

Guidelines for Determining Private Business Use Lease / Rental Agreements

Private business use is the use of tax-advantaged bond-financed property (including property financed with tax-exempt bonds or build America bonds) in a trade or business carried on by a person other than a state or local government entity. Private users could include the following:

- Private for-profit business
- Natural person conducting his or her trade or business
- Private nonprofit organization (501(c)(3) or otherwise)
- The federal government or its agencies

Note: a private user would not include any private person acting solely and directly as an officer or employee of or on behalf of the University or other governmental unit. Private users do include independent contractors of the University.

A lease/rental agreement between a governmental person and a private user with respect to bond-financed property may result in private business use.

There are certain IRS “safe harbors” which could cause short-term leases or other exclusive use arrangements to not be considered private business use.

Safe Harbors and Exceptions

- **50-Day Rule** – arrangements for terms of use, including renewal options enforceable by the lessee, of not more than 50 days in the aggregate (days where facility is not used by lessee do not count towards 50 day limit), if negotiated at arm’s-length and the compensation represents fair market value and facility is not financed for a principal purpose of providing the facility for use by that particular lessee.
 - **Example** – the University rents empty fields to a private soccer camp for a one-week period over the summer under a negotiated, arm’s-length agreement.
- **200-Day Rule** – arrangements involving terms of use, including renewal options enforceable by the lessee, of not more than 200 days in the aggregate (days where facility is not used by lessee do not count towards 200 day limit), of property that is predominately used by natural persons not engaged in a trade or business will not be considered private business use.
 - **Example** – the University offers 6-month membership to its gym facilities to employees of a local business and the gym facilities are used by the employees and members of the general public. The gym is predominately used by natural persons not engaged in a trade or business. Although gym members have a right of first refusal to renew the membership, the members are not guaranteed renewal. University charges a generally applicable fair market value rate to all members for the gym membership at the time of the renewal.

Other safe harbor arrangements may be available when a rate schedule is generally

applicable and uniformly applied for property that is not likely to be used by a natural person not engaged in a trade or business. These situations are unique and would rarely apply to University properties.

Arrangements for different areas of a bond-financed facility with the same entity can be counted as separate arrangements so long as there was nothing in one contract obligating the University to rent the other area. The contract providing for the rental of the second area would need to be the result of a separate negotiation between the University and the entity.

A second contract with a company can be entered into at the expiration of the first contract, or any time thereafter, so long as the first contract did not obligate the University to enter into the second contract. The second contract would need to be the product of a separate negotiation between the University and the entity.

Leasing space in a bond-financed facility at no cost to the private user in exchange for the private user's services offered to the University's faculty, staff, or students at a reduced fee or free will not be considered private business use if the space is leased for 50 days or less and the value of the discount is equal to the fair market value of the space leased.

Each person(s) responsible for renting or leasing space in a bond-financed property will be required to maintain a database tracking any lease/rental agreements. This database will need to reflect the person(s) or company(ies) renting the space and the terms of the arrangement, including the length of time and space rented. This database will need to be maintained while there are bonds outstanding on the facility.

Do not rely solely on these guidelines to determine private business use. If you have questions or believe there is any possible private business use, please contact University Financial Services Administration at (859) 257-4758 or pbu@uky.edu.

Instructions

Please complete this form by supplying the requested information for each question. Please use a separate form for each bond-financed project for which you are responsible. When completed, please submit to:

University Financial Services Administration
pbu@uky.edu
(859) 257-4758

Following your submission of a completed questionnaire, someone from University Financial Services may need to contact you for additional information.

Private Business Use Questionnaire Lease / Rental Agreements

Building Name:

Responsible Department:

Questions

- 1) Does any portion of the facility include space (such as office space, laboratories, conference rooms, luxury suites, etc.) available for rent to external parties? This would include the leasing of athletic or residential facilities for summer use by private entities in their trade or business or any "in-kind" arrangements with external parties.

Yes

No

If you answered yes to the question above, please use the space below to describe the space(s) available for rent and any current, prior, or anticipated rental arrangements. Please include the expected length, purpose, square footage and compensation expected from each arrangement. Provide copies of any current, prior or anticipated arrangements.

Certification

I certify to the best of my knowledge that the above statements and representations are true and correct and that there are no material omissions of relevant facts.

Electronic Signature

Date

Title

Email Address

Phone Number