3, subdivision (d), (Mann v. County of Alameda (1978) 85 Cal.App.3d 505). In reaching its decision, the Court stated its rationale as follows at page 508:

> "In Church Divinity Sch. v. County of Alameda (1957) 152 Cal.App.2d 496, the court set forth a test of 'exclusive use' in the context of an analogous exemption. That case turned on an interpretation of article XIII, section 1a, (footnote omitted) 'the predecessor section to present section 3, subdivision (e)' (footnote omitted). It provided that 'Any educational institution of collegiate grade . . . not conducted for profit, shall hold exempt from taxation its buildings and equipment, its ground . . . used exclusively for the purposes of education.' In Church Divinity School, Alameda County sought to impose a property tax directly on two divinity schools. The property was owned by the schools and consisted of (1) a parking lot set aside for students, faculty and staff in attendance at the school for which a minimal monthly parking fee was charged; (2) faculty housing provided rent free; and (3) married student housing. The court held that property 'used exclusively for educational purposes' includes 'any facilities which are reasonably necessary for the fulfillment of a generally recognized function of a complete modern college.' (152 Cal.App.2d at p. 502.) The court further held then that all the property involved was 'reasonably necessary' for the fulfillment of such a function, and that such property was therefore exempt from a tax levied directly on the college.
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> "It is true that in Church Divinity School the tax was levied directly on the college as the owner of the property, whereas in the case at bench, the tax is levied on the students' possessory interest in the property. Subsequently, it was held, however, in English v. County of Alameda (1977) 70 Cal.App.3d 226 (footnote omitted), 'that the section 3, subdivision (e) exemption applies not only to the reversionary interest that the college has in the property, but also the leasehold interests of the students in the property. Section 3, subdivision (d) employs the phrase 'used exclusively for . . . state universities.' Section 3, subdivision (e) uses the phrase 'used exclusively for educational purposes by a nonprofit institution of higher education.' No reason appears to

> exist why the words 'used exclusively' should be given different meanings in the two subsections; on the contrary, it seems obvious that they should be given the same meaning for they appear in immediate sequence and in the same context, namely, tax exemption. Furthermore, both sections exempt certain property from taxation, not on the basis of its ownership, but on the basis of its use for a public purpose. (Ross v. City of Long Beach (1944) 24 Cal.2d 258 . . . . The public purpose which is the ground of the relevant exemption provided by section 3, subdivision (d) is the same as the public purpose which grounds the section 3, subdivision (e) exemption. Section 3, subdivision (e) exempts certain property used 'for educational purposes'; section 3, subdivision (d)'s exemption of property used for, inter alia, state universities, is grounded on a policy of '[encouraging] the cause of education.' (Ross v. City of Long Beach, supra, at p. 262.) Thus, there can be no basis for finding that a given use of property is within the intended scope of section 3, subdivision (e), but not within the intended scope of section 3, subdivision (d).
>
> "In light of the holding in Church Divinity Sch. v. County of Alameda, supra, . . . that married student housing owned by the school was encompassed within the meaning of 'used exclusively for educational purposes' in former section 1a, we conclude, therefore, that married student housing used exclusively for a state university comes within the ambit of section 3, subdivision (d).
>
> "Thus, since English, supra, holds that the possessory interest of the student is exempt, . . . it would seem to follow that the students' possessory interest in the case at bench is exempt."

The facts of this case are different from those in Mann in that in this case there is a master tenant, i.e., the Lessee who presumably operates the property for a profit. Because of this profit-making aspect, it could be argued that the land and improvements in question are not "used exclusively for" the University of California within the meaning of section 3, subdivision (d). We have, however, previously concluded to the contrary. See, for example,. LTA No. 80/48 dated March 21, 1980, Question No. 1 wherein we concluded that taxable possessory interests in property used by concessionaires exclusively for providing food service to public schools, etc., are exempt under article XIII section 3(d).

Moreover, the possessory interests of the student tenants in this case are legally indistinguishable from those in the Mann case. Since such tenants are sublessees of the same possessory interest created in Lessee, it would be anomolous to conclude that such possessory interest is not exempt under section 3(d) in light of the Mann case.

Based on the foregoing, we are of the opinion that the possessory interests in question are exempt except to the extent that on any lien date any unit is rented or subleased to persons none of whom is a Permitted Tenant or a faculty or staff member of U.C. Davis.

