

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
OFFICE OF ETHICS, COMPLIANCE AND AUDIT SERVICES



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Universitywide Policy Office

PRESIDENTIAL POLICY ACTION FORM

Policy Name and Number: Business and Finance Bulletin G-38 Property Tax Exemption and Refund Claims Guidance for Property Owned and Leased by the University

Responsible Office: Financial Accounting, AVP-Systemwide Controller

Date of This Action: September 15, 2021

Date Last Reviewed: January 17, 2012

Name of Policy Owner: David Won, Manager and Tax Services Coordinator

Summary of Action Request (Purpose, Background, Topics Addressed)

This is a substantial revision of the Business and Finance Bulletin G-38. The name has been changed to reflect the University's unique property tax exemption and to address filing refund claims for property that is leased by the University.

I. TYPE OF ACTION (double click on the box to insert an X)

A new policy

(Include policies that are new to the University.)

A rescission

The rescission of a Presidential Policy occurs when an active policy is obsolete or has been combined with another policy, which makes it more effective. Rescissions follow a similar process as a comprehensive review.

A technical or routine review

Includes changes to the policy that are technical in nature and do not change the substance or principles of the document. A technical review includes updates to web and document links, office titles, updates to named employees, typographical amendments, and certain FAQ additions/updates (consultation with the Universitywide Policy Office (UPO) required). Changes that alter the direction or scope of the policy are considered substantive and require a comprehensive review. Technical reviews typically require 30 days posting before changes are made.

A comprehensive or substantive review

Includes any and all changes to the policy's substance or principles and requires consultation and vetting by appropriate stakeholders, review by the required bodies (senate, staff, academic

****All policies submitted for review must include this form, a tracked changes (redline) version of the policy reflecting all changes, and a clean "final" version of the policy.****

personnel, students) and final review by the Policy Advisory Committee (PAC) and PSC. *Note: the Policy Owner may not assume that any change in substance or principles is not significant enough to require formal consultation.*

II. SUMMARY OF DEVELOPMENT PROCESS AND ACTIONS

The current version of the policy is posted here: [BFB-G-38: Tax Exemption and Refund Claims Filing for Property Leased by the University \(ucop.edu\)](#)

The reason for the change: G-38 was last updated in 2012 and it was deemed necessary to update and streamline policy language for both relevancy and adherence to County Assessor filing requirements. The name of the Bulletin was changed to “Property Tax Exemption and Guidance for Refund Claims Guidance for University Owned and Leased Property.” The main users of this bulletin are the campus equipment managers, real and leased property group, and campus tax coordinators.

A summary of the main changes with this revision are:

- Reformatted policy to the revised template,
- Changed the name of the policy to reflect the University’s overall exemption
- Updated hyperlinks and replaced the Orange County samples of Form BOE-263, Lessors' Exemption Claim, and Form BOE-268-A, Public School Exemption, with the samples from the BOE.
- Included a reference to the University’s statutory exemption from real property assessment and added additional property tax laws related to the University’s property tax exemption

The proposed draft language was vetted by Liana Epperson in the UC Legal; however, she recommended that procurement counsel review the leased personal property section. Linda Kimsey, Procurement Policy Analyst, reviewed the draft and provided suggestions on the usage of “should” versus “must.” The UC Berkeley campus real estate group reviewed but had no further edits or suggestions.

In consultation with the Policy Advisory Committee, G-38 should be rescinded as a Presidential Policy and moved to an internal SharePoint site as a procedure/guideline. Reference to Business and Finance Bulletin in the Procedure/Guideline will be removed. This action will still go through the 30-day notification period.

