



(916) 445-3076

August 29, 1980

Mr. B

Dear Mr. B :

Possessory Interest in University Staff Housing

This is in response to your request for our opinion on whether there is a taxable possessory interest in staff housing located at the agricultural field station in Yuba County. The property is owned and operated by the University of California. There are five residences located on the property which are rented to staff members.

Whether a staff member's possessory interest in housing owned by the University of California constitutes a taxable interest depends upon whether the property is used exclusively for educational purposes. To understand the term "exclusively for educational purposes", it is helpful to review the key judicial decision of English v. County of Alameda, (1977) 70 Cal. App. 3d 226.

In the English case, the issue was the taxability of possessory interests of college and hospital administrators and staff who occupied quarters owned by tax-exempt colleges, universities and hospitals. The court held that the possessory interests were not subject to ad valorem taxation. It based its conclusion on two grounds.

First, the court reviewed the constitutional language which defines the scope of the welfare exemption and found that the term "property", as used therein, encompasses the totality of rights composing property, including possessory interests. (70 Cal. App. 3d at 235-236.) The question then was whether the possessory interests were property "used exclusively" for the purposes of education. The court made it clear that the

possessory interests constituted property used for educational purposes so long as their use was incidental to the educational purposes of the institution. The court stated:

"The extensive judicial interpretation of the phrase 'exclusive use' carries an overriding significance in the case at bench. Reduced to simplest terms, it means that even if the use of certain property is only incidental or reasonably necessary to attain the charitable goal and, therefore, at least in the every day sense of the word, does not foreclose some additional or complementary use on the part of certain authorized private individuals, ... for the purpose of property taxation such incidental or reasonably necessary use must be and is considered as an exclusive use which calls for exemption from ad valorem taxation both under the constitution and the statute." (70 Cal. App. 3d at 236-237.)

Second, the court found that public policy favored tax exemption in some instances. It reasoned that imposing a property tax on the occupancy or use of private individuals whose work is a contributory factor to the proper functioning of the charitable institution would put the burden on the institution itself, thereby frustrating the charitable goal for which the tax exemption was granted. (70 Cal. App. 3d at 240.) Cases such as United States of America v. County of Fresno (1957) 50 Cal. App. 3d 633, which held that employee use of quarters on federal land primarily benefited the employee and therefore was taxable, were distinguished. The court characterized the tax exemption granted to public land as one based on ownership whereas the tax exemption granted to welfare property was based on its use. (70 Cal. App. 3d at 238-239.) Further, the points made in respect to the welfare exemption were ruled to be equally applicable to the college exemption. (70 Cal. App. 3d at 244.)

Therefore possessory interests which allow staff members to occupy quarters on an agricultural field station owned by the University of California are not taxable to the user if such occupancy can be considered reasonably necessary or incidental to an educational purpose. This is a factual determination which must be made by using the broad judicial interpretation given the term "reasonably necessary" as a guideline. Facts which show that the presence of staff members is necessary to

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perform duties outside of regular working hours or that housing is provided because of the difficulty in recruiting satisfactory employees due to the scarcity or long distance to private rental housing, are facts which courts have held constitute reasonable necessity. See Church Divinity School v. County of Alameda (1957) 152 Cal. App. 3d 209. Therefore, if these or similar facts are present, we conclude that the possessory interests are not taxable.

Very truly yours,

Michele F. Hicks
Tax Counsel

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