

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

TABLE OF CONTENTS

I. SCOPE AND PURPOSE2

II. WHO NEEDS TO KNOW THIS POLICY.....2

III. PRE-ISSUANCE COMPLIANCE REQUIREMENTS5

 A. Authorization to Issue UMS Tax-Exempt Bonds 5

 B. External Advisors for UMS Bonds..... 5

 C. Requests for and Approval of Tax-Exempt Bond Financing..... 5

 D. Lease Purchase Agreements..... 7

IV. POST-ISSUANCE COMPLIANCE REQUIREMENTS.....7

 A. Responsibilities..... 7

 B. Annual Private Business Use Compliance Surveys 9

 C. Screening Proposed Arrangements for Private Business Use10

 D. Rebate.....11

 E. Source of Debt Service Payments; Gifts12

 F. Investment of Bond Proceeds.....12

 G. Expenditure of Bond Proceeds13

 H. Record Retention.....14

 I. External Advisors / Documentation15

 J. Information Reporting16

 K. Continuing Disclosure.....16

 L. Education Policy16

V. RESOURCES.....16

VI. RELATED DOCUMENTS17

ATTACHMENTS

[A - DEFINITIONS](#)..... 18

[B - PRIVATE BUSINESS USE](#) 20

[C - MANAGEMENT CONTRACT GUIDELINES](#)..... 27

[D - RESEARCH CONTRACT GUIDELINES](#) 35

[E - USE OF FACILITIES QUESTIONNAIRE](#)..... 40

[F – ELECTRONIC RECORDKEEPING](#)..... 41

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

I. SCOPE AND PURPOSE

This Administrative Practice Letter – Tax-Exempt Debt Compliance of the University of Maine System (UMS) identifies the compliance areas of tax-exempt bond financing and the University System’s policy of fulfilling all requirements in these areas during both pre- and post-issuance processes.

The UMS finances certain capital projects through the issuance of its own tax-exempt [revenue bonds](#) and through the use of proceeds from tax-exempt bonds issued and repaid by the State of Maine (“State bonds”). Investors in tax-exempt bonds are willing to accept a lower interest rate because interest earned on tax-exempt bonds is exempt from taxation. This exemption translates into a lower cost of capital for the University and the State.

The exemption also translates into lost tax dollars for the federal government; therefore, the federal government limits the ability to issue tax-exempt bonds to certain types of entities, including governmental entities such as the UMS. The federal government also wants to ensure that tax-exempt debt is benefiting only the qualified entity and not private enterprise.

The tax-exempt status remains throughout the life of the debt provided that the UMS satisfies all [applicable federal tax laws](#). A failure to meet these laws at any time during the life of the bonds could result in the retroactive and prospective loss of the tax-exempt or tax-advantaged status of the bonds or the imposition of additional taxes or assessments on the UMS (or the State of Maine in the case of State bonds).

II. WHO NEEDS TO KNOW THIS POLICY

University staff involved in any stage or aspect of any UMS [revenue bond](#) issue or State of Maine bond issue, including but not limited to those who **manage, direct or influence** any of the following areas needs to know the requirements of this APL:

Area	Campus Personnel Impacted	System Personnel Impacted
Pre-issuance processes and decision-making including: <ul style="list-style-type: none"> • identification of eligible projects, • identification of other funding sources for the projects (e.g., gifts, grants, etc.), 	CFO Academic Deans responsible for managing buildings Auxiliary Directors Conferences Development, including Athletics Facilities – Director, project	Treasurer Director of Facilities Controller Accounting – Director and capital asset accountant

ADMINISTRATIVE PRACTICE LETTER

Section III-I
 Issue 1
 Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

Area	Campus Personnel Impacted	System Personnel Impacted
<ul style="list-style-type: none"> • funding source for payment of debt service, and • due diligence on tax aspects of projects. 	managers, and accounting Industrial Cooperation Space Managers Sponsored Programs (Research)	
The use of bond proceeds and timing of use	CFO Facilities – Director, project managers, and accounting	Treasurer Director of Facilities Controller Accounting – Director and capital asset accountant
Investing of bond funds and arbitrage processes	CFO	Treasurer Controller Director of Accounting
Use of UMS property financed by tax-exempt bonds, including: <ul style="list-style-type: none"> • Leases • Management and services agreements • Research agreements • Naming agreements • Short-term rentals 	CFO Academic Deans responsible for managing buildings Auxiliary Directors Conferences Development, including Athletics Facilities Director Industrial Cooperation Purchasing Space Managers Sponsored Programs (Research)	Treasurer Director of Facilities Controller Accounting – Director and capital asset accountant University Counsel Purchasing
The creation and retention of documentation relating to use of proceeds, arbitrage , return filings, and private usage	CFO Academic Deans responsible for managing buildings Auxiliary Directors Conferences Development, including Athletics Facilities – Director, project managers, and accounting Industrial Cooperation Purchasing Space Managers	Treasurer Director of Facilities Controller Accounting – Director and capital asset accountant University Counsel Purchasing

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

Area	Campus Personnel Impacted	System Personnel Impacted
	Sponsored Programs (Research)	
Recording and reporting of financial transactions related to tax-exempt bonds	CFO Facilities – Project managers and accounting	Treasurer Director of Facilities Controller Accounting – Director and capital asset accountant

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

III. PRE-ISSUANCE COMPLIANCE REQUIREMENTS

A. Authorization to Issue UMS Tax-Exempt Bonds

The [Treasurer](#), through delegation on an issuance by issuance basis from the UMS Board of Trustees (BOT), is authorized to issue tax-exempt bonds for the UMS.

B. External Advisors for UMS Bonds

To help ensure pre-issuance compliance, the Treasurer engages reputable bond counsel, financial advisors, and underwriters to assist the UMS in the process of issuing tax-exempt bonds. Structure of the debt must comply with the UMS' debt policy as described in [APL Section III-H, "Debt Policy"](#).

C. Requests for and Approval of Tax-Exempt Bond Financing

UMS Revenue Bonds

Each CFO proposes projects to be funded with the bond proceeds and submits information on the projects to the [Treasurer](#). Such information includes the following:

1. Nature of the project, e.g., new construction, renovation of a facility, etc.
2. Operational need and impact of the project, e.g., activity to be carried on in the facility, users of the facility, potential for private use, payment or both, etc.
3. Anticipated use of the facility in five years, 10 years, 15 years, 20 years, 25 years, 30 years
4. Ability of the University to repay UMS debt
5. Types and amounts of other funding sources for the project

Prior to the revenue bonds being issued, each CFO also identifies a backup plan for spending the bond proceeds in the unforeseen event the original project(s) are completed under budget or there are otherwise additional proceeds. In developing the plan, consideration is given to whether or not the facility is already financed with tax-exempt debt, current use of the facility, and anticipated future use of the facility.

Before UMS issues bonds or requests proceeds from State bonds, the following approvals are obtained:

1. BOT approval of the projects to be funded with UMS revenue bond proceeds,
2. BOT approval of any UMS bond issuance, including a reimbursement resolution, and
3. Delegation by the Chancellor to the Treasurer of all powers and responsibilities which the Chancellor may have with respect to the issuance of UMS bonds.

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

State Bonds

Each CFO submits to the UMS Treasurer a list of projects to be funded with proposed State bond proceeds. The Treasurer makes the final determination of which submitted projects will be included in the funding request made to the State of Maine legislature. In the event the legislature approves sending the bond package to referendum at a reduced amount, the Treasurer works with the campus CFOs to determine the revised list of projects to be funded. Throughout the process of obtaining State bond funding, the Treasurer updates the UMS BOT on the status of the proposed funding.

If the bond package is approved by State of Maine voters, the projects may move forward provided the following actions have been taken:

1. Obtain BOT approval in accordance with BOT policy [Section 701: Operating & Capital Budgets](#). In obtaining BOT approval the following information about the project is considered and shared with the BOT:
 - a. Nature of the project, e.g., new construction, renovation of a facility, etc.
 - b. Operational need and impact of the project, e.g., activity to be carried on in the facility, users of the facility, potential for private use, payment or both, etc.
 - c. Anticipated use of the facility in five years, 10 years, 15 years, 20 years, 25 years, 30 years
 - d. Types and amounts of other funding sources for the project

If a project does not need BOT approval, the above information is compiled and provided to the Tax-Exempt Debt [\(TED\) Compliance Coordinator](#).

2. Contact the TED Compliance Coordinator about the anticipated use of the facility. The TED Compliance Coordinator shares this information with the State's bond counsel to help them determine whether the State should issue tax-exempt bonds or taxable bonds.

Each CFO also identifies a backup plan for spending the State bond proceeds if the original project(s) are completed under budget or in the case of other unforeseen events. In developing the plan, consideration is given to the uses for which the particular bond funding is authorized, whether or not the facility is already financed with tax-exempt debt, current use of the facility, and anticipated future use of the facility.

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

D. Lease Purchase Agreements

Tax-exempt lease purchase agreements and other short term loan arrangements are available to finance equipment purchases. The Universities are not authorized to enter into such agreements without consultation with the System [TED Compliance Coordinator](#) to determine what the approval and compliance implications of entering into such agreements would be.

If it is collectively determined (between the University and the System Office) that the University can proceed with any such agreement, the TED Compliance Coordinator shall monitor all such tax-exempt financings for the year to assure that the “small issuer” limit (currently, \$10,000,000) is not exceeded.

IV. POST-ISSUANCE COMPLIANCE REQUIREMENTS

Post-issuance tax compliance begins with the debt issuance process itself and provides for a continuing focus on investments of debt proceeds and use of debt-financed property. In order to maintain the debt status as tax-exempt, the University must comply with post-issuance debt requirements.

