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Executive Director

January 22, 2002

Re: Assessment of "River Rafting" Taxable Possessory Interest to
the University of California in County

Dear Mr.

This is in response to your letter dated September 6, 2001 in which you ask our opinion with regard to a taxable possessory interest assessment against the University of California (UC) by County (the county) with regard to the proposed issuance of a river use permit to UC. Pursuant to attachments to your letter, the river rafting permit will be issued to "Outdoor Adventure UC" and used for "raft trips," "inflatable kayak trips," and "kayak instruction" for U.C., students. You state that the "County seeks to tax an interest owned by the University and that it bases its ability to do so on the belief that the University is not using the possessory interest for an educational purpose."

As indicated in more detail below, in our opinion, the referenced assessment is in error. Assuming that the river rafting permit will, in fact, create a taxable possessory interest, that possessory interest will be owned by UC and, thus, exempt under article XIII, section 3(a) of the California Constitution regardless of how it is used. Whether or not UC can be said to be making use of the taxable possessory interest for an "educational purpose" is irrelevant as section 3(a) does not require such a purpose. The conditional exemption found in article XIII, section 3(d) of the California Constitution, to which the county apparently is referring, is inapplicable as UC does not appear to be making use of any privately held property with respect to the taxable possessory interest, only the river.

Law and Analysis

Section 3(a) of article XIII of the California Constitution exempts all property "owned by the State." Section 3(d) exempts, "property used exclusively for public schools, community colleges, state colleges, and state universities." The term "state universities" as used in section 3(d) includes the University of California. (*Regents of University of California v. State Board of Equalization* (1977) 73 Cal.App.3d 660.) Under section 3(d):

[W]hen property is leased for educational purposes to a public educational institution, the property is wholly exempt from tax. But if the property is leased for other purposes, the lessor is subject to tax on the entire value of the property, without deduction for the possessory interest. (1 Taxing California Property, 3rd Ed., §6.09 at p. 15 (West 2001).)

In other words, section 3(a) operates to exempt any property owned by a state university such as UC, regardless of how the property is used. But as to property that is merely leased by a state university, the private lessor of such property can assert an exemption under section 3(d) only if the property is exclusively used for the state university, i.e., for educational purposes.

In this case, since there does not seem to be any dispute on the issue, we will assume that “Outdoor Adventures UC” constitutes both a state agency within the meaning of section 3(a) and a “state university” within the meaning of section 3(d). If the facts are different however, and “Outdoor Adventures UC” were determined to be a separate non-profit corporation and not an agent of the State, then our conclusion would be different.

Turning to the issue at hand, UC concedes that, pursuant to *Scott-Free River Expeditions, Inc. v. County of El Dorado* (1988) 203 Cal.App.3d 896, the issuance of a recreational river rafting permit may result in the creation of a taxable possessory interest in the permittee. Nevertheless, it should be mentioned that such a taxable interest is created only if the preconditions set forth in Revenue and Taxation Code section 107 and Board Property Tax Rule 20 are satisfied. If those preconditions are not satisfied, then – irrespective of section 3(a) and 3(d) – UC will not possess a taxable interest in real property subject to assessment by the county.

Even if UC does, in fact, possess a taxable possessory interest, however, section 3(a) exempts such otherwise taxable property interest from taxation. As indicated above, section 3(a) exempts all property owned by the state. Thus, if UC owns the taxable possessory interest, then the possessory interest will be exempt regardless of what use or uses it might be put. Pursuant to California law, a taxable possessory interest is an interest in real property that is separate and apart from the underlying land and improvements and the “title to the land.” (*People v. Shearer* (1866) 30 Cal. 645, 657; *State v. Moore* (1859) 12 Cal. 56; *Kaiser v. Reid* (1947) 30 Cal.2d 610.) Thus, given that it is UC (and not a separate corporation) that will acquire the permit, it is UC that will be the owner of any property rights that are thereby created. Accordingly, if a taxable possessory interest is created, it follows that it will be owned by UC. This is consistent with the holding in *County of Sacramento v. Assessment Appeals Board No.2* (1973) 32 Cal.App.3d 654, 659, ft. 1, in which the court states that the state’s usufructary interest in property does, in fact, “‘belong’ to the state” for exemption purposes.

Turning to section 3(d), whether or not the proposed use of the river rafting taxable possessory interest by UC can be said to be exclusively for “educational purposes” is irrelevant since no taxable property appears to be used by UC, only exempt public property, the river. Accordingly, as UC is not using any privately held property in conjunction with the river rafting permit, section 3(d) is inapplicable.

Conclusion

As indicated above, in our opinion, the county's assessment of a river rafting taxable possessory interest to UC is in error. Assuming that the river rafting permit will, in fact, create a taxable possessory interest, that possessory interest will be owned by UC and, thus, exempt under article XIII, section 3(a) of the California Constitution regardless of how it is used. Whether or not UC can be said to be making use of the taxable possessory interest for an "educational purpose" is irrelevant as section 3(a) does not require such a purpose. The conditional exemption found in article XIII, section 3(d) of the California Constitution, to which the county apparently is referring, is inapplicable as UC does not appear to be making use of any privately held property with respect to the taxable possessory interest, only the river.

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. If you have any questions, please call me at (916) 324-6593.

Yours truly,

/s/ Robert W. Lambert

Robert W. Lambert
Senior Tax Counsel

RWL:eb

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