

LEGAL UPDATES

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# Hold the Sauce! Nebraska Denies Tax Exemption for University Food Court

In the latest skirmish in an ongoing battle between taxing authorities and institutions of higher education, the Nebraska Tax Equalization and Review Commission recently affirmed a decision that denied a property tax exemption for a food court located on the campus of the University of Nebraska. In *Board of Regents of the University of Nebraska v. Lancaster County Bd. of Equalization*, the Commission found the food court was located in the union building and was used exclusively by private food vendors. The Commission determined the use of the food court space was inconsistent with the University's public purpose, despite the fact that the University used the rental payments to cover the University's investment in the food court.

In Nebraska, the person or entity claiming an exemption from property tax must establish entitlement to the exemption. Like many other states, a property owner's exemption from federal income taxation does not automatically exempt the owner's property under state law. Pursuant to Nebraska regulations—and in addition to establishing the property is owned by an exempt organization—the owner must also demonstrate the following to obtain exemption:

That the property is owned by a type of organization designated as exempt pursuant to Neb. Rev. Stat. §77-202;

That the property is used exclusively for at least one of the purposes specified in Neb. Rev. Stat. §77-202 as exempt, i.e., an educational, religious, charitable, or cemetery purpose; and the property is *not*:

owned or used for financial gain to the property owner or user;

used more than 20 hours per week for sale of alcoholic liquors; or

owned or used by an organization which, on the basis of race, color, or national origin, discriminates in membership or employment.

In this instance, the case hinged on whether the food court was being used exclusively for a purpose specified in Neb. Rev. Stat. §77-202 (1). Pursuant to Nebraska regulations, the term “operated exclusively” means an organization’s primary or predominant activity, which for the University would be education. The Commission concluded that the University did not demonstrate that the food court served its charitable purpose beyond generating revenue to support the food court and therefore did not warrant exemption.

## **What this means to you**

This case serves as a reminder to exempt organizations, including state educational institutions, that federal and state tax laws often differ within the same state. Additionally, state tax laws pertaining to the taxability of property owned by colleges and universities can differ from state to state. Despite Nebraska law supporting University of Nebraska’s exemption position, this decision indicates that many courts very strictly construe these property tax statutes. Exempt organizations should be mindful when conducting or allowing certain “for profit” activities to take place in their buildings and grounds and seek counsel as needed to determine proper planning to ensure such properties, or portions thereof, remain exempt.

## **Contact us**

For more information regarding this development or any other property tax inquiry, please contact Smitha Chintamaneni, Anthony Anzelmo, Jameson Sauseda, or any other member of our State and Local Tax Team.