A. Responsibilities

In accordance with UMS Board Policy 713, the Vice Chancellor for Finance and Administration and Treasurer (the “Treasurer”) has the primary operating responsibility for establishing and maintaining written guidelines to support compliance and for monitoring compliance on an ongoing basis with post-issuance requirements for the bonds. The Treasurer will meet these responsibilities through delegation of certain responsibilities to the System Tax-Exempt Debt (TED) Compliance Coordinator and the University Chief Financial Officers (CFOs).

Below is a summary of the responsibilities of the CFOs, the System [TED Compliance Coordinator](#), and the System Treasurer. These responsibilities are discussed in further detail in the remainder of section IV of this APL.

1. University CFO Responsibilities

- a. Establish and maintain a process under which proposed arrangements (agreements) regarding the use of UMS tax-exempt financed property are screened for [private business use](#). Provide a written description of this process and responsible positions to the System TED Compliance Coordinator. See section IV-C of this document for further information about screening requirements.

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

- b. Immediately contact the System TED Compliance Coordinator when possible or actual private business use has been identified. Any needed remedial action must be made timely; thus, waiting for the annual review (see 'd' below) would not be appropriate.
- c. Take immediate action to remediate impermissible private business use. This involves working with the System TED Compliance Coordinator, bond counsel, and the System Treasurer to identify an appropriate course of action.
- d. Timely respond to the annual use of facilities questionnaire (see [Attachment E](#)) distributed by the System TED Compliance Coordinator.
- e. Ensure that applicable documents are retained in accordance with record retention requirements and provide a list of responsible persons to the System TED Compliance Coordinator. See section IV-H of this document for further information about record retention.

2. System TED Compliance Coordinator Responsibilities

- a. Periodically provide each University with a listing of all buildings financed in whole or in part with tax-exempt bond proceeds (both UMS and [State bonds](#)).
- b. Address campus questions.
- c. Coordinate all contact with outside bond counsel regarding questions related to [private business use](#) and other tax-exempt debt compliance issues.
- d. Ensure that rebate or yield reduction calculations are made in accordance with federal requirements and that needed payments are timely remitted to the federal government.
- e. Stay abreast of developments in [applicable federal law](#) related to tax-exempt debt. Available tools include the IRS' web site for the Tax-exempt Bond Community, consultation with bond counsel, attendance at conferences, and other means. Communicate changes as needed to the CFOs and other persons responsible for compliance.
- f. Ensure that the CFOs and other persons responsible for compliance (as identified by the CFOs) are provided with sufficient training and background resources to perform their tasks.

3. System Treasurer Responsibilities

- a. Ensure that provisions are made in the System's operating budget for the following items:
 - Periodic centralized training for the [TED Compliance Coordinator](#) and other persons responsible for tax-exempt debt compliance.
 - Engagement of Bond Counsel to address possible/actual private business use and other compliance issues.
 - Periodic rebate calculations.

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

- b. Serve as the final authority on whether or not a University will enter a private activity arrangement whether or not it places the UMS over the allowed limit.
- c. Serve as the final authority on how nonqualified (private activity) bonds will be remediated if necessary.

B. Annual Private Business Use Compliance Surveys

Annually, the [TED Compliance Coordinator](#) conducts a survey of the uses of bond-financed property to determine the amount of [private business use](#) of each outstanding bond issue for that fiscal year. The TED Compliance Coordinator prepares a "Use of Facilities Questionnaire" (see Attachment E for a sample of the questionnaire) for each University; listing each building that was financed in whole or in part with tax-exempt bonds (both UMS and [State bonds](#)). The Use of Facilities Questionnaire is given to the University CFO, who confirms whether the space usage information (including information concerning leases, management and service contracts, space rentals, sponsored research, and naming agreements) provided in response to the prior year's questionnaire is still accurate, and if not, provides any necessary updates. For any facilities that were not addressed by a prior-year questionnaire, the CFO provides a description of the use of space in the facilities.

The TED Compliance Coordinator reviews the survey responses to identify private business uses of bond-financed space and, as necessary to make this determination, obtains copies of relevant contracts (e.g., leases, management agreements, short-term rental agreements, grant agreements, naming agreements, etc.). The TED Compliance Coordinator refers to the description of the relevant legal standards outlined in this APL in making this determination, although any management or service contracts that do not qualify as "incidental services" as described in Attachment B of this APL should generally be reviewed by bond counsel.

To the extent private business use arose from any arrangement, the TED Compliance Coordinator gathers any information necessary to identify and/or allocate the bond-financed space to private business use. For example, if a noncompliant sponsored research contract is performed in the same space as other compliant research contracts, the TED Compliance Coordinator obtains from the Director of Sponsored Programs data as to the revenues derived from the noncompliant contract, and data as to the revenues derived from all research contracts performed in that space, from which the TED Compliance Coordinator makes a proportional allocation.

If any arrangements are not clearly categorized as impermissible or compliant private business use, or if it is unclear how mixed-use property should be allocated to private business use, the TED Compliance Coordinator discusses the issue with bond counsel.

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

The TED Compliance Coordinator then calculates the average amount of private business use of each of the UMS' outstanding bond issues for the fiscal year, or depending on the complexity, engages bond counsel to calculate the amounts. These average amounts for each year are then taken into account in determining the average private use in the measurement period for the bond issues. The purpose of these calculations is to confirm the UMS' continued compliance with the limitations on private business use. As part of the annual update process, the TED Compliance Coordinator also contacts each person responsible for a bond compliance task, to confirm that the person understands and is continuing to perform his or her responsibilities.

For there to be a private activity concern, the private payments/security limit must also be exceeded. Generally since UMS does not mortgage or assign its property to secure payment of its bonds, the focus will be on the payments test rather than the security limit. Payments received by UMS with respect to contracts with [Non-Exempt Persons](#) as well as payments received with respect to privately used facilities are taken into account. Payments may be offset by operation and maintenance costs directly related to the privately used property but not by overhead and administrative costs. Payments are compared on a present value basis against the present value of the debt service on the bonds.

C. Screening Proposed Arrangements for Private Business Use

Before a University enters into an arrangement that involves property financed with tax-exempt debt, the arrangement is reviewed to make sure that entering into the arrangement would not cause impermissible [private business use](#). The types of proposed arrangements that are reviewed include the following.

- Leases
- Periodic space rentals
- Management and service contracts
- Sponsored research agreements
- Partnerships
- Joint ventures
- Naming rights agreements
- Sale or other disposition of property
- Change of use

See [Attachment B](#) for a discussion of private business use related to the above types of arrangements.

Responsibility for screening these proposed arrangements is assigned to particular individuals throughout the UMS, who are designated through consultation between the [TED Compliance Coordinator](#), the University CFOs and the identified individuals.

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

If the screener believes that a proposed arrangement will, or possibly could, give rise to private business use, the screener refers the proposal to the TED Compliance Coordinator. If the TED Compliance Coordinator (in consultation with bond counsel as necessary) determines that no private business use and no private payment would arise, the arrangement may proceed. If the TED Compliance Coordinator determines that private business use and private payments would arise under the arrangement as then proposed, he or she will recommend appropriate steps to promote the best interests of UMS. Such steps ("corrective steps") may include:

- requiring that the arrangement be modified to eliminate the impermissible private business use or payments (for example, by fitting the arrangement within IRS "[safe harbor](#)" guidance);
- taking "remedial action" as permitted under the Treasury Regulations to cure any impermissible private business use or payments resulting from the arrangement;
- re-allocating the sources of funding of the facility at issue to the extent permitted by the Treasury Regulations; or
- determining that the amount of private business use generated by the arrangement is immaterial and will not cause the applicable limitation on private business use to be exceeded.

It is important that a review of tax compliance be undertaken **before** arrangements are entered into because corrective steps such as remedial action must be undertaken within certain time periods of the arrangements being entered into, or may not be possible. **In no event may the TED Compliance Coordinator approve, or the University enter into, a proposed arrangement that would cause the limitation on private business use or payment for a given bond issue to be exceeded.**

Even if a given arrangement would not cause the applicable limitation on private business use or payments to be exceeded, if the amount of private business use or payment generated by the arrangement would be material, the TED Compliance Coordinator will ordinarily recommend that one of the corrective steps described above be undertaken. Only in rare and unusual cases will the TED Compliance Coordinator authorize such an arrangement to be entered into without a corrective step, and shall consult with bond counsel before providing any such authorization.

D. Rebate

Federal tax law requires the UMS to "rebate" to the federal government any amounts earned from the investment of bond proceeds at a yield in excess of the bond yield, unless an exception applies. The UMS retains an outside rebate computation firm to calculate its liability, if any, for rebate for each of its bond issues. The [TED Compliance Coordinator](#) is responsible for maintaining the engagement with the firm, providing the firm with the documentation it requires, making sure the firm prepares

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

calculations at the required intervals (including upon the retirement of a given bond issue), reviewing the firm's calculations for obvious errors, remitting any required rebate to the federal government, and retaining appropriate records. The TED Compliance Coordinator is also responsible for monitoring the spending of bond proceeds and taking appropriate steps to qualify for a "spending exception" to rebate, to the extent practicable.

E. Source of Debt Service Payments; Gifts

To avoid creating a "[sinking fund](#)" that is subject to restriction on the yield at which it may be invested, payments of principal and interest on the UMS' tax-exempt bonds are derived from current revenues (including current gifts), not directly or indirectly from the UMS' endowment or other restricted funds. Each CFO is responsible for maintaining accounting and cash flow practices that will satisfy this requirement.