Department:	Date	Notified who?	Notification required*? (yes/no)	Date Started	Date Completed
Academic Senate			No		
Academic Personnel			No		
Students			No		
Staff			No		
OGC			Yes		
Campus and Med Center Controllers			Yes		
Labor Relations			No		
Campus Tax Coordinators		all	Yes		

Campus Real Estate Group		UCB	Yes		
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***Determination whether review is required must be made by representatives of the relevant entity in consultation with the Policy Owner.**

In addition to the above, specifically list who* was consulted during this process? (Insert extra rows if necessary)

Consultation (Department)	Consultation (Name)
OGC	Liana Epperson
OGC	Andrew Houston
Procurement	Linda Kimsey

*Consultation with a single individual might not substitute for a formal consultation required by a department or entity. Please consult the UPO.

III. SUMMARY OF MAJOR DISCUSSION TOPICS, POINTS OF DISAGREEMENT, CONTROVERSIES, ETC.

IV. RECOMMENDED FUTURE ACTIONS

Continue to monitor the policy for any technical corrections or changes in California property tax law. Move to the internal Financial Accounting Share Point site for Accounting Manual Procedures.

David Won _____ Date: 9/29/21
 Policy Owner *Hui Won* Signature

Ruth Satorre _____ Date: 9/29/21
 Responsible Officer Signature



Property Tax Exemption and Refund Claims Guidance for University Owned and Leased Property

Responsible Officer:	AVP - Systemwide Controller
Responsible Office:	FA - Financial Accounting
Issuance Date:	October 1, 201
Effective Date:	10/1/2021
Last Review Date:	January 17, 2012
Scope:	This procedure/guideline applies to property owned and leased by the University within the jurisdiction of the State of California.

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VIII. REVISION HISTORY _____ **9**

I. POLICY SUMMARY

It is the policy of the University to avail itself of the real and personal property tax exemption afforded the University on owned and leased property under Article XIII of the California Constitution.

II. DEFINITIONS

Property Classifications:

- BOE – California State Board of Equalization.
- Leased Property – May be either real or personal and includes any tangible property such as copiers, computers, equipment and furniture.
- Personal Property – Any movable thing or intangible item of value that is capable of being owned by a person and not recognized as real property.
- Real Property – Land, and anything growing on, affixed to, or built upon land. This also includes man-made buildings, as well as crops. Real property is best characterized as property that doesn't move, or that is attached to the land.

III. POLICY STATEMENT

A. *Introduction*

As a State university, the University of California is a political subdivision of the State of California and an I.R.C. Section 501(c)(3) tax-exempt organization that conducts teaching, research and public service. In recognition of the importance of these activities to the State of California, property owned by or exclusively used by the University is not subject to California property taxes under the California Constitution. Article XIII, Section 3(d) of the California Constitution specifically cites “the University of California” as being exempt from this form of taxation.

Further to this point, in Sections 202(a)(3), 202.2 (leased property) and 202.5 (personal property), the California Revenue Taxation Code recognizes that any property used exclusively for the University shall be exempt from taxation. The University’s property tax exemption applies to both owned and leased properties. Owned properties are automatically removed from the tax roll by the County Assessor upon acquisition by the University, and lease properties require the filing of a claim for exemption with the County.

B. *Property Leased by the University*

Chapter 936, Statutes of 1978 (also known as Senate Bill 2006), pertinent provisions of which have been added to the California Revenue and Taxation Code as Section 202.2, mandates the pass-on from the Lessors to the University of the economic benefit of the property tax savings. The pass-on may be made under the following options:

Property Tax Exemption and Refund Claims Guidance for University Owned and Leased Property

- 1) The Lessor pays the property tax, and then the University will file for the tax exemption with the Lessor's cooperation;
- 2) The Lessor obtains exemption and excludes property taxes from rent or operating expenses; or
- 3) The Lessor obtains exemption and pays the amount saved to the University or credits it against rent.

The policy presented in this Bulletin does not apply to property leased by the University outside the jurisdiction of the State of California, though there may be opportunities in those out-of-state jurisdictions that would permit UC to be exempted. Those opportunities should be reviewed as they arise.

