

Private Business Use of Tax-Advantaged Bond-Financed Facilities

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Private Business Use of Tax-Advantaged Bond-Financed Facilities

Private Business Use of Tax-Advantaged Bond-Financed Facilities

I. Purpose

The University of Kentucky will from time to time use tax-advantaged bonds to finance the construction of, and improvements to, its facilities. Federal laws and regulations govern the use of the facilities financed with tax-advantaged bonds to ensure that the tax-advantage is not extended to unrelated parties in excess of allowable limits. Compliance with these laws and regulations will ensure that the University keeps the advantages of its tax-advantaged bonds, including tax-exemption, direct payment and tax credits for bondholders and will ensure that the University remains eligible to engage in future tax-advantaged financings. Please note compliance with these rules must be tracked on a bond issue by bond issue basis.

University Financial Services Administration will annually track the private business use (see [Section II](#) for definition) of the University's facilities financed with tax-advantaged bonds in accordance with the Federal laws and regulations. It will ensure accuracy of the analysis and compliance with the allowable limits for all University facilities financed with tax-advantaged bonds. Individuals responsible for the use of those facilities, including those who negotiate contracts for activities conducted in the facilities, must adhere to this policy.

II. Definitions

- *Eligible Mixed-Use Project*: a project that is financed with proceeds of bonds that, when issued, purported to be governmental bonds (the applicable bonds) and with qualified equity pursuant to the same plan of financing (within the meaning of IRS Treasury Regulation §1.150-1(c)(1)(ii)). The project must be wholly owned by one or more governmental persons or by a partnership in which at least one governmental person is a partner.

- *Private Business Use*: the use of tax-advantaged bond-financed property in a trade or business carried on by a person other than a state or local government entity. Private business use may arise by any of the following arrangements with a private user:
 - Management contracts
 - Sponsored research agreements
 - Naming rights agreements
 - Leases and subleases of facilities
 - Franchise contracts
 - Joint venture corporations and partnership arrangements
 - Unrelated business income activities
 - Transfer of ownership
 - Other special legal entitlements and economic benefits

- *Private Business Use Test*: the Private Business Use Test is met, meaning there is too much private business use, if more than 10% of the net proceeds of the bond issuance or \$15 million, whichever is less, are used for any private business use.
 - If the private business use is “unrelated” or is related but is “disproportionate” to the governmental use, then 5% (rather than 10%) applies for purposes of the Private Business Use Test.

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- a. The private business use is considered unrelated to a government use if there is no operational relationship between the government use and the private business use.
 - b. The private business use is considered disproportionate to the governmental use if the amount of proceeds used for that private business use exceeds the amount of proceeds used for the related government use.
- o The 10% private business use test is generally measured based on the average percentage of private use over a measurement period. The average percentage of private business use calculation involves a two-step process:
 - (a) finding the percentage of private business use in each 1-year period (determined as a percentage of actual use); and (b) averaging the 1-year percentages.
 - a. The measurement period begins on the later of (a) the issue date of the bonds or (b) the date the financed property is placed in service. The measurement period ends on the earlier of (a) the last day of the reasonably expected economic life of the property (determined on the issue date), or (b) the final maturity date of the bonds (disregarding optional redemption dates).
 - b. Private business use resulting from ownership of the property by a nongovernmental person is the greatest percentage of private business use in any 1-year period.
- *Private Loan Financing Test:* the Private Loan Financing Test is met if proceeds are to be used (directly or indirectly) to make or finance loans to persons other than governmental units in excess of the lesser of 5% of such issue of which the proceeds are a part, or \$5 million.
- *Private User:* private users include private for-profit businesses, natural persons conducting their trade or business, private nonprofit organizations (501(c)(3) or otherwise), or the federal government or its agencies.
 - o 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.
- *Private Security or Payment Test:* the Private Security or Payment Test is met, meaning there is too much private payment or security, if more than 10% of the payment of principal or interest on an issue is directly or indirectly derived from payments for private business use property or secured by private business use property.
 - o The private security or private payments test is met if the present value of the fair market value of the pledged property (determined as of the first date such property secures the bonds) or the present value of all private payments over the term of the bond issue exceeds 10% of the present value of the debt service on the bond issue.
- *Qualified Equity:* For purposes of this section, qualified equity means proceeds of bonds that are not tax-advantaged bonds and funds that are not derived from proceeds of a borrowing that are spent on the same eligible mixed-use project as the proceeds of the applicable bonds. Qualified equity does not include equity

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interests in real property or tangible personal property. Further, qualified equity does not include funds to redeem or repay governmental bonds.

