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OPINION	:	No. CV 78-125
of	:	March 20, 1979
GEORGE DEUKMEJIAN Attorney General	:	
Rodney Lilyquist, Jr. Deputy Attorney General	:	

SUBJECT: VEHICLE PARKING SPACE—A county official may have a taxable possessory interest in a vehicle parking space assigned by the county and located on property owned by the county if certain conditions are met.

The Honorable Walter I. Colby, County Counsel of Yuba County, has requested an opinion on the following question:

May a county official have a taxable possessory interest in a vehicle parking space assigned by the county and located on property owned by the county?

The conclusion is:

A county official may have a taxable possessory interest in a vehicle parking space assigned by the county and located on property owned by the county if certain conditions are met; however, the tax ordinarily would not be imposed because the amount received would be less than the costs of collection.

ANALYSIS

We are informed that the County of Yuba assigns vehicle parking spaces located in the basement garage of the county courthouse to various county officials and employees. An elected official is assigned one space upon assuming office, and each county department is assigned one space for use of a department employee. No charge is made for the use of a space, and no spaces are available for the general public or for other county employees.

The question presented for analysis is whether the designated county officials and employees have taxable possessory interests in their assigned parking spaces so as to give rise to the imposition of an ad valorem property tax. We conclude that such a tax may be imposed for use of the spaces but that ordinarily the interests would be exempt from tax because the amount levied would be less than the cost of collection.

In California, the right to possess and use land or improvements, when not coupled with an ownership interest, is generally treated as a "possessory interest" subject to taxation. (Cal. Const., art. XIII, § 1; Rev. & Tax. Code, §§ 103, 104, 107, 201;[1] *United States of America v. County of Fresno* (1975)50 Cal. App. 3d 633, 638; *Board of Supervisors v. Archer* (1971) 18 Cal. App. 3d 717, 724–725.)

Commonly, the taxable possessory interest will be in land that itself is exempt from property taxes because of ownership by the federal, state, or a local government. (*Kaiser Co. v. Reid* (1947) 30 Cal. 2d 610, 618; *English v. County of Alameda* (1977) 70 Cal. App. 3d 226, 238, 240, 242; *McCaslin v. DeCamp* (1967) 248 Cal. App. 2d 13, 16–17; Cal. Admin. Code, tit. 18, § 21, subd. (b).) In such circumstances, the possessory interest tax assessment is not made against the government or the government's interest in the property; the assessment is levied solely against the private citizen's right of use and enjoyment of the property. (*United States v. City of Detroit* (1958)355 U.S. 466, 469–470; *General Dynamics Corp. v. County of L.A.* (1958) 51 Cal. 2d 59, 63; *United States of America v. County of Fresno, supra*, 50 Cal. App. 3d 633, 640.)

In the factual situation presented for analysis, the real property in question is owned by the County of Yuba, and its interest is constitutionally exempt from property taxation. (Cal. Const., art. XIII, § 3, subd. (b).) The purpose of the county's exemption, however, is not violated by refusing to extend the exemption to private persons who have obtained and enjoy a valuable possessory interest therein. (See *English v. County of Alameda, supra*, 70 Cal. App. 3d 226, 238–239.)

[1] All unidentified section references hereinafter refer to the Revenue and Taxation Code.

Taxable possessory interests in publicly owned land arise in a variety of circumstances, including the grazing of cattle on government land (*El Tejon Cattle Co. v. County of San Diego* (1966) 64 Cal. 2d 428; *Board of Supervisors v. Archer*, *supra*, 18 Cal. App. 3d 717), the occupying of residential housing on government land (*United States of America v. County of Fresno, supra*, 50 Cal. App. 3d 633, affd. (1977) 429 U.S. 452; *McCaslin v. DeCamp*, *supra*, 248 Cal. App. 2d 13), and the operating of a snack bar at a publicly owned golf course (*Mattson v. County of Contra Costa* (1968) 258 Cal. App. 2d 205).

However, not all private possession and use of public land is subject to property taxation. Numerous factors must be weighed and considered on a case-by-case basis. (See *Stadium Concessions, Inc. v. City of Los Angeles* (1976) 60 Cal. App. 3d 215, 223; *Wells Nat. Services Corp. v. County of Santa Clara* (1976) 54 Cal. App. 3d 579, 583; *Pacific Grove-Asilomar Operating Corp. v. County of Monterey* (1974) 43 Cal. App. 3d 675, 692.)