Special Assessments and Local Property Related to Proposition 218 Assessments:

There are special considerations when local assessments and property-related fees under Proposition 218 are imposed, as these charges might not be property taxes. The campuses/UC locations should refer to the Guidelines for Proposition 218 Assessments issued in March 2009 by the Office of General Counsel. As necessary, UC locations should consult the UCOP Real Estate Services and Strategies group or UC Legal.

C. Lease Contract Language

Each contract entered into by the University for lease of real property shall include specific language in Article 5 of [The Regents of the University of California Standard Lease Form, The Regent as Tenant](#), based on the guidelines shown below, with the intent to pass on to the University the economic benefit of the property tax exemption. Revisions to the standard provisions may only be made, or exceptions may only be granted, after consultation with UCOP Real Estate Services and Strategies and UC Legal (UCL).

1. Option 1 [see Section III.B.1]

If the Lessor agrees to option 1, the following in the contract applies:

“Landlord hereby affirms that the eligibility of the Premises for exemption from property tax pursuant to Article XIII, Section 3(d) of the California Constitution was not taken into account in fixing the rental rate to be paid by the Tenant hereunder; and Landlord agrees neither to file a claim for such exemption nor to claim the benefit thereof by any other means. The parties mutually agree that property taxes on the Premises shall be paid in full by Landlord and that Tenant shall thereafter apply to the County of _____, California, for a direct refund to the Tenant of taxes paid, in the amount of said exemption, as provided by Section 202.2 of the California Revenue and Taxation Code. Landlord agrees to cooperate with

Tenant and do all acts reasonably necessary and appropriate to secure and maintain said tax exemption of the Premises.”

2. Option 2 [see Section III.B.2]

If the Lessor agrees to option 2, the following in the contract applies:

“The Premises will be exempt from property taxes (including supplemental taxes, with the possible exception of special assessments and other ad valorem assessments), pursuant to Article XIII, Section 3(d) of the California Constitution, as a result of Tenant's exclusive use thereof. Tenant acknowledges that, in recognition of such exemption, Landlord has excluded property taxes from the rental rate herein provided. Therefore, Tenant will do all things reasonably necessary and appropriate to secure and maintain said tax exemption during the term of this Lease and agrees to reimburse Landlord for any property taxes on the Premises (excluding special assessments or other ad valorem assessments) that may become due and payable during the Lease Term because of Tenant's failure to file a timely exemption.”

3. Option 3 [see Section III.B.3]

If the Lessor agrees to option 3, the following in the contract applies:

“Landlord will cooperate with Tenant and do all acts reasonably necessary and appropriate to secure and maintain the property tax exemption of the Premises pursuant to Article XIII, Section 3 of the California Constitution. Landlord will either pay to Tenant the amount of any reduction or refund of property taxes resulting from such exemption or credit such amount against the Rent payable hereunder, as soon as possible after Landlord receives the benefit of the tax exemption.

If such exemption is granted for a fiscal year which is, in whole or in part, after the date of expiration or earlier termination of the Lease Term, then, with respect to that portion of such fiscal year which is after the Lease Term, Landlord will pay to Tenant the amount of such reduction or refund of property taxes in cash or immediately available funds.”

IV. COMPLIANCE / RESPONSIBILITIES

Function	Responsibilities
Executive Vice President-Chief Financial Officer	<ul style="list-style-type: none">Establishing and updating the procedures set forth in this Bulletin.
Chancellors and Laboratory Director	<ul style="list-style-type: none">Designating a fiscal or administrative unit (e.g. the Controller's Office; the Real Estate Services Strategies

Property Tax Exemption and Refund Claims Guidance for University Owned and Leased Property

	group) to handle the campus/Laboratory tax exemption and refund claiming on leased property.
Campus and Lab Controller's Office (UC locations)	<ul style="list-style-type: none"> Dealing with the campus/Laboratory tax exemption and refund claims on leased property.
Vice President-Agriculture and Natural Resources	<ul style="list-style-type: none"> Dealing with tax exemption and refund claims for real property leased under Agriculture and Natural Resources.
Associate Vice President-Finance and Systemwide Controller	<ul style="list-style-type: none"> Dealing with tax exemption and refund claims for all other real property leased for Systemwide Administration.
Campus/Laboratory Leased Property Tax Exemption Coordinator, Campus Tax Coordinator, or Designated Real Estate Unit	<ul style="list-style-type: none"> Filing the Claims for Exemption (see Section V.).