- *Tax-Advantaged Bonds*: tax-advantaged bonds include tax-exempt bonds, build America bonds or other types of tax credit bonds.

III. Responsibilities

A. University Financial Services Administration

1. Establish and enforce this policy.
2. Analyze proposed construction projects to be financed with tax-advantaged debt to determine the impact on private business use limitations. In consultation with the University's bond counsel, or other advisors, determine the amount, if any, of non-tax-advantaged debt to be issued.
 - a. As a general rule, the University will allocate equity or non-tax-advantaged debt to the portion of the project used for private business use (if any exists), to minimize the potential private use of the tax-advantaged bond, or otherwise apply the mixed-use allocation rules described in [Section IV](#).
3. On or before the issue date for each bond issue (new money or refunding), University Financial Services Administration will determine and document the property or properties associated with the issue.
4. Engage the University's bond counsel with any questions or concerns arising from the annual private business use questionnaires and analysis as well as to assist in the resolution of any potential private business use issues.
5. Conduct annual private business use analysis for all outstanding bond issues. Annual analysis will include current year and to-date tracking of private business use for the measurement period of each bond issue.
6. In consultation with the University's bond counsel, provide post issuance compliance training, including private business use training, to appropriate University individuals.
7. Store appropriate records to support the private business use calculations for at least six years after the final principal payment is made on the bond issue or any bond issue that refunds the original bond issue. Records will be stored electronically in a designated drive and folder and will include contracts and agreements related to the calculations, the actual calculations and any other documentation to support the analysis.
8. Provide a facilities map indicating which University facilities have been financed or refinanced with tax-advantaged bonds.

B. Office of Legal Counsel

1. Work with University Financial Services Administration to complete all appropriate post issuance compliance training, including private business use training.
2. Review proposals or contracts for sponsored research or third party use of facilities financed with tax-advantaged debt to identify possible private business use exposure.
 - a. Alert University Financial Services Administration if possible private business use exposure is identified.

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3. Accurately complete the annual private business use questionnaire and return to University Financial Services Administration no later than the specified due date.

C. Office of Sponsored Projects Administration

1. Work with University Financial Services Administration to complete all appropriate post issuance compliance training, including private business use training.
2. Review proposals or contracts for sponsored research conducted in any University facilities financed with tax-advantaged debt and identify any possible private business use exposure.
 - a. Alert University Financial Services Administration if possible private business use exposure is identified.
3. Accurately complete the annual private business use questionnaire and return to University Financial Services Administration no later than the specified due date.

D. Purchasing and Other Individuals with Contracting and Leasing Authority

1. Work with University Financial Services Administration to complete all appropriate post issuance compliance training, including private business use training.
2. Review all proposals, contracts, or leases related to University facilities financed with tax-advantaged debt to identify possible private business use exposure.
 - a. Alert University Financial Services Administration if possible private business use exposure is identified.
3. Maintain a database tracking any lease/rental agreements of bond-financed properties. See [Appendix B](#) for more detail.
4. Accurately complete the annual private business use questionnaire and return to University Financial Services Administration no later than the specified due date.

E. Office of Philanthropy

1. Work with University Financial Services Administration to complete all appropriate post issuance compliance training, including private business use training.
2. Consult with University Financial Services Administration on naming rights opportunities considered in University facilities financed with tax-advantaged debt.
3. Accurately complete the annual private business use questionnaire and return to University Financial Services Administration no later than the specified due date

F. Capital Project Management Division

1. Work with University Financial Services Administration to complete all appropriate post issuance compliance training, including private business use training.