Whenever a gift is received that bears a close relationship to bond-financed capital costs (e.g., because it is designated for a bond-financed project, is received through a fundraising campaign that focuses on the project, or otherwise), the gift generally should be (i) used to pay capital costs of the project not financed with bond proceeds, or (ii) deposited into the debt service fund for the issue within 30 days of being received and entirely used for the next payment of debt service on the bonds. If these approaches are not feasible (for example, because the amount of the gift exceeds the amount of the next debt service payment, or there are insufficient other capital costs to which the gift may be applied), bond counsel should be consulted, who can advise whether in this situation the gift will need to be yield-restricted. Each University's Director of Development is responsible for alerting the [TED Compliance Coordinator](#) whenever a gift (other than gifts received pursuant to a pre-approved fundraising campaign) is received that may bear a close relationship to a facility, and the TED Compliance Coordinator will ensure that the gift is applied in a manner consistent with these procedures.

F. Investment of Bond Proceeds

Prior to being spent, bond proceeds must be invested in a manner that will establish fair market value for federal tax purposes, in order to maintain compliance with the rebate and [arbitrage](#) yield restriction rules. The rules for establishing fair market value are summarized in the [tax certificate](#) executed by the UMS at the time of issuance of each bond issue; certain investments, for example, must be acquired through the detailed "three-bid" procedure set forth in the Treasury Regulations. Typically, bond counsel would review the initial investments of bond proceeds acquired on the issue date for compliance with these rules, but would not necessarily do so for any subsequent investments or reinvestments of such proceeds. The [TED Compliance Coordinator](#) will take appropriate steps, in consultation with the Director of Finance and Controller and bond counsel, to assure that subsequent investments or reinvestments

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

of bond proceeds are made in compliance with these rules. For example, investments of proceeds in any guaranteed investment contract, and investments of funds in an escrow to defease a bond issue, will be acquired through the "three-bid" procedure noted above.

G. Expenditure of Bond Proceeds

Federal tax law places many restrictions on the types of expenditures that may be financed with tax-exempt bond proceeds, including, among other things, that the expenditures, meet certain useful life requirements, be made within certain deadlines, and not be used to reimburse expenditures made before the issuance date unless certain requirements are satisfied. The UMS' expectations as to the expenditure of bond proceeds are set forth in the [tax certificate](#) executed on the date of issuance of each bond issue, which bond counsel uses to evaluate compliance with these rules as of such date. The [TED Compliance Coordinator](#) will make sure that the UMS' actual expenditure of proceeds of each bond issue will not deviate materially from the expectations and limitations stated in the tax certificate for the issue without consulting beforehand with bond counsel.

At the time project costs are paid, campus personnel are responsible for identifying the source of funds (e.g., tax-exempt bonds, gifts funds, etc.) from which the costs are being paid and ensuring that the costs qualify to be paid from the indicated source. This allocation is reflected in the UMS' general ledger system through the use of unique fund, project, and program combinations. See the following UMS business process documents for more information on accounting for bond proceeds:

[Accounting for University Revenue Bonds](#)
[Accounting for State Capital Bond Proceeds](#)

The TED Compliance Coordinator is responsible for making sure that, for each bond-financed project, bond proceeds are allocated to expenditures for the project within the period ending on the earliest of the following (the "Permitted Allocation Period"):

1. 18 months after the placed-in-service date of the project (or the payment of the expenditure in question, if later),
2. five years (plus 60 days) after the issue date of the bonds, or
3. 60 days after the retirement of the bonds.

The TED Compliance Coordinator is responsible for maintaining a control sheet for each bond issuance that reflects the following data:

- Name of bond issue and total proceeds received (including project fund proceeds, cost of issuance proceeds, and investment earnings)

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

- Description and general ledger reference for each project funded from the bond proceeds
- Budgeted amount for each project funded from the bond proceeds
- Date and amount of each drawdown of bond proceeds by project to pay project costs

If UMS bond proceeds continue to be held beyond the end of the relevant temporary period for unrestricted investment, the proceeds will either be invested at a yield not in excess of the yield on the UMS bonds or the TED Compliance Coordinator will assure that a yield reduction payment is made to the Internal Revenue Service in the same manner as rebate payments are made. Generally, the temporary period for proceeds used for project costs is three years from the original date of issuance. The temporary period, however, is terminated if the UMS bonds are advance refunded before the end of that three year period.

H. Record Retention

The UMS is required to maintain sufficient records to demonstrate that its bonds have satisfied the requirements for tax-exempt status. To this end, the [TED Compliance Coordinator](#) maintains a list of key records that generally should be retained (see the list on the next page). For each category of records, the list identifies the individuals responsible for maintaining the records for each University. These individuals are designated through consultation between the TED Compliance Coordinator, the University CFOs and the identified individuals. Certain records (such as the bond transcript) are maintained centrally by the TED Compliance Coordinator at the System Office, while other records are maintained by the departments in which the responsible individuals work. Regardless of where held, the records should be maintained for the entire period required by federal tax law. Records may be stored in either hard copy or electronic format. If in electronic format, the federal tax guidelines pertaining to electronic recordkeeping (Revenue Procedure 97-22) should be satisfied.

The following documents shall be retained for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

Document Type	Retained by System Office	Retained by University
Bond closing transcript(s) and other relevant documentation delivered to the UMS at or in connection with closing of the issue of Bonds	X	
All documents relating to expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices,		X

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

Document Type	Retained by System Office	Retained by University
requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds		
Records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds;	X	
All records of investments, investment agreements, arbitrage reports and underlying documents, in connection with any investment agreements, and copies of all bidding documents, if any	X	
Copies of all leases, management and service contracts, periodic rental agreements, sponsored research agreements, naming rights agreements, sale and other disposition agreements, etc. supporting use of the bond financed facility by entities other than the University		X
Space records (original and each revision) supporting use of the facility		X

The TED Compliance Coordinator monitors IRS guidance and other developments in the law relating to record retention and shall modify these procedures in accordance with any such guidance and developments.

With respect to records relating to tax-exempt bonds, these record retention procedures supersede any of the UMS' general record retention procedures (as outlined in [APL Section IV-D](#)) that may be less stringent.

I. External Advisors / Documentation

The UMS shall consult with bond counsel and other advisors, as needed, throughout the bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt or tax-advantaged status. The UMS also shall consult with bond counsel and other advisors, as needed, following issuance of the bonds to ensure that all applicable post-issuance requirements are met. This shall include, without limitation, consultation in connection with any potential change of use of bond-financed or refinanced assets.

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

J. Information Reporting

The [TED Compliance Coordinator](#) shall confirm that bond counsel has timely filed with the Internal Revenue Service the applicable information report (i.e., Form 8038-G) for each issue of Bonds.

K. Continuing Disclosure

Under the provisions of SEC Rule 15c2-12 (the "Rule"), underwriters of UMS bonds are required to obtain an agreement for ongoing disclosure in connection with the public offering of bonds in a principal amount in excess of \$1,000,000. Unless an issuer is exempt from compliance with the Rule as a result of certain permitted exemptions, the transcript for each issue of bonds will include a Continuing Disclosure Certificate or another undertaking by UMS to comply with the Rule. The [TED Compliance Coordinator](#) will monitor compliance by UMS with its undertakings, which includes the requirement for an annual filing of audited financial statements and certain other operating and financial information and includes a requirement to file notices of certain listed "material events," such as principal and interest payment delinquencies, the issuance by the Internal Revenue Service of proposed or final determinations of taxability and rating changes.

L. Education Policy

It is the policy of the UMS, as an issuer of tax-exempt bonds, that the [TED Compliance Coordinator](#), the University CFO's, and other persons identified by the CFOs as responsible for compliance should be provided with education and training on federal tax requirements applicable to tax-exempt and tax-advantaged bonds. The UMS recognizes that such education and training is vital as a means of helping to ensure that the UMS remains in compliance with those federal tax requirements in respect of its bonds. The UMS will therefore enable and encourage those personnel to participate in educational and training programs offered by professional trade associations and other entities with regard to the federal tax requirements applicable to tax-exempt and tax-advantaged bonds.

V. RESOURCES

To assist each University in monitoring compliance, the following is provided by the UMS System Office:

- Up-to-date listing of bond financed buildings with the date for which [private business use](#) limitations expire
- Definition of terms commonly used in this APL and attachments – See Attachment A of this document

ADMINISTRATIVE PRACTICE LETTER

Section III-I
Issue 1
Effective 5/14/2012

SUBJECT: TAX-EXEMPT DEBT COMPLIANCE

- Discussion of arrangements that can give rise to private business use – See Attachment B of this document
- Screening guidelines for management and service contracts – See Attachment C
- Screening guidelines for research agreements – See Attachment D of this document
- Periodic centralized training sessions

VI. RELATED DOCUMENTS

[Policy 713: Post-Issuance Compliance for Tax-Exempt Bonds](#)

[APL Section III-H: Debt Policy](#)

[APL Section IV-D: Record Retention Practices](#)

APPROVED

Signature on file in System Office of Finance and Administration.

Vice Chancellor for Finance and Administration

ATTACHMENT A DEFINITIONS

Applicable federal law – Includes the Internal Revenue Code (IRC) and regulations promulgated thereunder, including IRC sections 103, 141, 147-150 and related regulations. Note: IRS publication 4079, Tax-Exempt Governmental Bonds Compliance Guide provides guidance and explanation for most areas of tax-exempt financing relevant to UMS.

Arbitrage – Investment earnings on bond proceeds in excess of the bond interest paid to bondholders, adjusted for certain expenses.

Basic research – An original investigation for the advancement of scientific knowledge not having a specific commercial objective (see [IRS Rev. Proc. 2007-47](#)). For example, product testing supporting the trade or business of a specific Non-Exempt Person is not treated as basic research.