V. PROCEDURES

A. *Claims for Exemption / Claims for Refund*

1. The property tax coordinator should review the terms and conditions of each lease to determine the method agreed to by the Lessor for passing on to the University the economic benefit of the property tax exemption [see Section III.C., above].
2. Once the tax payment and reimbursement method has been determined, the property tax coordinator should complete the claim for exemption and/or claim for refund forms discussed below or collaborate with the Lessor to file the relevant forms. Please note that County Assessors do not always follow the processes outlined below, and the property tax coordinators should confirm the specific filing requirements of each County Assessor.
3. Note that refund claims should be filed as soon as practicable after the tax payments have been made, but in no case should claims be filed any later than four years from the tax payment due date or the date the tax payment was remitted, whichever occurred first.
4. Option 1: Where Contract Calls (Stipulates) for Lessor to Pay the Property Tax and the **University** Subsequently Files for the Tax Exemption and Refund with the Lessor's Cooperation [see Section III.B.1].
 - a. The University pays property taxes (typically included in gross rent or common area maintenance charges) to the Lessor. In turn, the Lessor must remit payments of property tax to the County Assessor indicated below:

Property Tax Exemption and Refund Claims Guidance for University Owned and Leased Property

- i) Real property. Taxes are based on a fiscal year basis (July 1 – June 30). One-half of the tax payment is due no later than December 10; the remaining half is due no later than April 10.
- b. The University should file Form BOE-263-B, *Lessee’s Exemption Claim*, for Form BOE-268-A, *Public School Exemption*, by February 15 with respect to properties it leased as of January 1. Exemption forms should be available on the BOE website and on each County Assessor’s website. If not available online, please obtain hard copies directly from the County Assessor.

When completing the exemption claim form, please be aware that the effective lien date begins January 1 of each year entitling the University to a tax exemption for the entire calendar year. If the University leases only a portion of the real property, it is imperative that the accurate amount of square footage be provided so that the University may take full advantage of the exemption to which it is entitled.

- c. The University should file a claim for refund as soon as reasonably practicable. Note that if the claim for refund is denied, the statute of limitations for filing a lawsuit against the County is only 6 months after denial of the claim. Form BOE-268-A, *Public School Exemption*
5. Please consult with the relevant County Assessor for their filing requirements and preferred forms. Some Counties automatically issue a refund upon granting the claim for exemption, while others require the filing of a claim for refund. Also, some counties issue the refund to the Lessor instead of the University. Please confirm the County’s practice with the Assessor.
6. Option 2: Where Contract Calls (Stipulates) for Lessor to Claim the Tax Exemption at the Outset and Exclude Property Taxes from Rent or Operating Expenses [see Section III.B.2].
- a. Under this option, no property tax payment is paid by the University to the Lessor. The University’s payments to the Lessor excludes property taxes altogether. Lessee must ensure the proper and timely filing of the claim for exemption form, however.
 - b. Lessor should complete and file Form BOE-263, *Lessor’s Exemption Claim*, by February 15. Alternatively, the University completes and files Form BOE-263-B or Form 268-A.

7. Option 3: Where Contract Calls (Stipulates) for the Parties to Work Together to Claim a Tax Exemption and the Landlord must Pay the Amount Saved to the University or Credit It Against Rent [see Section III.B.3].
 - a. Under this option, the University pays property taxes to the Lessor, who then remits payment to the County Assessor. Once the claim for exemption is approved by the County, the Lessor either reimburses the University for the amount of the tax exemption, or credits the exemption amount against payments due from the University.
 - b. The Lessor should file Form BOE-263, *Lessor's Exemption Claim*, by February 15. The Lessor's Exemption Claim requires an affidavit from the University certifying the qualifying exclusive use of the leased property.
 - c. Filing for Refund.
 - i) With respect to filing for a refund, no claim is to be filed by the University, unless the County Assessor does not issue a refund or grant an exemption directly to the Lessor.

