

## Taxable Possessory Interest in Auxiliary Organization Leases?

County tax assessors, eager to find property tax revenues, may come after auxiliary organizations for their *possessory interest* in support service leases to campus (tax-exempt, publicly owned) property, particularly when a commercial activity is involved. Unlike the corporate tax, auxiliary organizations do not enjoy a *general* exemption from property taxation.

California Revenue & Taxation Code Section 202(a)(3) implements a State Constitutional (Section 3 of Article XIII) exemption from taxation on “property used exclusively for public schools, community colleges, state colleges, and state universities, including the University of California.”

Such property is exempt from taxation on the basis of its exclusive use for public school purposes. The recitals in these leases should contain language that strengthens the connection between the functions performed by the auxiliary organization under the lease(s) and the university’s education mission (“public school purposes”).

Revenue & Taxation Code Section 480.6 also contains lessor-reporting requirements that may apply to support service leases. Also, Section 107.6(a) requires that a notice provision be included in such instruments stating that the property interest may be subject to property taxation if created, and that the party, in whom the *possessory interest* is vested, may be subject to the payment of property taxes levied on that interest.

Since the *Public Schools Exemption* is not a general exemption, auxiliary organizations need to claim it annually from the county assessor. To apply a claim form must be filed *each year* with the assessor of the county where the property is located. The claim form, BOE-268-A, *Exemption for Property Used Exclusively by a Public School*, is available from the county assessor. To receive the full 100 percent exemption for property owned or leased on the January 1 lien date, the claim must be filed by February 15.

Revenue & Taxation Code Section 202(c) carves out an exception to the *Public Schools Exemption* with respect to bookstore property used to generate unrelated business taxable income. This law includes valuation details on how to determine the tax due.

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