External Party – Any person other than a member of the university faculty, staff, or student body.

Management Contract – A management, service, or incentive payment contract between the University and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility.

Non-Exempt Person – The federal government, any agency or department of the federal government, any nonprofit corporation and any other firm, corporation, partnership, or entity that is not a state or local governmental unit.

Private Business Use – Use in a trade or business carried on by or for the benefit of any Non-Exempt Person. Private business use does not include use of a facility by a member of the general public where the facility is open to the public and the user has no special legal entitlement to use of the facility.

Qualified User - A state or local governmental unit.

Safe Harbor – A provision that shields a party from liability under the law provided that certain conditions are met. IRS regulations and revenue procedures contain several safe harbors relating to activities which could generate private business use, the most important of which pertain to management contracts and research contracts.

Service Provider - Any person other than a qualified user that provides services under a contract to, or for the benefit of, a qualified user. Common service providers include food vendors and facilities managers.

Sinking Fund – A debt service fund, redemption fund, reserve fund, replacement fund, or any similar fund, to the extent reasonably expected to be used directly or indirectly to pay principal or interest on the bond issue.

State bonds – Bonds issued and repaid by the State of Maine, the proceeds of which are used by the UMS in furtherance of its governmental purpose.

Tax certificate – The Non-Arbitrage and Use of Proceeds Certificate or other document signed by the Treasurer of the UMS at the closing of UMS bond issuance in which the UMS makes certain representations, warranties and covenants relating to the tax eligibility of the projects, expenditure and investment of bond proceeds and UMS operations.

**ATTACHMENT A
DEFINITIONS**

TED Compliance Coordinator – Tax-Exempt Debt Compliance Coordinator. This is the person to whom the System Treasurer has delegated certain compliance responsibilities related to tax-exempt bond compliance.

Trade or Business – Any activity carried on by a Non-Exempt Person other than an individual acting as a member of the general public.

Treasurer – The University of Maine System’s Vice Chancellor for Finance and Administration and Treasurer.

University revenue bonds – Tax-exempt bonds issued and repaid by the UMS, the proceeds of which are used in furtherance of its governmental purpose.

**ATTACHMENT B
PRIVATE BUSINESS USE**

Section III-I
Issue 1
Effective 5/14/2012

CONTENTS

A. OVERVIEW	20
B. LEASES AND PERIODIC SPACE RENTALS	20
C. MANAGEMENT CONTRACTS	22
D. RESEARCH AGREEMENTS	24
E. NAMING RIGHTS AND SPONSORSHIP PAYMENTS	25
F. OUTPUT FACILITIES	26
G. OWNERSHIP	26
H. QUALIFIED IMPROVEMENTS	26

A. OVERVIEW

Contained in this attachment is a brief discussion of various arrangements that can give rise to [‘private business use’](#) as defined in Attachment A.

The following types of arrangements can give rise to private use:

1. Leases of UMS property to [Non-Exempt Persons](#), including a parking area lease *
2. Management or service contracts * (e.g., food service and parking contracts)
3. Research contracts *
4. Naming rights agreements involving a bond financed facility *
5. Output Facilities *
6. Privatization/change in use – sales or dispositions of bond financed property

** Described in more detail in remainder of this attachment.*

B. LEASES AND PERIODIC SPACE RENTALS

A bond financed facility is treated as leased to a [Non-Exempt Person](#):

1. Whether leased by the Non-Exempt Person, then subleased to a governmental organization, or
2. Leased to a governmental organization and then subleased to a Non-Exempt Person

Factors that bear on the lease analysis;

1. Degree of control that the Non-Exempt Person has in the facility,
2. Risk of loss borne by the Non-Exempt Person

ATTACHMENT B
PRIVATE BUSINESS USE

Section III-I
Issue 1
Effective 5/14/2012

A lease or rental of bond-financed property by a private user constitutes private use unless an exception is satisfied.

Exceptions:

1. A lease or rental of property to a state or local governmental unit should not give rise to private business use.
2. Use of facilities intended for general public use is not considered “use” by nongovernmental persons in a [trade or business](#) if such persons use the facilities in their trade or business on the same basis as other members of the public. Use of the financed facilities by organizations such as school groups, church groups, and fraternal organizations and numerous commercial organizations for a short period of time on a rate scale basis will not be considered use by nongovernmental persons in a trade or business if the rights of such a user are only those of a transient occupant rather than the full legal possessory interests of a lessee. Any arrangement that conveys priority rights to the use or capacity of the financed property will be treated a private business use.
3. Rental of property should not give rise to private business use if the term of the use under the arrangement, including all renewal options is not longer than 200 days, and the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.
4. Rental of property that is made generally available to third parties (though not necessarily individuals) should not give rise to private business use if:
 - a. the term of the use under the arrangement, including all renewal options, is not longer than 100 days,
 - b. the property is not financed for a principal purpose of providing it to an outside user, and
 - c. to the extent the property is not generally available to individuals, the reason is because “generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business.”

Example 1: Authority E uses all of the proceeds of its bonds to construct a prison. E contracts with Federal Agency F to house federal prisoners on a space available, first-come, first-served basis, pursuant to which F will be charged approximately the same amount for each prisoner as other persons that enter into similar transfer agreements. It is reasonably expected that other persons will enter into similar agreements. The term of the use under the contract is not longer than 100 days, and F has no right to renew, although E reasonably expects to renew the contract indefinitely. The prison is not financed for a principal purpose of providing the prison for use by F. It is reasonably expected that during the term of the bonds, more than 10 percent of the prisoners at the prison will be federal prisoners. F's use of the facility is not general public use because this type of use (leasing space for prisoners) is not available for use on the same basis by natural persons not engaged in a trade or business. The issue does not meet the private business use test, however, because the lease is not longer than 100 days.

**ATTACHMENT B
PRIVATE BUSINESS USE**

Section III-I
Issue 1
Effective 5/14/2012

5. Rental of property should not give rise to private business use if
 - a. the arrangement is a negotiated arm's-length arrangement and compensation under the arrangement is at "fair market value";
 - b. the term of the use under the arrangement, including all renewal options, is not longer than 50 days; and
 - c. the property is not financed for a principal purpose of providing it to a user other than the University.

6. Incidental use of a facility by an [external party](#) (whether or not described as a "rental") should not give rise to private business use to the extent that all such uses do not exceed 2.5% of the proceeds of the bonds and if
 - a. the user does not have possession and control of space that is physically separated from other parts of the facility (e.g., by walls) except in the case of vending machines, pay phones, kiosks and the like,
 - b. the non-possessory use is not functionally related to any other use of the facility by the same party, and
 - c. all non-possessory uses of the facility do not, in the aggregate, involve the use of more than 2.5% of the facility.

Example: This exception may cover an ATM which is located in a bond financed facility for the convenience of those who use the facility but not a rental of roof space for a mobile telecommunications tower which provides service over a wide area.

C. MANAGEMENT CONTRACTS

1. General Rule

A [management contract](#) with respect to bond financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility.

Generally, compensation under a management contract is not based on net profits if it is based on –

- a. A percentage of gross revenues (or adjusted gross revenues) of a facility or
- b. A percentage of expenses from a facility, but not both;
- c. A capitation fee; or
- d. A per-unit fee.

Example 1: County uses proceeds of tax-exempt bonds to finance a courthouse. County enters into a contract with Corporation pursuant to which Corporation is to manage the cafeteria located in the courthouse. The contract provides that Corporation's compensation will equal 5 percent of the net profits of the cafeteria. The management contract results in private use because compensation is based on net profits.

ATTACHMENT B
PRIVATE BUSINESS USE

Section III-I
Issue 1
Effective 5/14/2012

Example 2: County uses proceeds of tax-exempt bonds to finance a courthouse. County enters into a contract with Corporation pursuant to which Corporation is to manage the cafeteria located in the courthouse. The contract provides that Corporation will receive 10 percent of the gross receipts of the cafeteria. This aspect of the management contract does not result in private use because the compensation is based only on gross receipts not gross receipts and expenses from the facility. However, the contract must be further reviewed to determine whether it meets one of the safe harbor provisions outlined in the following paragraph.

2. Safe Harbors

In addition to the compensation requirements outlined above, the management contract must meet **one** of the following [safe harbors](#) to avoid being classified as private business use:

a. Safe Harbor 1:

- (1) At least 95% of the fee is a fixed amount **and**
- (2) the contract term, including renewal options, is the lesser of 80% of useful life of the property or 15 years.

b. Safe Harbor 2:

- (1) At least 80% of the fee is fixed **and**
- (2) the contract term, including renewal options, is the lesser of 80% of useful life of the property or 10 years.

c. Safe Harbor 3:

- (1) At least 50% of the fee is fixed or capitated,
- (2) the contract term, including renewal options, is not more than 5 years, **and**
- (3) the contract must be cancellable by the University after the third year.

d. Safe Harbor 4:

- (1) All of the compensation is based on a per-unit fee or a combination of a per-unit fee and a periodic fixed fee,
- (2) the contract term, including renewal options, is not more than 3 years, and
- (3) the contract must be cancellable by the University after the second year.

e. Safe Harbor 5:

- (1) If compensation is all based on a percentage of gross revenue, the contract term, including renewal options, cannot exceed 2 years and
- (2) the contract must be cancellable by the University after the first year.

Example: County uses proceeds of tax-exempt bonds to finance a courthouse. County enters into a contract with Corporation pursuant to which Corporation is to manage the cafeteria located in the courthouse. The contract provides that the contract will be a term of 15 years (including renewal options) and Corporation's compensation will be (i) \$X per month and (ii) 1

ATTACHMENT B
PRIVATE BUSINESS USE

Section III-I
Issue 1
Effective 5/14/2012

percent of gross receipts of the cafeteria during such month. The contract provides that in no event will the amount received by Corporation under clause (ii) be more than 5 percent of Corporation total compensation each month.