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2. Engage University Financial Services Administration if identify capital projects which could give rise to private business use.
3. Assist University Financial Services Administration in analyzing the impact of new construction projects on the private business use limitations.
4. Determine the reasonably expected economic life of each bond-financed project and document the results.
 - a. The results will need to be retained for at least six years after the final principal payment on the bond issue or issues that financed the project or the bond issue or issues which refunded the bond issue or issues which financed the project.

G. Accounting and Financial Reporting Services

1. Work with University Financial Services Administration to complete all appropriate post issuance compliance training, including private business use training.
2. Work with University Financial Services Administration to ensure the University complies with the disclosure requirements outlined in the University's continuing disclosure agreements.
3. Track the direct and indirect payment of debt service on the bonds made or secured by payment or property to be used for private business use (see [Section IV \(C\)](#) for more detail).
4. Maintain all documentation related to any anticipatory remedial action or remedial action within the appropriate files for the bond issue or bond issues affected.

IV. Monitoring and Measuring Private Use

A. Measuring Private Business Use

Tax-advantaged bonds lose their tax-advantaged status if they are determined to be private activity bonds, which are any bonds issued as part of an issue which:

1. Meets both the private business use test and the private security or payment tests, or
2. Meets the private loan-financing test.

Private business use is measured over the entire life of the bonds, including any refunding bonds. It is also measured on an issue-by-issue basis, so that each bond issue must be tracked and measured separately (except for a refunding bond issue, which normally has a combined measurement period with the bonds it refunded).

If the project qualifies as an eligible mixed-use project, then qualified equity may be allowed to "float" to the portion of the facility used by non-governmental entities.

1. If a project is an eligible mixed-use project, then qualified equity is first allocated to the private business use of the mixed-use project and then to the governmental use, and bond proceeds are first allocated to the governmental use and then to the private use.

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2. There are specific guidelines as to what meets the definition of qualified equity and limitations regarding the timing of the allocations. Therefore, please consult with University Financial Services Administration before applying such allocations.

B. Private Business Use Test

University Financial Services Administration, with the assistance of the individuals named in [Section III](#), will monitor and measure the private business use for each bond issue to ensure that the amount of private business use is within the acceptable limit. It will be the best practice of the University for each bond issue to comply with the applicable private use limit on an annual basis, even though the private use is calculated over the measurement period (typically the life of the bond).

The definition of private business use is broad, however common instances of private business use may include:

1. **Sale of a Facility** (or a long-term lease which constitutes a sale for tax purposes)
2. **Management Contracts**
 - a. A management contract between the University and a private user with respect to bond-financed property may result in private business use. See [Appendix A](#) for guidelines for determining private business use as it relates to management contracts.
3. **Leases and subleases of facilities**
 - a. A lease/rental agreement between the University and a private user with respect to bond-financed property may result in private business use. See [Appendix B](#) for guidelines for determining private business use as it relates to lease/rental agreements.
4. **Research Agreements**
 - a. A research agreement between the University and a private user with respect to bond-financed property may result in private business use. See [Appendix C](#) for guidelines for determining private business use as it related to research agreements.
5. **Naming Rights**
 - a. A naming rights agreement between the University and a private user with respect to a bond-financed property may result in private business use. See [Appendix D](#) for guidelines for determining private business use as it related to naming rights agreements.
6. **Other Strategic Arrangements**
 - a. Other strategic arrangements include partnerships, joint ventures and franchising agreements.

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c. Private Security or Private Payments

1. University Financial Services Administration, with the assistance of Accounting and Financial Reporting Services, will monitor the private security or private payment test to ensure that in such cases where the private business use test is likely to be met, the private payment or security test is not also met.
 - a. Accounting and Financial Reporting Services facilitates the payment of debt service on the University's outstanding bonds. Individuals within Accounting and Financial Reporting Services will track the direct and indirect payment of debt service on the University's bonds made or secured by payment or property to be used for private business use. They will then compare the present value of the private payments or property to the present value of the debt service to be paid over the term of the issue. If it appears the Private Payment or Security Test has been met, the Accounting and Financial Reporting Services will notify University Financial Services Administration immediately who will consult with the University's bond counsel as needed.
 - b. Accounting and Financial Reporting Services will undergo this process for each outstanding bond issue whether or not the private business use test was met.