Very truly yours,

Eric F. Eisenlauer

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Tax Counsel

EFE:cb
0853D

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
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August 30, 2002

Re: Proposed Residential Housing
University of California, Irvine

Dear Mr.

This is in response to your July 25, 2002, letter to Mr. Louis Ambrose wherein you requested that we review a statement of facts pertaining to proposed residential housing to be constructed on the University's Irvine Campus and advise as to the availability of one or more property tax exemptions for the housing.

As hereinafter explained, in our view, the land upon which the housing would be built would be exempt from property tax under Article XIII, section 3(a) of the California Constitution and Revenue and Taxation Code section 202(a)(4) as property owned by the State of California; the non-profit corporation's taxable possessory interests in the Project, land and improvements, would be exempt from property tax under Article XIII, section 3(d) of the California Constitution and Revenue and Taxation Code section 202(a)(3); and students, etc., would have possessory interests in their respective residential units upon leasing them, but they would be, for the most part, exempt also under Article XIII, section 3(d) and section 202(a)(3). Such would, of course, have to be determined by the Orange County Assessor's Office, which administers these exemptions. That office would also have to determine whether the non-profit corporation's management company, if there is one, has taxable possessory interests in the Project, and if it does, whether those interests are exempt under Article XIII, section 3(d) and section 202(a)(3).

Statement of Facts

The Regents of the University of California ("Regents") is a California corporation that, pursuant to Article IX, section 9 of the California Constitution administers the University of California as a public trust. The Regents own and operate a campus in Irvine, California ("UCI").

To address its current housing deficit, UCI initiated an on-campus student housing project that involves use of a non-University development team to design, finance, construct, own and operate student housing which exclusively dedicated to serve the students of UCI in accordance with UCI's student housing program. It selected a team that includes EAH, Inc., which is a non-profit public benefit corporation, incorporated in 1962 under the laws of the State of California. EAH, Inc. was organized to develop and own affordable housing and has since expanded its activities to address a statewide shortage of student and faculty housing. The proposed owner of the Project for the period during which tax-exempt financing for the Project remains outstanding is EAH University Properties, Inc.,[1] a California non-profit public benefit corporation and an affiliate of EAH, Inc. The Owner has engaged American Campus Communities ("ACC") for the development, construction and/or management of the Project.

The Project, known as "East Campus Student Apartments," is to be a 488 unit, 1,488-bed student housing facility, situated on approximately 30 acres located on the UCI campus. It will consist of 42 residential buildings, a 15,126-square-foot undergraduate community building, a 1,580-square-foot graduate community building and ancillary laundry and maintenance buildings. The main undergraduate Community Center includes a reception area, social lounge, meeting room with fireplace, 10-station computer room, e-mail terminals, academic center with private rooms, a 40-seat mini-theater, arcade areas, managerial and accounting offices, community assistants workspace, laundry room, community kitchen, public restrooms and storage. Outside amenities include a swimming pool, sand volleyball courts, a half-court basketball/tennis "Sport Court," outdoor carwash and various gathering areas that can accommodate benches or picnic tables. The Project also includes approximately 1,197 parking spaces.

The Owner would enter into a ground lease with the Regents for access to the site of the Project and would construct, own and operate the Project subject to the terms of the ground lease until the earlier of 40 years or repayment and redemption of the bonds. At either of those times, the ground lease will terminate and the Project will become the property of the Regents. The Owner and its on-site manager, if there were one, would be bound, under the terms of the ground lease, to lease residential space in the Project only (a) to continuing undergraduate students and graduate students of UCI ("Permitted Occupants") and (b) if the Owner is unable to lease all of the space in the Project to Permitted Occupants, after obtaining the Regents' consent on a case by case basis to lease to other persons from among students, UCI facility members, and UCI staff members. If vacancies remain thereafter, the Owner could seek the Regents' consent on a case by case basis to lease to other persons, on a limited duration basis. Community spaces in the Project may be used only for Campus-related purposes.

Your View as to Property Tax Exemption

[1] Changed from the July 25, 2002, letter, which stated, "The proposed owner of the Project for the period during which tax-exempt financing for the Project remains outstanding is EAH - East Campus Apartments, LLC (the "Owner"), which is a limited liability company, organized and existing under the laws of the State of California. The Owner's managing and sole member is EAH University Properties, Inc., a California non-profit public benefit corporation and an affiliate of EAH, Inc."