The management contract meets the safe harbor described in 'a' above: 95 percent of the compensation is based on a period fixed fee and the contract term including renewal options is 15 years or less. Please note also that the variable portion of the compensation is based on gross receipts and not net profits.

3. Contracts Deemed to be Leases

A management contract with respect to bond financed property results in private business use of that property if the service provider is treated as the lessee or owner of financed property for federal tax purposes.

Example: City uses proceeds of bonds to finance an office building. The office building includes a cafeteria that is open to the general public. City enters into a contract with Corporation to manage the cafeteria for a term of 10 years. Corporation receives all the receipts of the cafeteria and in turn gives \$X per month to City. Corporation has complete discretion to manage the cafeteria without any input from City. The contract is labeled "management contract." Notwithstanding its title, the contract seems to be a lease and should not be analyzed under IRS rules pertaining to management contracts.

See SECTION 3 and SECTION 5 of Rev. Proc. 97-13 in Attachment C of this APL for more information.

D. RESEARCH AGREEMENTS

Research performed in bond-financed facilities may constitute private business use if a [Non-Exempt Person](#) funds the research and receives particular benefits from the results of the research. If a research agreement meets the requirements of the applicable safe harbor provided in Revenue Procedure 2007-47, use of the research facility or equipment subject to the research agreement is considered not to result in private business use.

Safe Harbor 1 –Corporate Sponsored Research

- a. The research agreement provides for [basic research](#),
- b. any license to or other use by the sponsor of any technology, product or other application resulting from the basic research is permitted only on the same terms as the University would permit that use by any non-sponsoring unrelated party (that is, the sponsor must pay a competitive price for its use) **and**
- c. the price is determined at the time the license or other resulting technology, product or other application is available for use (and such price is no less than the price that would be paid by any non-sponsoring party for those same rights).

**ATTACHMENT B
PRIVATE BUSINESS USE**

Section III-I
Issue 1
Effective 5/14/2012

Safe Harbor 2 – Industry Sponsored Research

- a. A single sponsor agrees, or multiple sponsors agree to fund University-performed basic research;
- b. the University determines the research to be performed and the manner in which it will be performed (e.g., selection of personnel to perform the research);
- c. title to any patent or other product incidentally resulting from the basic research lies exclusively with the University; and
- d. the sponsor or sponsors are entitled to no more than a nonexclusive, royalty-free license to use the product of any such research.

Safe Harbor 3 –Federally-Sponsored Research

- a. The sponsor agrees to fund University-performed basic research,
- b. the University determines the research to be performed and the manner in which it will be performed (e.g., selection of personnel to perform the research),
- c. title to any patent or other product incidentally resulting from the basic research lies exclusively with the University, and
- d. the nature of any license granted the federal government or the sponsoring federal agency or any third-party Non-Exempt Person to use the product of the research is no more than a nonexclusive, royalty-free license.

If a research agreement with a federal sponsor (or a grantee of a federal sponsor) meets all of the elements of Safe Harbor 3 above, the rights of the federal government and its agencies mandated by the Bayh-Dole Act will not cause a research agreement to fail the safe harbor requirements and will not constitute private use. For information about the Bayh-Dole Act, see [Attachment D](#), sections 2.02 and 6.04.

E. NAMING RIGHTS AND SPONSORSHIP PAYMENTS

Private business use is generally not created when a building, or a room, or an area within a building, is named for an individual or individuals when the name is not that of a company or a commercial name, e.g., the John and Mary Doe Building. Private business use could result when a naming situation involves a company or commercial name such as the XYZ Bank Building.

Agreements which permit a private company or organization to make payments for the right to have its name or logo used in connection with property financed with tax-exempt debt may result in private business use. The rules in this area continue to evolve but “qualified sponsorship payments” should not give rise to a private business use. A qualified sponsorship payment means any payment made by any person engaged in a [trade or business](#) with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement

**ATTACHMENT B
PRIVATE BUSINESS USE**

Section III-I
Issue 1
Effective 5/14/2012

of the sponsor's name or logo in connection with the activities of the University. Such use or acknowledgement may not include advertising such person's products or services. The qualified sponsorship payment would not include any payment that -

1. is contingent upon attendance at events or
2. entitles the payor to the use or acknowledgement of the payor's name or logo in regularly scheduled and printed material published by or on behalf of the University. This would allow donations in exchange for the usual "brass plaque" but call into question arrangements such as the right to name a University facility and control how that facility is referred to in publications and press releases.

F. OUTPUT FACILITIES

Occasionally an Exempt Person (e.g., the University) will acquire facilities such as co-generation facilities. The sale of output (as distinguished from consumption of the output by the Exempt Person) from an output type facility can result in a private business use.

G. OWNERSHIP

A sale or transfer of ownership (as determined under federal income tax principles) or other disposition of bond financed property to a [Non-Exempt Person](#) will result in private business use unless remedial action is planned in advance.

H. QUALIFIED IMPROVEMENTS

Proceeds of tax-exempt bonds that provide a University owned improvement to an existing University owned building (including its structural components and land functionally related and subordinate to the building) are not used for a private business use if

1. The building was placed in service more than 1 year before the construction or acquisition of the improvement is begun;
2. The improvement is not an enlargement of the building or an improvement of interior space occupied exclusively for any private business use;
3. No portion of the improved building or any payments in respect of the improved building secures payment of the tax-exempt bonds; and
4. No more than 15 percent of the improved building is used for a private business use.

ATTACHMENT C
MANAGEMENT CONTRACT GUIDELINES

Rev. Proc. 97-13 1997-1 C.B. 632 — Management Contract Guidelines (Supersedes Rev. Proc. 93-19)

1997-1 C.B. 632; 1997 IRB LEXIS 14; 1997-5 I.R.B. 18; REV. PROC. 97-13
(Also Part I, § § 103, 141, 145; 1.141-3, 1.145-2.)
February 3, 1997

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth conditions under which a management contract does not result in private business use under § 141(b) of the Internal Revenue Code of 1986. This revenue procedure also applies to determinations of whether a management contract causes the test in § 145(a)(2)(B) of the 1986 Code to be met for qualified 501(c)(3) bonds.

SECTION 2. BACKGROUND

.01 Private Business Use.

(1) Under § 103(a) of the 1986 Code, gross income does not include interest on any state or local bond. Under § 103(b)(1) of the 1986 Code, however, § 103(a) of the 1986 Code does not apply to a private activity bond, unless it is a qualified bond under § 141(e) of the 1986 Code. Section 141(a)(1) of the 1986 Code defines “private activity bond” as any bond issued as part of an issue that meets both the private business use and the private security or payment tests. Under § 141(b)(1) of the 1986 Code, an issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Under § 141(b)(6)(A) of the 1986 Code, private business use means direct or indirect use in a trade or business carried on by any person other than a governmental unit. Section 145(a) of the 1986 Code also applies the private business use test of § 141(b)(1) of the 1986 Code, with certain modifications.

(2) Corresponding provisions of the Internal Revenue Code of 1954 set forth the requirements for the exclusion from gross income of the interest on state or local bonds. For purposes of this revenue procedure, any reference to a 1986 Code provision includes a reference to the corresponding provision, if any, under the 1954 Code.

(3) Private business use can arise by ownership, actual or beneficial use of property pursuant to a lease, a management or incentive payment contract, or certain other arrangements. The Conference Report for the Tax Reform Act of 1986, provides as follows:

The conference agreement generally retains the present-law rules under which use by persons other than governmental units is determined for purposes of the trade or business use test. Thus, as under present law, the use of bond-financed property is treated as a use of bond proceeds. As under present law, a person may be a user of bond proceeds and bond-financed property as a result of (1) ownership or (2) actual or beneficial use of property pursuant to a

ATTACHMENT C MANAGEMENT CONTRACT GUIDELINES

lease, a management or incentive payment contract, or (3) any other arrangement such as a take-or-pay or other output-type contract. 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-687-688, (1986) 1986-3 (Vol. 4) C.B. 687-688 (footnote omitted).

(4) A management contract that gives a nongovernmental service provider an ownership or leasehold interest in financed property is not the only situation in which a contract may result in private business use.

(5) Section 1.141-3(b)(4)(i) of the Income Tax Regulations provides, in general, that a management contract (within the meaning of § 1.141-3(b)(4)(ii)) with respect to financed property may result in private business use of that property, based on all the facts and circumstances.

(6) Section 1.141-3(b)(4)(i) provides that a management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility.

(7) Section 1.141-3(b)(4)(iii), in general, provides that certain arrangements generally are not treated as management contracts that may give rise to private business use. These are—

(a) Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing or similar services);

(b) The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of its facilities;

(c) A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property (as defined in § 168(i)(10) of the 1986 Code), if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and

(d) A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

(8) Section 1.145-2(a) provides generally that §§ 1.141-0 through 1.141-15 apply to § 145(a) of the 1986 Code.

(9) Section 1.145-2(b)(1) provides that in applying §§ 1.141-0 through 1.141-15 to § 145(a) of the 1986 Code, references to governmental persons include section 501(c)(3) organizations

ATTACHMENT C MANAGEMENT CONTRACT GUIDELINES

with respect to their activities that do not constitute unrelated trades or businesses under § 513(a) of the 1986 Code.

.02 *Existing Advance Ruling Guidelines*. Rev. Proc. 93-19, 1993-1 C.B. 526, contains advance ruling guidelines for determining whether a management contract results in private business use under § 141(b) of the 1986 Code.