d. Annual Compliance Review

1. University Financial Services Administration will conduct an annual review of the bond-financed facilities for the life of the bond issues to ensure compliance with the federal laws and regulations. The University personnel identified in [Section III](#) will complete private business use questionnaires annually and submit to University Financial Services Administration. The questionnaires can be found in the Appendices.
 - a. Based on the results of the private business use questionnaire, University Financial Services Administration will calculate the annual percentage of private use in each bond-financed facility and for the bond issue as a whole.
 - b. University Financial Services Administration will consult with bond counsel regarding any issues arising from the questionnaires. University Financial Services Administration may also schedule follow up meetings with University personnel, as needed.
 - c. The departments completing the annual review will submit to University Financial Services Administration all contracts or agreements related to the bond-financed property. Examples of documents to be submitted are included in [Section II](#).
2. Annual compliance review does not replace consistent monitoring and reporting to University Financial Services Administration of any arrangements that might result in private business use.

v. Remedial Actions and Voluntary Closing Agreement Program

In the event the University's bonds exceed or may exceed the allowable private business use limitations, the IRS provides certain remedies. The anticipatory remedial actions and remedial actions are outlined in Treasury Regulation Section 1.141-12.

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The IRS also provides a Voluntary Closing Agreement Program (VCAP) to offer issuers a streamlined process to remedy post-issuance compliance violations that cannot be remediated pursuant to Treasury Regulation Section 1.141-12.

If the University determines that the private business use limit has been or might be exceeded, there is a change in use of the bond-financed property, or that the ownership requirement is not being met, University Financial Services Administration will be responsible for consulting with the University's bond counsel to determine the appropriate course of action to remedy the violation. Please note that there are timing requirements that must be met with respect to remedial actions and VCAP submissions.

VI. Implementation

The University will comply with all aspects of this policy with respect to each bond issue that is issued after the date of adoption of this policy.

With respect to each outstanding bond issue that was issued before the adoption date of this policy, the University will implement this policy to the greatest extent, and during the shortest time frame, that is reasonably practicable.

Appendix A

Appendix A

**Guidelines for Determining Private Business Use
Management Contracts**

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 management contract between a governmental person and a private user with respect to bond-financed property may result in private business use. A management contract is a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract.

In general, a management contract will result in private business use if the compensation of the manager is based, in whole or in part, on a share of net profits from operating the facility or if the manager is treated as the lessee or owner of the property for federal income tax purposes.

The regulations provide that the following types of arrangements are not management contracts that give rise to private business use:

- **Incidental Services** – contracts for services that are solely incidental to the primary function of the bond-financed property, such as janitorial services, hospital billing or equipment repair.
- **Hospital Admitting Privileges** – the mere granting of admitting privileges by a governmental hospital to a doctor, if such privileges are available to all qualified physicians in the area.
- **Eligible Expense Reimbursement Arrangements** – a contract in which the only compensation is the reimbursement to the service provider for actual and direct expenses paid by the provider to unrelated parties.
- **Functionally Related and Subordinate Use** – a manager’s use of the property considered to be functionally related and subordinate to the services provided under a management contract meeting the safe harbor requirements will not result in private business use.
 - **Example** – a manager using storage areas to store equipment used to provide the services outlined in the management contract.

Appendix A

There is an IRS “safe harbor” for management contracts which could cause an arrangement to not be considered private business use.

