

## Private Business Use

July 5, 2016

### Introduction and Purposes

Private business use (PBU) on governmental bonds is any use of tax-exempt bond-financed property by any person other than a state or local government unit. The University of Minnesota, as in integral part of the State of Minnesota, issues governmental bonds. Occasionally, the University may issue qualified 501(c)(3) bonds, but for purposes of this TMOG, the focus will be on PBU with respect to governmental bonds.

Generally, for governmental-use bonds, any use by the federal government, a qualified §501(c)(3) organization or by a corporation is PBU. Use by a natural person not engaged in any trade or business is not PBU.

### Example Areas of PBU

The following areas have significant potential to create PBU in bond financed facilities:

#### Management Contracts

Management contracts are arrangements between the University and a private business enterprise. These arrangements create PBU to the extent that the agreement terms of these business relationships do not follow strict IRS official guidance. The official IRS guidance is published in Revenue Procedure 97-13 and is further amplified by other rulings issued by the IRS. The University will ensure that PBU on bond financed projects is kept within acceptable limits by having management contracts reviewed by the Office of the General Counsel (OGC) and the Tax Management Office (TMO) prior to letting the third party use such facilities. The TMO will track all management contracts and measure the effect these arrangements have on PBU.

#### Leases of Facilities

The University may lease to a private business enterprise. Both short-term and long-term leases that involve tax-exempt bond financed facilities may create PBU. Generally, the prime measure of these arrangements is the square footage of the leased space compared to the total assignable square footage of the debt financed property. The University will ensure that PBU on bond financed facilities is kept within acceptable limits by having leases reviewed by the Real Estate Office and the TMO prior to entering into the lease with the third party. The TMO will track all leases and measure the effect these arrangements have on PBU. There is an exception for short-term leases that may apply. See *TMOG #9 Fifty Day Rule* for more information.

#### Naming Rights Agreements

Naming rights relating to a bond financed facility can create PBU when the name used on the facility is connected to a private business enterprise. Merely naming a facility after an individual with no business connection does not necessarily create PBU. Prior to the finalization of naming rights agreements drafted by the OGC, each agreement must be reviewed by the TMO for its effect upon bond financed facilities.

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**Sponsored Research**

The University utilizes standard research agreements which have been reviewed by outside tax counsel and have been deemed to not create private business use. However, the University has an initiative creating Minnesota Innovative Partnership (MN-IP) agreements which may create PBU. The TMO tracks these MN-IP agreements for PBU purposes. Sponsored Project Administration (“SPA”) will advise the TMO of any other non-standard research agreements, so that the effects of the non-qualified research agreements on bond financed facilities can be measured for PBU purposes. See *TMOG #4 - Research and Private Business Use* for more information.

**Collaboration and Other Arrangements**

PBU may be created when the University allows its facilities to be used by third parties as a result of a joint venture or partnership arrangement. In addition, any other arrangement that conveys a special legal entitlement, as defined in the Regulations, may also create PBU. Prior to entering into these arrangements, the University will analyze the PBU effect under the facts and circumstances on bond financed facilities. This review will be coordinated between the OGC and the TMO.

**Sales of Debt Financed Property**

Prior to selling or disposing of any tax-exempt debt financed project for which debt remains outstanding, University departments must consult with the TMO and outside bond tax counsel to determine the impact, if any, such sale or disposition will have on the tax status of the University’s outstanding tax-exempt debt.

**Contact**

If you have questions about whether a scenario creates PBU, please contact the Tax Management Office at [taxhelp@umn.edu](mailto:taxhelp@umn.edu) or 612-624-1053.