SECTION 3. DEFINITIONS

.01 *Adjusted gross revenues* means gross revenues of all or a portion of a facility, less allowances for bad debts and contractual and similar allowances.

.02 *Capitation fee* means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. For example, a capitation fee includes a fixed dollar amount payable per month to a medical service provider for each member of a health maintenance organization plan for whom the provider agrees to provide all needed medical services for a specified period. A fixed periodic amount may include an automatic increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to protect the service provider against risks such as catastrophic loss.

.03 *Management contract* means a management, service, or incentive payment contract between a qualified user 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. See §§ 1.141-3(b)(4)(ii) and 1.145-2.

.04 *Penalties* for terminating a contract include a limitation on the qualified user's right to compete with the service provider; a requirement that the qualified user purchase equipment, goods, or services from the service provider; and a requirement that the qualified user pay liquidated damages for cancellation of the contract. In contrast, a requirement effective on cancellation that the qualified user reimburse the service provider for ordinary and necessary expenses or a restriction on the qualified user against hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and the qualified user, such as a loan or guarantee by the service provider, is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm's-length that could operate to prevent the qualified user from terminating the contract (for example, provisions under

ATTACHMENT C MANAGEMENT CONTRACT GUIDELINES

which the contract terminates if the management contract is terminated or that place substantial restrictions on the selection of a substitute service provider).

.05 *Periodic fixed fee* means a stated dollar amount for services rendered for a specified period of time. For example, a stated dollar amount per month is a periodic fixed fee. The stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. Capitation fees and per-unit fees are not periodic fixed fees.

.06 *Per-unit fee* means a fee based on a unit of service provided specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program, or the qualified user. For example, a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile is a per-unit fee. Separate billing arrangements between physicians and hospitals generally are treated as per-unit fee arrangements. A fee that is a stated dollar amount specified in the contract does not fail to be a per-unit fee as a result of a provision under which the fee may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards.

.07 *Qualified user* means any state or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. The term also includes a section 501(c)(3) organization if the financed property is not used in an unrelated trade or business under § 513(a) of the 1986 Code. The term does not include the United States or any agency or instrumentality thereof.

.08 *Renewal option* means a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

.09 *Service provider* means any person other than a qualified user that provides services under a contract to, or for the benefit of, a qualified user.

SECTION 4. SCOPE

This revenue procedure applies when, under a management contract, a service provider provides management or other services involving property financed with proceeds of an issue of state or local bonds subject to § 141 or § 145(a)(2)(B) of the 1986 Code.

ATTACHMENT C MANAGEMENT CONTRACT GUIDELINES

SECTION 5. OPERATING GUIDELINES FOR MANAGEMENT CONTRACTS

.01 *In general.* If the requirements of section 5 of this revenue procedure are satisfied, the management contract does not itself result in private business use. In addition, the use of financed property, pursuant to a management contract meeting the requirements of section 5 of this revenue procedure, is not private business use if that use is functionally related and subordinate to that management contract and that use is not, in substance, a separate contractual agreement (for example, a separate lease of a portion of the financed property). Thus, for example, exclusive use of storage areas by the manager for equipment that is necessary for it to perform activities required under a management contract that meets the requirements of section 5 of this revenue procedure, is not private business use.

.02 *General compensation requirements.*

(1) *In general.* The contract must provide for reasonable compensation for services rendered with no compensation based, in whole or in part, on a share of net profits from the operation of the facility. Reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties is not by itself treated as compensation.

(2) *Arrangements that generally are not treated as net profits arrangements.* For purposes of § 1.141-3(b)(4)(i) and this revenue procedure, compensation based on—

(a) A percentage of gross revenues (or adjusted gross revenues) of a facility or a percentage of expenses from a facility, but not both;

(b) A capitation fee; or

(c) A per-unit fee is generally not considered to be based on a share of net profits.

(3) *Productivity reward.* For purposes of § 1.141-3(b)(4)(i) and this revenue procedure, a productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues), or reductions in total expenses (but not both increases in gross revenues (or adjusted gross revenues) and reductions in total expenses) in any annual period during the term of the contract, generally does not cause the compensation to be based on a share of net profits.

(4) *Revision of compensation arrangements.* In general, if the compensation arrangements of a management contract are materially revised, the requirements for compensation arrangements under section 5 of this revenue procedure are retested as of the date of the material revision, and the management contract is treated as one that was newly entered into as of the date of the material revision.

ATTACHMENT C MANAGEMENT CONTRACT GUIDELINES

.03 *Permissible Arrangements*. The management contract must be described in section 5.03(1), (2), (3), (4), (5), or (6) of this revenue procedure.

(1) *95 percent periodic fixed fee arrangements*. At least 95 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 15 years. For purposes of this section 5.03(1), a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(2) *80 percent periodic fixed fee arrangements*. At least 80 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 10 years. For purposes of this section 5.03(2), a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(3) *Special rule for public utility property*. If all of the financed property subject to the contract is a facility or system of facilities consisting of predominantly public utility property (as defined in § 168(i)(10) of the 1986 Code), then “20 years” is substituted—

(a) For “15 years” in applying section 5.03(1) of this revenue procedure; and

(b) For “10 years” in applying section 5.03(2) of this revenue procedure.

(4) *50 percent periodic fixed fee arrangements*. Either at least 50 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee. The term of the contract, including all renewal options, must not exceed 5 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the third year of the contract term.

(5) *Per-unit fee arrangements in certain 3-year contracts*. All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fixed fee. The term of the contract, including all renewal options, must not exceed 3 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the second year of the contract term.

(6) *Percentage of revenue or expense fee arrangements in certain 2-year contracts*. All the compensation for services is based on a percentage of fees charged or a combination of a per-

ATTACHMENT C MANAGEMENT CONTRACT GUIDELINES

unit fee and a percentage of revenue or expense fee. During the start-up period, however, compensation may be based on a percentage of either gross revenues, adjusted gross revenues, or expenses of a facility. The term of the contract, including renewal options, must not exceed 2 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the first year of the contract term. This section 5.03(6) applies only to—

- (a) Contracts under which the service provider primarily provides services to third parties (for example, radiology services to patients); and
- (b) Management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (for example, a contract for general management services for the first year of operations).

.04 No Circumstances Substantially Limiting Exercise of Rights.

(1) *In general.* The service provider must not have any role or relationship with the qualified user that, in effect, substantially limits the qualified user's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

(2) *Safe harbor.* This requirement is satisfied if—

- (a) Not more than 20 percent of the voting power of the governing body of the qualified user in the aggregate is vested in the service provider and its directors, officers, shareholders, and employees;
- (b) Overlapping board members do not include the chief executive officers of the service provider or its governing body or the qualified user or its governing body; and
- (c) The qualified user and the service provider under the contract are not related parties, as defined in § 1.150-1(b).

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 93-19, 1993-1 C.B. 526, is made obsolete on the effective date of this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after May 16, 1997. In addition, an issuer may apply this revenue procedure to any management contract entered into prior to May 16, 1997.

**ATTACHMENT C
MANAGEMENT CONTRACT GUIDELINES**

DRAFTING INFORMATION

The principal author of this revenue procedure is Loretta J. Finger of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure contact Loretta J. Finger on (202) 622-3980 (not a toll-free call).

ATTACHMENT D RESEARCH CONTRACT GUIDELINES

Rev. Proc. 2007-47—Operating Guidelines for Research Agreements

(Also Part I, § § 103, 141, 145; 1.141-3, 1.145-2.)

June 26, 2007

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth conditions under which a research agreement does not result in private business use under § 141(b) of the Internal Revenue Code of 1986 (the Code). This revenue procedure also addresses whether a research agreement causes the modified private business use test in § 145(a)(2)(B) of the Code to be met for qualified 501(c)(3) bonds. This revenue procedure modifies and supersedes Rev. Proc. 97-14, 1997-1 C.B. 634.

SECTION 2. BACKGROUND

.01 Private Business Use.

(1) Under § 103(a) of the Code, gross income does not include interest on any State or local bond. Under § 103(b)(1), however, § 103(a) does not apply to a private activity bond, unless it is a qualified bond under § 141(e). Section 141(a)(1) defines “private activity bond” as any bond issued as part of an issue that meets both the private business use and the private security or payment tests. Under § 141(b)(1), an issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Under §141(b)(6)(A), private business use means direct or indirect use in a trade or business carried on by any person other than a governmental unit. Section 150(a)(2) provides that the term “governmental unit” does not include the United States or any agency or instrumentality thereof. Section 145(a) also applies the private business use test of §141(b)(1) to qualified 501(c)(3) bonds, with certain modifications.

(2) Section 1.141-3(b)(1) of the Income Tax Regulations provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user of proceeds and financed property as a result of ownership; actual or beneficial use of property pursuant to a lease, or a management or incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

(3) Section 1.141-3(b)(6)(i) provides generally that an agreement by a nongovernmental person to sponsor research performed by a governmental person may result in private business use of the property used for the research, based on all the facts and circumstances.

(4) Section 1.141-3(b)(6)(ii) provides generally that a research agreement with respect to financed property results in private business use of that property if the sponsor is treated as the lessee or owner of financed property for Federal income tax purposes.

ATTACHMENT D RESEARCH CONTRACT GUIDELINES

(5) Section 1.141-1(b) provides that the term “governmental person” means a State or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. Section 1.141-1(b) further provides that governmental person does not include the United States or any agency or instrumentality thereof. Section 1.141-1(b) further provides that “nongovernmental person” means a person other than a governmental person.

(6) Section 1.145-2 provides that §§ 1.141-0 through 1.141-15 apply to qualified 501(c)(3) bonds under § 145(a) of the Code with certain modifications and exceptions. (7) Section 1.145-2(b)(1) provides that, in applying §§ 1.141-0 through 1.141-15 to § 145(a) of the Code, references to governmental persons include § 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under § 513(a).