Summary. Under California law, the Project qualifies for exemption from property tax for three, independent reasons:

- The Regents' residual interest in the Project is **property owned by the State of California** and is exempt under California Constitution Article XIII, section 3(a) and California Revenue and Taxation Code, section 202(a)(4).
- The Project will, at all times during its existence, be **property used exclusively for the University of California** and is therefore exempt under California Constitution Article XIII, section 3(d) and California Revenue and Taxation Code, section 202(a)(3).
- The Project will, at all times prior to retirement of the bonds, **be property used exclusively for charitable purposes** and will be **owned and operated by a charitable fund,** foundation, or corporation, and both the Project and the fund, foundation or corporation will meet all of the requirement of subdivision (a) of section 214 of the California Revenue and Tax Code, resulting in exemption of the Project under section 214(e) of the California Revenue and Taxation Code.

Analysis

1. Property Owned by the State. The land on which the Project will be located is owned by the Regents of the University of California.

Although the Regents constitute a corporation separate from the University of California and hold and administer all University property, all such property belongs to the State, and the Regents merely hold and administer the property in trust. Stats. 1867-68, Ch. 244, p. 248. Property owned by the State is exempt from taxation under Article XIII, section 3(a) of the California Constitution. See The Regents of the University of California v. City of Los Angeles (1979) 100 Cal. App. 3d 547; and The Regents of the University of California v. City of Los Angeles (1983) 148 Cal. App. 3d 451.

Such would, of course, have to be determined by the Orange County Assessors' Office which administers this exemption.

2. Property Owned by EAH University Properties, Inc. The Project is to be owned by EAH University Properties, Inc., a California non-profit public benefit corporation.

In 1988, we had occasion to consider a statement of facts pertaining to residential housing constructed on the University's Davis Campus as the result of the Regent's lease of campus property to a for-profit entity. The lease terms were similar to those in the Statement of Facts in

that the lessee was to own the Project improvements until expiration or earlier termination of the lease, at which time they were to be demolished at the lessee's expense or kept by the Regents, as

it elected; and the lessee was to operate the Project for "Permitted Tenants," as defined, generally a family, at least one member of which was an enrolled, full-time student.

Based upon Revenue and Taxation Code section 107, Possessory Interests, and former Property Tax Rule No. 21, Possessory Interest Definitions, we concluded that the lessee obtained a taxable possessory interest in both the land and in the Project improvements:

> Revenue and Taxation Code section 107 defines "possessory interests" to mean (a) the possession of, claim to, or the right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person and (b) taxable improvements on tax-exempt land. See also Property Tax Rule 21(a) and (b).
>
> Under the foregoing definitional provisions, it is clear that the Lessee obtained a taxable possessory interest in the ten acres of land owned by the Lessor at the Davis campus as of the effective date of the lease, November 28, 1984. It is also clear under those provisions that the Lessee's interest in the improvements is a possessory interest either because Lessee's ownership in the improvements terminates at the same time Lessee's leasehold interest in the land terminates or because the improvements constitute taxable improvements on tax-exempt land.

We further concluded, however, that the lessee's taxable possessory interests were exempt from property taxation as properties "used exclusively for" the University of California within the meaning of Article XIII, section 3(d) of the California Constitution, based upon Mann v. Alameda County (1978) 85 Cal. App. 3d 505 and our prior conclusion, set forth in a March 21, 1980, Letter to Assessors among other places, that lands and improvements can be "used exclusively for" the University of California within the meaning of section 3(d), even though the lessee is a for-profit entity:

> In cases such as this where the land in question is owned by a state university as is the University of California, the applicability of Article XIII, section 3, subdivision (d), of the California Constitution is at issue. That provision exempts from property tax " ... property used exclusively for public schools, community colleges, state colleges, and state universities."
>
> The question, therefore, is whether the possessory interests in land and improvements which were created in this case are property "used exclusively for" the University of California, within the meaning of section 3, subdivision (d).
>
> In a similar case, the Court of Appeal held that the possessory interests of students in family housing owned by the University of California were exempt under section 3, subdivision (d), (Mann v. County of Alameda (1978) 85 Cal. App. 3d 505). In reaching its decision, the Court stated its rationale as follows at page 508:

> The facts of this case are different from those in Mann in that in this case there is a master tenant, i.e., the Lessee who presumably operates the property for a profit. Because of this profit-making aspect, it could be argued that the land and improvements in question are not "used exclusively for" the University of California within the meaning of section 3, subdivision (d). We have, however, previously concluded to the contrary. See, for example, LTA No. 80/48 dated March 21, 1980, Question No. 1 wherein we concluded that taxable possessory interests in property used by concessionaires exclusively for providing food service to public schools, etc., are exempt under Article XIII section 3(d).