In the area of a government employer-employee relationship, two elements are necessary for establishing the employee's taxable possessory interest in the government's property. First, the employee must have more than a right in common with others; his or her use must not be subject to an unreasonably interfering use by others. (See *United States of America v. County of Fresno*, *supra*, 50 Cal. App. 3d 633, 638; *Sea-Land Service, Inc. v. County of Alameda* (1974)36 Cal. App. 3d 837, 842; *Board of Supervisors v. Archer, supra*, 18 Cal. App. 3d 717, 725–727.) Second, the employee's use must substantially subserve an independent, private interest of the user. (See *United States v. County of Fresno* (1977) 429 U.S. 452, 465–467; *United States of America v. County of Fresno*, *supra*, 50 Cal. App. 3d 633, 638; Cal. Admin. Code, tit. 18, § 28, subd. (b).) The test, therefore, is whether the employee has a sufficiently "exclusive" possession (to the exclusion of any unreasonably interfering use by others) and a "valuable" use not subordinate to the primary interests of the employer. (See *United States v. County of Fresno*, *supra*, 429 U.S. 452, 466; *Kaiser Co. v. Reid*, *supra*, 30 Cal. 2d 610, 618–619; *Pacific Grove-Asilomar Operating Corp. v. County of Monterey*, *supra*, 43 Cal. App. 3d 675, 690–691, 694; *Mattson v. County of Contra Costa*, *supra*, 258 Cal. App. 2d 205, 212.)

Accordingly, even if a government employee's possession and custody of government property is on behalf of and for certain purposes of the government, he or she nevertheless may be taxed for the beneficial personal use of the property. (*United States v. County of Fresno, supra*, 429 U.S. 452, 467; *United States v. Allegheny County* (1944) 322 U.S. 174, 187–188.) Elements of control of the property, such as the use being nontransferable (*Kaiser Co. v. Reid*, *supra*, 30 Cal. 2d 610, 620; *Mattson v. County of Contra Costa*, *supra*, 258 Cal. App. 2d 205, 211), or temporary (*Board of Supervisors v. Archer*, *supra*, 18 Cal. App. 3d 717, 725), or terminable at the will of the government (*McCaslin v. DeCamp*, *supra*, 248 Cal. App. 2d 13, 18; *Rand Corp. v. County of Los*

Angeles (1966) 241 Cal. App. 2d 585, 588) or to some extent shared with others (*Sea-Land Service, Inc. v. County of Alameda, supra*, 36 Cal. App. 3d 837, 841–842; *Board of Supervisors v. Archer*, *supra*, 18 Cal. App. 3d 717, 725–727), merely go to the value of the taxable possessory interest. (*Wells Nat. Services Corp. v. County of Santa Clara*, *supra*, 54 Cal. App. 3d 579, 584; *United States of America v. County of Fresno*, *supra*, 50 Cal. App. 3d 633, 639.)

In the circumstances presented, the parking spaces appear to be under sufficiently "exclusive" control of the officials and employees to meet the first requirement of a taxable possessory interest. Use of the spaces is not subject to interference by the general public or by other county employees; the basement garage is not a public parking lot. As for the second requirement, it would appear that the use of the spaces primarily benefits the officials and employees rather than the county and that such use is not essential in the performance of the county's business; the personal inconvenience and cost of parking elsewhere could be significant in comparison to the county's "benefit."

While it is possible that in some circumstances the use of an assigned parking space could be similar to a forest fighter's use of an ax or fire tower (see *United States v. County of Fresno, supra*, 429 U.S. 452, 466 fn. 15) or the use of a desk and office for performing employment responsibilities, it is more likely that a taxable possessory interest will be found in an assigned parking space. The various factors, however, must be considered on a case-by-case basis.

Two final observations are necessary in our discussion. If the use of an assigned parking space is provided by a written contract, a statement in the contract concerning the employee's taxable interest is necessary under section 107.6. More significantly, if the full value of the possessory interest in the parking space causes the total taxes, special assessments, and applicable subventions on the property, up to $400, to be less than the cost of collecting them, the county board of supervisors may exempt the parking space possessory interest from property taxation. (Cal. Const., art. XIII, § 7; § 155.20.) Since ordinarily the full value of a parking space possessory interest would be less than $400 and the collection costs would be more than the amount to be levied, it is apparent that the tax will be imposed only on rare occasion.

The conclusion to the question presented, therefore, is that a county official may have a taxable possessory interest in a vehicle parking space assigned by the county and located on property owned by the county if certain conditions are met; however, the tax ordinarily would not be imposed because the amount received would be less than the costs of collection.

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