.02 Federal Government rights under the Bayh-Dole Act.

(1) The Patent and Trademark Law Amendments Act of 1980, as amended, 35 U.S.C. § 200 et seq. (2006) (the “Bayh-Dole Act”), generally applies to any contract, grant, or cooperative agreement with any Federal agency for the performance of research funded by the Federal Government.

(2) The policies and objectives of the Bayh-Dole Act include promoting the utilization of inventions arising from federally supported research and development programs, encouraging maximum participation of small business firms in federally supported research and development efforts, promoting collaboration between commercial concerns and nonprofit organizations, ensuring that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise, and promoting the commercialization and public availability of inventions made in the United States by United States industry and labor.

(3) Under the Bayh-Dole Act, the Federal Government and sponsoring Federal agencies receive certain rights to inventions that result from federally funded research activities performed by non-sponsoring parties pursuant to contracts, grants, or cooperative research agreements with the sponsoring Federal agencies. The rights granted to the Federal Government and its agencies under the Bayh-Dole Act generally include, among others, nonexclusive, nontransferable, irrevocable, paid-up licenses to use the products of federally sponsored research and certain so-called “march-in rights” over licensing under limited circumstances. Here, the term “march-in rights” refers to certain rights granted to the sponsoring Federal agencies under the Bayh-Dole Act, 35 U.S.C. § 203 (2006), to take certain actions, including granting licenses to third parties to ensure public benefits from the dissemination and use of the results of federally sponsored research in circumstances in which the original contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the product of that research. The general purpose of these rights is to ensure the expenditure of Federal research funds in accordance with the policies and objectives of the Bayh-Dole Act.

ATTACHMENT D RESEARCH CONTRACT GUIDELINES

SECTION 3. DEFINITIONS

.01 *Basic research*, for purposes of § 141 of the Code, means any original investigation for the advancement of scientific knowledge not having a specific commercial objective. For example, product testing supporting the trade or business of a specific nongovernmental person is not treated as basic research.

.02 *Qualified user* means any State or local governmental unit as defined in § 1.1031 or any instrumentality thereof. The term also includes a § 501(c)(3) organization if the financed property is not used in an unrelated trade or business under § 513(a) of the Code. The term does not include the United States or any agency or instrumentality thereof.

.03 *Sponsor* means any person, other than a qualified user, that supports or sponsors research under a contract.

SECTION 4. CHANGES

This revenue procedure modifies and supersedes Rev. Proc. 97-14 by making changes that are described generally as follows:

.01 Section 6.03 of this revenue procedure modifies the operating guidelines on cooperative research agreements to include agreements regarding industry or federally sponsored research with either a single sponsor or multiple sponsors.

.02 Section 6.04 of this revenue procedure provides special rules for applying the revised operating guidelines under section 6.03 of this revenue procedure to federally sponsored research. These special rules provide that the rights of the Federal Government and its agencies mandated by the Bayh-Dole Act will not cause research agreements to fail to meet the requirements of section 6.03, upon satisfaction of the requirements of section 6.04 of this revenue procedure. Thus, under the stated conditions, such rights themselves will not result in private business use by the Federal Government or its agencies of property used in research performed under research agreements. These special rules do not address the use by third parties that actually receive more than non-exclusive, royalty-free licenses as the result of the exercise by a sponsoring Federal agency of its rights under the Bayh-Dole Act, such as its march-in rights.

SECTION 5. SCOPE

This revenue procedure applies when, under a research agreement, a sponsor uses property financed with proceeds of an issue of State or local bonds subject to § 141 or §145(a)(2)(B) of the Code

ATTACHMENT D RESEARCH CONTRACT GUIDELINES

SECTION 6. OPERATING GUIDELINES FOR RESEARCH AGREEMENTS

.01 *In general.* If a research agreement is described in either section 6.02 or 6.03 of this revenue procedure, the research agreement itself does not result in private business use. In applying the operating guidelines under section 6.03 of this revenue procedure to federally sponsored research, the special rules under section 6.04 of this revenue procedure (regarding the effect of the rights of the Federal Government and its agencies under the Bayh-Dole Act) apply.

.02 *Corporate-sponsored research.* A research agreement relating to property used for basic research supported or sponsored by a sponsor is described in this section 6.02 if any license or other use of resulting technology by the sponsor is permitted only on the same terms as the recipient would permit that use by any unrelated, non-sponsoring party (that is, the sponsor must pay a competitive price for its use), and the price paid for that use must be determined at the time the license or other resulting technology is available for use. Although the recipient need not permit persons other than the sponsor to use any license or other resulting technology, the price paid by the sponsor must be no less than the price that would be paid by any non-sponsoring party for those same rights.

.03 *Industry or federally-sponsored research agreements.* A research agreement relating to property used pursuant to an industry or federally-sponsored research arrangement is described in this section 6.03 if the following requirements are met, taking into account the special rules set forth in section 6.04 of this revenue procedure in the case of federally sponsored research

-
- (1) A single sponsor agrees, or multiple sponsors agree, to fund governmentally performed basic research;
 - (2) The qualified user determines the research to be performed and the manner in which it is to be performed (for example, selection of the personnel to perform the research);
 - (3) Title to any patent or other product incidentally resulting from the basic research lies exclusively with the qualified user; and
 - (4) The sponsor or sponsors are entitled to no more than a nonexclusive, royalty-free license to use the product of any of that research.

.04 *Federal Government rights under the Bayh-Dole Act.* In applying the operating guidelines on industry and federally-sponsored research agreements under section 6.03 of this revenue procedure to federally sponsored research, the rights of the Federal Government and its agencies mandated by the Bayh-Dole Act will not cause a research agreement to fail to meet the requirements of section 6.03, provided that the requirements of sections 6.03(2), and (3) are met, and the license granted to any party other than the qualified user to use the product of the research is no more than a nonexclusive, royalty-free license. Thus, to illustrate, the existence of march-in rights or other special rights of the Federal Government or the sponsoring Federal agency mandated by the Bayh-Dole Act will not cause a research agreement to fail to meet the requirements of section 6.03 of this revenue procedure, provided that the qualified user determines the subject and manner of the research in accordance with section 6.03(2), the qualified user retains exclusive title to any patent or other product of the research in accordance with section 6.03(3), and the nature of any license granted to the Federal Government or the

**ATTACHMENT D
RESEARCH CONTRACT GUIDELINES**

sponsoring Federal agency (or to any third party nongovernmental person) to use the product of the research is no more than a nonexclusive, royalty-free license.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 97-14 is modified and superseded.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for any research agreement entered into, materially modified, or extended on or after June 26, 2007. In addition, an issuer may apply this revenue procedure to any research agreement entered into prior to June 26, 2007.

SECTION 9. DRAFTING INFORMATION

The principal authors of this revenue procedure are Vicky Tsilas and Johanna Som de Cerff of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Johanna Som de Cerff at (202) 622-3980 (not a toll-free call).

**ATTACHMENT E
USE OF FACILITIES QUESTIONNAIRE**

Section III-I
Issue 1
Effective 5/14/2012

Fiscal Year Beginning: _____

Name of Person Completing this Form: _____ Signature of Person Completing this Form _____ Date Completed: _____

Instructions: Listed below are the facilities for your University that are funded in part or in whole by tax-exempt bonds. For each facility listed, please provide the information described below. Please return these forms to _____ no later than _____.

- Column A Indicate the name of the Facility.
- Column B Describe the primary uses of the Facility (e.g., classroom, dormitory, research, labs, offices).
- Column C Indicate whether any portion of the Facility is leased to an [external party](#). External parties include for profit and nonprofit entities, governmental entities, and individuals.
- Column D Indicate whether there are any parties that provide management or other services with respect to the Facility. Examples of such arrangements include agreements with health service providers, building management providers, IT providers, and food service providers. If the Facility's only service contracts are limited to janitorial, security, pest control or equipment repair services, check "no."
- Column E Indicate whether any portion of the Facility, such as dorm rooms, conference rooms, lobby space or an auditorium, is rented to third parties on a short-term or periodic basis.
- Column F Indicate whether the Facility contains space in which research sponsored by an external party is performed.
- Column G Indicate whether the Facility or any space within it is the subject of an agreement with a party to have a name associated with the Facility or space in return for a payment.
- Column H Indicate whether the Facility is, or contains, a parking garage where spaces are used by persons other than the University's employees, students, or visitors.
- Column I Indicate whether the answers indicated in columns C through H would have been different at any point since 1989. For example, if the Facility is not currently subject to a management or service contract but previously was so subject, indicate "yes" in column I.
- Column J Indicate whether there are any current plans to change the use of the Facility in the next 1-5 years.

A	B	C		D		E		F		G		H		I			J	
Name of Facility	Primary Uses of Facility	Leases?		Management or Service Contracts?		Short-term or Periodic Rentals?		Sponsored Research?		Naming Agreement ?		Parking Garage Used by Third Parties?		Changes Since 1989?			Planned Change in Use of Building?	
		Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Don't Know	No	Yes	No

ATTACHMENT F
ELECTRONIC RECORDKEEPING

Section III-I
Issue 1
Effective 5/14/2012

Rev. Proc. 97-22—Retention of Books and Records

SECTION 1. PURPOSE

This revenue procedure provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media, such as an optical disk. Records maintained in an electronic storage system that complies with the requirements of this revenue procedure will constitute records within the meaning of § 6001 of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever necessary, the secretary may require any persons by notice served upon that person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not that person is liable for tax.