Safe Harbor

- **General Financial requirements** – management contracts must meet the following general financial requirements:
 - The compensation of the manager is considered reasonable for the services provided,
 - No element of the compensation to the manager is based on a share of net profits or both the managed property’s revenues and expenses, and
 - Incentive compensation will not be considered to be based on net profits, so long as it is determined by the manager’s performance in meeting criteria standards measuring quality of services, performance, or productivity, without regard to net profits performance.
 - The contract does not allow the manager to bear a share of the net losses from operating the managed property.
 - Compensation will not be considered a share of net profits or requiring the manager to bear a share of the net losses if the compensation is: (1) based solely on a capitation fee, a periodic fixed fee, or a per-unit fee; (2) incentive compensation, as described above; or (3) a combination of these types of compensation.
 - Deferral of payment due to insufficient net cash flows from the operations of the managed property that otherwise meets the guidelines outlined above, will not be treated as contingent upon net profits or net losses if the contract includes the following requirements: (1) compensation is payable at least annually, (2) the University is subject to reasonable consequences for a late payment and (3) the University will pay the deferred compensation no later than the end of five years after the original due date of the payment.
- **Term of the Contract** – the term of the contract, including all renewal options, does not exceed the lesser of 30 years or 80% of the weighted average reasonably expected economic life of the managed property. Economic life is determined as of the beginning of the term of the contract. If the contract is materially modified, it must be retested as a new contract as of the date of the material modification, taking into account the weighted average reasonable expected economic life as of that date.
- **Control Over the Use of the Managed Property** – the University must exercise a significant degree of control over the managed property. This control is evidenced by approving the following related to the managed property: (1) annual budgets, (2) capital expenditures, (3) disposition of assets, (4) rates charged for use and (5) the general nature and type of use.
 - In circumstances where it may not be feasible for the University to approve specific rates set, the University may satisfy this condition by approving the method used to set the rates or by requiring the manager to charge rates that are considered to be reasonable and customary as specifically determined by,

Appendix A

or negotiated with, an independent third party (such as a medical insurance company).

- **Risk of Loss of the Managed Property** – the University bears the risk of loss upon damage or destruction of the managed property.
 - The University is permitted to impose a penalty on the manager for failure to operate the managed property under the terms of the management contract. The University may also insure against the risk of loss of the managed property through a third party.
- **No Inconsistent Tax Position** – the manager may not take any tax position which is inconsistent with being a service provider. This includes taking depreciation or amortization, investment tax credit, or a deduction for any payment as rent with respect to the managed property.
- **No Circumstances Substantially Limiting Exercise of Rights** – the manager does not have any role or relationship with the University which would substantially limit the University's ability to exercise its rights under the contract. A manager will not be treated as having such a relationship or role if the following safe harbors are met:
 - Directors, officers, shareholders, partners, members and employees of the manager have no more than 20% of the voting power of the University's governing body;
 - The University's governing body does not include the manager's chief executive officer ("CEO") or chairperson (or equivalent executive); and
 - The manager's CEO (or person with equivalent management responsibilities) is not the CEO (or person with equivalent management responsibilities) of the University or any of its related parties.

The University may apply the safe harbors for management contracts set forth in previous IRS announcements, such as Revenue Procedure 97-13 and Notice 2014-67, to a management contract that is entered into before August 18, 2017 and that is not materially modified or extended on or after August 18, 2017 (other than pursuant to a renewal option).

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 Administration may need to contact you for additional information.

Appendix A

**Private Business Use Questionnaire
Management Contracts and Other Strategic Arrangements**

Building Name:

Responsible Department:

Questions

- 1) Please identify and briefly describe any current, prior, or anticipated management or service contracts involving control or operation of any portion or function of the facility (an example would be a dining service contract or vivarium management contract). This should include information regarding square footage and the duration of the contract. Please note: this does not include contracts for services that are incidental to the operation of the facility (i.e. janitorial services, office equipment repair, etc.). Please provide copies of any current or prior contracts. If there are any anticipated arrangements and a draft contract is available, please attach a copy.

- 2) Please identify and briefly describe any current, prior, or anticipated leases to third parties, such as study courses, bookstores, gift shops, banking services, etc. Please include square footage and the duration of the lease. Provide copies of any current or prior leases. If there are any anticipated arrangements and a draft lease is available, please attach a copy.

- 3) Please identify and briefly describe any current, prior, or anticipated vendor contracts for operations within the facility, such as concessions and gift shops. Please include information regarding square footage and the duration of the contract. Provide copies of any current or prior contracts. If there are any anticipated arrangements and a draft contract is available, please attach a copy.

Appendix A

If you answered yes to the question above, please describe the arrangement in the space provided below.