A copy of our January 13, 1988, letter[2] to Yolo County Assessor, Alan Flory in these regards and upon which Property Tax Annotation No. 660.0225[3] is based is enclosed for your information and review.

The same reasoning is applicable to the Statement of Facts you submitted. In fact, the Statement of Facts is much closer to the facts in Mann v. Alameda County, supra, in that while there is a lessee entity, the lessee is a non-profit organization and thus, there is no profit-making aspect and no basis for any argument that because of a profit-making aspect, the land and improvements are not "used exclusively for" the University of California.

Such would, of course, have to be determined by the Orange County Assessors' Office which also administers this exemption.

3. Use of Project, Land and Improvements, by University Students, etc.

In our January 13. 1988, letter to Assessor Flory, we concluded also that students, etc. would have possessory interests in their respective residential units upon leasing them, but that under Mann v. Alameda County, supra, they would be, for the most part, exempt also under Article XIII, section 3(d):

> . . . Further, when the Lessee sublease individual units in the apartment project to tenants, such tenants will have possessory interests as subleases of Lessee's possessory interest.

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[2] The same reasoning would apply in the case of a comparable lease of campus property to a limited liability company.

[3] **660.0225 Public Schools-Student Housing.** A fifty-year lease of land owned by the University of California to a lessee who is to construct and operate a 200-unit student family housing apartment complex creates a possessory interest that would be taxable, except for the provisions of Section 3(d) of Article XIII of the California Constitution. That provision exempts property used exclusively for public schools, community colleges, state colleges, and state universities.

Upon the basis of the reasoning in such cases as *Mann v. Alameda County* (1978) 85 Cal. App. 3d 505, *Church Divinity School* v. *Alameda County* (1957) 152 Cal. App. 2d 496, and *English* v. *Alameda County* (1977) 70 Cal. App. 3d 226, the property is being used exclusively for University purposes so long as any given unit is subleased to a student, faculty member, or staff member of the University, even though the lessee is a for-profit entity. C 1/13/88.

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Moreover, the possessory interests of the student tenants in this case are legally indistinguishable from those in the Mann case. Since such tenants are sublessees of the same possessory interest created in Lessee, it would be anomalous to conclude that such possessory interest is not exempt under section 3(d) in light of the Mann case.

Based on the foregoing, we are of the opinion that the possessory interests in question are exempt except to the extent that on any lien date any unit is rented or subleased to persons none of whom is a Permitted Tenant or a faculty or staff member of U. C. Davis.

The same reasoning is applicable to the Statement of Facts you submitted. The making of possessory interest assessments in the names of the students, etc. in such circumstances would, in effect, deny the benefits of exemption under section 3(d) intended for properties used exclusively for the University of California, which student housing for University of California students, etc. is. Possessory interest assessments would be proper to the extent that on any lien date any unit was rented or subleased to non-students, etc.

Such would, of course, have to be determined by the Orange County Assessor's Office which, as indicated, administers this exemption.

4. Management of the Project, Land and Improvements, by ACC.

According to the Statement of Facts, the Project could be managed by ACC, which "would be bound, under the terms of the ground lease, to lease residential space in the Project" only as provided. No document or other information pertaining to ACC's relationship with the University, contractual, legal, or otherwise, and the right to use the Project itself or through EAH University Properties, Inc. has been provided; and no management agreement between EAH University Properties, Inc. and ACC has been provided.

If the Project is managed by ACC, based upon those documents and, possibly, other documents and information, the Orange County Assessor's Office would have to determine whether ACC has taxable possessory interests in the Project and, if it does have taxable possessory interests therein, whether those interests are exempt from property tax under Article XIII, section 3 of the California Constitution and section 202(a)(3).