VI. RELATED INFORMATION

California Constitution, Article XIII, Section 3(d)

California Revenue and Taxation Code

- Section 202
- Section 202.2
- Section 202.5

[Publication 29](#), *California Property Tax Publication, An Overview*

[List of Exemptions](#), California Board of Equalization

- Lessee's Exemption
- Lessor's Exemption
- Public School Exemption

[The Regents of the University of California Standard Lease Form, The Regent as Tenant](#)

California State Board of Equalization Sample Forms

- [Form BOE-263](#) - *Lessors' Exemption Claim* Form BOE-263-B – Lessee's Exemption Claim
- [Form BOE-268-A](#) - *Public School Exemption*

VII. FREQUENTLY ASKED QUESTIONS

What is the historical perspective on tax exempt treatment of University owned real property?

California Constitution Article XIII, Section 1 indicates “Unless otherwise provided by this Constitution or the laws of the United States:

- (a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.
- (b) All property so assessed shall be taxed in proportion to its full value.”

In November 1974, California voters passed Proposition 8, the measure that was written into the California Constitution as, Article XIII, Section 3(d), and the University of California as a State university became exempt from taxation on owned or leased tangible property (both real estate property and personal property): “The following are exempt from property taxation: (d) Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.” The progression below strongly demonstrates the State’s increasing recognition of the University’s growing importance within the its overall educational function and the need to more clearly define its fiscal responsibility:

- 1968: added “state universities” to this section;
- 1978: California Supreme Court held that UC is a “state university”.

The California Revenue & Taxation Code was updated in response to the property tax exemptions in Article XIII. California Revenue & Taxation Code Section 202(a) provides that property used exclusively for public schools, community colleges, state colleges and universities (including the University of California) is exempt from property taxes. The exemption for public schools applies and extends to off-campus facilities owned or leased by a program sponsor. California Revenue & Taxation Code Section 202.2 explains that to the extent that property taxes are reduced for the lessors of leased property used for free libraries and museums, public schools, community colleges, state colleges,

or state universities, including the University of California, or leased property used exclusively for education purposes by a nonprofit institution of higher education, then the granted exemption inures to the benefit of the lessee institution.

California Revenue & Taxation Code Section 202.5 makes it clear that personal property used exclusively in the performance of authorized activities, by the college, an auxiliary nonprofit corporation, or student body organization under contract or lease with the Director of Education is deemed property used exclusively for public schools and is exempt from taxation. Note, however, that California Revenue & Taxation Code Section 202(c) specifies that the portion of a University's bookstore used for activities subject to unrelated business income taxes (UBIT) will be subject to property taxes.

VIII. REVISION HISTORY

10/1/82: First Published

Revised:

10/16/06: Revised

1/17/12: The following changes have been made to this policy to better align with the California Revenue and Taxation Code as well as the University's Standard Lease of Real Property:

- The lessor obtains exemption and excludes property taxes from rent or operating expense;
- The lessor obtains exemption and pays the amount saved to the University or credits it against rent; and
- Removed "for educational purposes" as a condition for the University's use of leased real property.
- Addressed the treatment of Proposition 218 Assessments.

9/30/2021: Reformatted policy to the revised template, and made various other technical revisions. Updated hyperlinks and replaced the Orange County samples of Form BOE-263, *Lessors' Exemption Claim*, and Form BOE-268-A, *Public School Exemption*, with the samples from the BOE. Include reference to the University's statutory exemption from real property assessment and added additional property tax laws related to the University's property tax exemption. Moved to internal SharePoint site as a Procedure/Guideline.