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

Appendix B

Appendix B

**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.

Appendix B

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.

Appendix B

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

Appendix C

Appendix C

**Guidelines for Determining Private Business Use
Research 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 research 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” for basic research which could cause certain research agreements to not be considered private business use.

Basic research means any original investigation for the advancement of scientific knowledge not having a specific commercial objective. Basic research does not include product testing.

Safe Harbors and Exceptions

- **Corporate Sponsored Research** – a research agreement relating to facilities used for basic research supported or sponsored by a corporate sponsor will not create private business use so long as all of the following are met:
 1. The University permits any license or other use of resulting technology by the sponsor on the same terms as such use by any unrelated, non-sponsoring party. Meaning, the sponsor must pay a competitive price for its use.
 2. The price paid for use of any license or other use of resulting technology is determined at the time the license or other resulting technology is available for use.
 - *Note: the University does not need to permit persons other than the sponsor to use any license or other resulting technology, but the price paid by the sponsor cannot be less than the price that would be paid by any non-sponsoring party for those same rights.*
- **Industry or Federally Sponsored Research** – a research agreement relating to facilities used for basic research pursuant to an industry or federally sponsored research agreement will not create private business use so long as all of the following are met:
 1. The University determines the research to be performed and the manner in which it is to be performed.

Appendix C

2. The University retains exclusive title to any patent or other product incidentally resulting from the basic research.
3. The industry or federal sponsor is entitled to no more than a nonexclusive, royalty-free license to use the product of any of the research.
 - *Note: Rights of the federal government under the Bayh-Dole Act are permitted so long as (1) and (2) are met and the license granted to any third party is no more than a non-exclusive, royalty-free license.*

Clinical trials are not considered basic research and therefore will not qualify under the Rev. Proc. 2007-47 safe harbor. All facts and circumstances must be considered to determine whether a clinical trial will give rise to private business use.

- Please consult with University Financial Services Administration prior to conducting a clinical trial in a bond-financed 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 Administration may need to contact you for additional information.

Appendix C

**Private Business Use Questionnaire
Research Agreements**

Building Name:

Responsible Department:

Questions

- 1) Does the University have any research which does not fit into one of the safe harbors described above?

Yes

No

If you answered yes to the question above please provide a list of the research agreements and the buildings in which the research is taking place. Provide copies of the research agreements listed below.

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

Appendix D

Appendix D

**Guidelines for Determining Private Business Use
Naming Rights**

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.

When the University enters into an agreement which gives a private user legal entitlement to name a facility financed with tax-advantaged bonds, or a portion thereof, after a for-profit entity or nonprofit organization, such contract could result in private business use with respect to the named space. This would also apply if the space was named after an individual whose name overlaps with the name of a nonprofit organization or commercial business with which such individual is associated (e.g. John Doe and John Doe Corporation).

Exceptions

- If the facility is named after the for-profit entity or nonprofit organization other than pursuant to a legally binding commitment (e.g. in gratitude for a donation) then such naming opportunity may not be treated as private business use, but would depend on the facts and circumstances.
 - Since this scenario depends on the facts and circumstances such arrangements would need to be brought to the attention of University Financial Services Administration.
- If the facility is named for an individual whose name does not overlap with the name of a for-profit entity or nonprofit organization with which the person is associated then such a naming opportunity would probably not be treated as private business use.
 - **Example** – John Doe and XYZ Bank Corporation.

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:

Appendix D

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

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

Appendix D

**Private Business Use Questionnaire
Naming Rights**

Building Name:

Responsible Department:

Questions

- 1) Please identify and briefly describe any current, prior, or anticipated restricted gifts or other fundraising efforts related to the facility. Please include any current, prior, or anticipated third parties providing a significant source of revenue for the facility. Provide copies of any current or prior contracts. If there are any anticipated arrangements and a draft contract is available, please attach a copy.

- 2) Please identify and briefly describe any current, prior, or anticipated naming rights related to the facility or any portion of the facility. Provide copies of any current or prior contracts. If there are any anticipated arrangements and a draft contract is available, please attach a copy.

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