We note in this regard the case of Pacific Grove-Asilomar Operations Corp. v. Monterey County (1974) 43 Cal. App. 3d 675, wherein the court of appeal concluded that the relationship between parties to a property management agreement was that of principal and agent, and also that the agent did not have a taxable possessory interest under the circumstances. The court also noted that property exempt in the hands of a principal remains exempt in the hands of the agent.

5. Welfare Exemption - Property Owned by EAH University Properties, Inc.

It is unlikely, for numerous reasons, that the property would be eligible for the welfare exemption under the circumstances.

Article XIII, section 4(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 provide for the exemption. Section 214(a)[4] provides, in part, that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if certain requirements are met. One requirement is that property be used for the actual operation of an exempt (religious, hospital, scientific, or charitable) activity (Section 214(a)(3)).

Although charitable purposes and activities include some educational purposes and activities, not all educational purposes and activities are charitable purposes and activities for purposes of section 214 (Stockton Civic Theatre v. Board of Supervisors (1967) 66 Cal. 2d 13: California College of Mortuary Science v. Los Angeles County (1972) 23 Cal. App. 3d 702; Alcoser v. San Diego County (1980) 111 Cal. App. 3d 907). As to organized school purposes and activities, section 214, section 214.4 and section 214.5 provide:

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[4] Section 214(a) rather than section 214(e) would be the applicable section. As indicated in Letter to Assessors No. 86/45 dated June 13, 1986, the effect of the addition of section 214(e) was as follows:

> As the result of the addition of subdivision (e), property owned by educational institutions of collegiate grade, as defined in section 203, as well as by religious, hospital, scientific (chartered by Congress or medical research), or charitable organizations, is eligible for the welfare exemption if the property is used exclusively for religious, hospital, scientific, or charitable purposes and if the property and organization(s) meet all of the requirements for the welfare exemption. Thus, property owned by a college and used by a church for religious purposes or used by a hospital for hospital purposes or used by a charitable organization for charitable purposes can qualify for the welfare exemption. But property owned by a qualifying religious, hospital, scientific, or charitable organization and used by a college for educational purposes of collegiate grade continues to be ineligible for the welfare exemption since educational purposes of collegiate grade are not religious, hospital, scientific, or charitable purposes.

Thus, section 214(e) would have no application because it pertains to the college exemption (Article XIII, section 3(e) of the Constitution), not to the public schools, state colleges, and state universities exemption (Article XIII, section 3(d)). Whether or not section 214(e) is applicable, section 214(a) is applicable since it specifically applies to all section 214 welfare exemption provisions, including those of section 214(b) through section 214(i), except that of section 214(j).

Section 214(a): Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

Section 214(b): Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

Section 214.4: For the purposes of Sections 207 and 214 a school of "less than collegiate grade" is (a) any institution of learning attendance at which exempts a student from attendance at a public full-time elementary or secondary day school under Section 48222 of the Education Code or (b) any institution of learning a majority of whose students are persons that have been excused from attendance at a full-time elementary or secondary day school under Section 48221 or 48226 of the Education Code.

Section 214.5: Property used exclusively for school purposes of less than collegiate grade, or exclusively for purposes of both schools of and less than collegiate grade, and owned and operated by religious, hospital or charitable funds, foundations or corporations, which property and funds, foundations or corporations meet all of the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and Section 214. This section shall not be construed to enlarge the college exemption.

While the college exemption, specifically referred to in section 214 and in section 214.5, for private colleges and universities (Article XIII, section 3(e) of the Constitution) is in addition to the exemptions for state colleges and state universities in sections 3(a) and 3(d) of the Constitution, the legislative intent has been to limit the eligibility of property used for organized school purposes, for the welfare exemption, to property used exclusively for school purposes of less than collegiate grade (section 214(b) and section 214.5) or to property used exclusively for purposes of both schools of and less than collegiate grade (section 214.5). Thus, exemption of property of an organization organized and operated to provide "collegiate grade" housing for state colleges or state universities, including the University of California, would conflict with the legislative intent expressed in the existing welfare exemption sections.

Other concerns pertaining to the availability of the welfare exemption are whether all requirements of the welfare exemption could be met. For example, section 214(a)(3) requires use of property for the actual operation of an exempt (religious, hospital, scientific, or charitable) activity. As indicated by the California Supreme Court in Stockton Civic Theatre v. Board of Supervisors (1967) 66 Cal. 2d 13, in order to be charitable, an educational activity "must benefit the community as a whole or an unascertainable and indefinite portion thereof." It is not free from doubt that the providing of housing to students of a particular state college or state university would primarily benefit the community as a whole or an unascertainable and

indefinite portion thereof, as opposed to the students who are paying rent in return for the housing and the university or its designee which is renting the housing and collecting the rent.

In addition, section 214 specifically provides for exemption of various housing if all the requirements of the section are met, properties used exclusively for housing and related facilities for elderly and handicapped families (section 214(f)), properties used exclusively for rental housing and related facilities serving lower income households, (section 214(g)), and properties used exclusively for emergency or temporary shelter and related facilities for homeless persons and families (section 214(h)). There is no statutory exemption for properties used to provide housing to students, etc. of state colleges or state universities. And even if exemption is sought for housing pursuant to section 214(f), (g), or (h), there must be some charitable aspect of the providing of the housing for the property to be eligible for exemption. Where an organization's purpose was to provide low cost rental housing for persons over the age of 60, the court of appeal found there was no charitable aspect of the organization's operations, which required that the tenants pay the full cost of the housing provided, the rents charged were the market price, and it was contemplated that rents would be paid in accordance with the terms of the leases, without regard for tenants who might experience financial distress. Martin Luther Homes v. Los Angeles County (1970) 12 Cal. App. 3d 205. Similarly, the providing of housing to students, etc. in return for their payments of the full costs of the housing provided does not establish or suggest any charitable aspect of EAH University Properties, Inc.'s operations.

In addition, donations to an organization or lack thereof is a consideration when considering the charitable aspect of the welfare exemption. A review of cases involving the charitable aspect of the exemption reveals that in many cases the organizations which were held to be charitable had received donations from outside sources at one time or another which they passed on, in the form of services or benefits, to recipients chosen from and indefinite class. In some cases, although there was no explicit finding that there were donations to the organizations, it was concluded that, by virtue of the very nature of the organizations and their affiliations, they were supported in whole or in part by donations. Thus, an organization's receipt of donations is an important criteria by which its charitable purpose can be demonstrated. Assessors' Handbook section 267, page 5. While absence of donations, by itself, does not mean a charitable purpose does not exist if it can be shown that an organization is providing a benefit or gift to the community (Assessors' Handbook Section 267, page 5), such would, no doubt, be a consideration in an instance such as this where EAH University Properties, Inc. would be renting the property to produce income, in effect, using property for disqualifying commercial purposes.

Finally in this regard, for property to be eligible for the welfare exemption, where there is an operator of the property in addition to the owner thereof, both the owner and the operator of the property must meet all of the ownership and use requirements of Section 214, et seq.

The ownership requirement has been considered by the Court of Appeal in Christ the Good Shepherd Lutheran Church v. Mathiesen (1978) 81 Cal. App. 3d 355, wherein the court held, among other things, that an owner of property may qualify for the exemption, notwithstanding the fact that its property is used by another organization (pp. 361, 362), but that the property must be both owned and operated by welfare organizations in order to qualify therefor. There is nothing to indicate that if the Project is managed by ACC, ACC is a qualifying, nonprofit corporation which meets all of the requirements for the welfare exemption.

The views expressed in this letter concerning exemption of property owned by the State, Article XIII, section 3(a) and section 202(a)(4), and exemption of property used exclusively for the University of California, Article XIII, section 3(d) and section 202(a)(3), represent the analysis of the Board's legal staff based upon the facts set forth herein and are not binding upon any person or public entity. You may wish to consult with the Orange County Assessors' Office to ascertain whether it is in agreement with the conclusions in these regards set forth above.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel IV

Enclosures

JKM:lg
Precdent/Welexqal/02/26jkm.doc

cc: Honorable Webster J. Guillory
Orange County Assessor

Ms. Kristine Cazadd
Mr. David Gau, MIC:63
Chief of PPSD, MIC:64
Mr. Dean Kinnee, MIC:64
Mr. Gordon Ferguson, MIC:64
Ms. Colleen Dottarar, MIC:64
Ms. Jennifer Willis, MIC:70