.02 Section 1.6001-1(a) of the Income Tax Regulations provides that, except for farmers and wage-earners, any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.

.03 Section 1.6001-1(e) provides that the books or records required by § 6001 must be kept available at all times for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law.

SECTION 3. SCOPE

.01 This revenue procedure applies to taxpayers who maintain books and records using an "electronic storage system." An electronic storage system is a system to prepare, record, transfer, index, store, preserve, retrieve, and reproduce books and records by either:

- (1) electronically imaging hardcopy documents to an electronic storage media; or
- (2) transferring computerized books and records to an electronic storage media using a technique such as "COLD" (computer output to laser disk), which allows books and records to be viewed or reproduced without the use of the original program.

.02 The requirements of this revenue procedure pertain to all matters under the jurisdiction of the Commissioner of Internal Revenue including, but not limited to, income, excise, employment, and estate and gift taxes, as well as employee plans and exempt organizations.

ATTACHMENT F
ELECTRONIC RECORDKEEPING

Section III-I
Issue 1
Effective 5/14/2012

.03 A taxpayer's use of a third party (such as a service bureau or time-sharing service) to provide the taxpayer with an electronic storage system for its books and records does not relieve the taxpayer of the responsibilities described in this revenue procedure.

.04 Except as otherwise provided in this revenue procedure, all requirements of § 6001 that apply to hardcopy books and records apply as well to books and records that are stored electronically pursuant to this revenue procedure.

SECTION 4. ELECTRONIC STORAGE SYSTEM REQUIREMENTS

.01 General Requirements

(1) An electronic storage system must ensure an accurate and complete transfer of the hardcopy or computerized books and records to an electronic storage media. The electronic storage system must also index, store, preserve, retrieve, and reproduce the electronically stored books and records.

(2) An electronic storage system must include:

(a) reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system;

(b) reasonable controls to prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records;

(c) an inspection and quality assurance program evidenced by regular evaluations of the electronic storage system including periodic checks of electronically stored books and records;

(d) a retrieval system that includes an indexing system (within the meaning of section 4.02 of this revenue procedure); and

(e) the ability to reproduce legible and readable hardcopies (within the meaning of section 4.01(3) of this revenue procedure) of electronically stored books and records.

(3) All books and records reproduced by the electronic storage system must exhibit a high degree of legibility and readability when displayed on a video display terminal and when reproduced in hardcopy. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize a group of letters or numerals as words or complete numbers. The taxpayer must ensure that the reproduction process maintains the legibility and readability of the electronically stored document.

(4) The information maintained in an electronic storage system must provide support for the taxpayer's books and records (including books and records in an automated data processing system). For example, the information maintained in an electronic storage system and the taxpayer's books and records must be cross referenced in a manner that provides an audit trail between the general ledger and the source document(s).

ATTACHMENT F
ELECTRONIC RECORDKEEPING

Section III-I
Issue 1
Effective 5/14/2012

(5) For each electronic storage system used, the taxpayer must maintain, and make available to the Service upon request, complete descriptions of:

- (a) the electronic storage system, including all procedures relating to its use
- (b) the indexing system (see section 4.02 of this revenue procedure).

(6) At the time of an examination, or for the tests described in section 5 of this revenue procedure, the taxpayer must:

- (a) retrieve and reproduce (including hardcopies if requested) electronically stored books and records; and
- (b) provide the Service with the resources (e.g., appropriate hardware and software, personnel, documentation, etc.) necessary to locate, retrieve, read, and reproduce (including hardcopies) any electronically stored books and records.

(7) An electronic storage system must not be subject, in whole or in part, to any agreement (such as a contract or license) that would limit or restrict the Service's access to and use of the electronic storage system on the taxpayer's premises (or any other place where the electronic storage system is maintained), including personnel, hardware, software, files, indexes, and software documentation.

(8) The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of the Internal Revenue laws under § 1.6001-1(e).

(9) The taxpayer may use more than one electronic storage system. In that event, each electronic storage system must meet the requirements of this revenue procedure. Electronically stored books and records that are contained in an electronic storage system with respect to which the taxpayer ceases to maintain the hardware and the software necessary to satisfy the conditions of this revenue procedure will be deemed destroyed by the taxpayer, unless the electronically stored books and records remain available to the Service in conformity with this revenue procedure.

(10) Taxpayers may use reasonable data compression or formatting technologies as part of their electronic storage system so long as the requirements of this revenue procedure are satisfied.

.02 Requirements of an Indexing System.

(1) For purposes of this revenue procedure, an "indexing system" is a system that permits the identification and retrieval for viewing or reproducing of relevant books and records maintained in an electronic storage system. For example, an indexing system might consist of assigning each electronically stored document a unique identification number and maintaining a separate database that contains descriptions of all electronically stored books and records along with their identification numbers. In addition, any system used to maintain, organize, or coordinate multiple electronic storage systems is treated as an indexing system under this revenue

ATTACHMENT F
ELECTRONIC RECORDKEEPING

Section III-I
Issue 1
Effective 5/14/2012

procedure. The requirement to maintain an indexing system will be satisfied if the indexing system is functionally comparable to a reasonable hardcopy filing system. The requirement to maintain an indexing system does not require that a separate electronically stored books and records description database be maintained if comparable results can be achieved without a separate description database.

(2) Reasonable controls must be undertaken to protect the indexing system against the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of any entries.

.03 Recommended Practices. The implementation of records management practices is a business decision that is solely within the discretion of the taxpayer. Records management practices may include the labeling of electronically stored books and records, providing a secure storage environment, creating back-up copies, selecting an off-site storage location, retaining hardcopies of books or records that are illegible or that cannot be accurately or completely transferred to an electronic storage system, and testing to confirm records integrity.

SECTION 5. DISTRICT DIRECTOR TESTING

.01 The District Director may periodically initiate tests of a taxpayer's electronic storage system. These tests may include an evaluation (by actual use) of a taxpayer's equipment and software, as well as the procedures used by a taxpayer to prepare, record, transfer, index, store, preserve, retrieve, and reproduce electronically stored documents. In some instances, the District Director may choose to review the internal controls, security procedures, and documentation associated with the taxpayer's electronic storage system.

.02 The tests described in section 5.01 of this revenue procedure are not an "examination," "investigation," or "inspection" of the books and records within the meaning of § 7605(b), or a prior audit for purposes of § 530 of the Revenue Act of 1978, 1978-3 (Vol. I) C.B. 119, as amended by § 1122 of the Small Business Job Protection Act of 1996, because these tests are not directly related to the determination of the tax liability of a taxpayer for a particular taxable period.

.03 The District Director must inform the taxpayer of the results of any tests under this section.

SECTION 6. COMPLIANCE

.01 A taxpayer's electronic storage system that meets the requirements of this revenue procedure will be treated as being in compliance with the recordkeeping requirements of § 6001 and the regulations thereunder.

.02 A taxpayer's electronic storage system that fails to meet the requirements of this revenue procedure may be treated as not being in compliance with the recordkeeping requirements of § 6001 and the regulations thereunder. See section 9 of this revenue procedure for applicable penalties. However, even though a taxpayer's electronic storage system fails to meet the requirements of this revenue procedure, the penalties described in section 9 of this revenue procedure may not apply if the taxpayer maintains its original books and records, or maintains its books and records in micrographic form in conformity with Rev. Proc. 81-46, 1981-2 C.B. 621.

ATTACHMENT F
ELECTRONIC RECORDKEEPING

Section III-I
Issue 1
Effective 5/14/2012

SECTION 7. DESTRUCTION AND DELETION OF ORIGINAL BOOKS AND RECORDS

This revenue procedure permits the destruction of the original hardcopy books and records and the deletion of the original computerized records (other than "machine-sensible" records required to be retained by Rev. Proc. 91 -59, 1991 -2 C.B. 841), after the taxpayer:

(1) has completed its own testing of the electronic storage system that establishes that hardcopy or computerized books and records are being reproduced in compliance with all the provisions of this revenue procedure; and

(2) has instituted procedures that ensure its continued compliance with all the provisions of this revenue procedure.

SECTION 8. IMPACT ON MACHINE-SENSIBLE RECORDS

The provisions of this revenue procedure regarding electronically stored books and records do not relieve taxpayers of the responsibility of retaining any other books and records required to be retained under § 6001. Such other books and records may include "machine-sensible" records required to be retained by Rev. Proc. 91 59 in connection with the taxpayer's use of an automatic data processing (ADP) system.

SECTION 9. PENALTIES

The District Director may issue a Notice of Inadequate Records pursuant to § 1.6001-I(d) if the taxpayer's books and records are available only as electronically stored books and records and the taxpayer's electronic storage system fails to meet the requirements of this revenue procedure. Taxpayers whose electronic storage system fails to meet the requirements of this revenue procedure may also be subject to applicable penalties under subtitle F of the Code, including the § 6662(a) accuracy-related civil penalty and the § 7203 willful failure criminal penalty.

SECTION 10. INTERNAL REVENUE SERVICE OFFICE CONTACT

.01 Questions regarding this revenue procedure should be directed to the office of the Assistant Commissioner (Examination). The telephone number for this office is (202) 622-5480 (not a toll-free number). Written questions should be addressed to:

Assistant Commissioner (Examination)
Attention: CP:EX Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

.02 Questions regarding the application of this revenue procedure o a specific factual situation should be directed to the appropriate District Director.

ATTACHMENT F
ELECTRONIC RECORDKEEPING

Section III-I
Issue 1
Effective 5/14/2012

SECTION 11. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545- 1533.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information are in sections 4 and 5 of this revenue procedure. This information is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of § 6001. The collections of information are mandatory for a taxpayer who chooses to electronically store its books and records. The likely respondents are individuals, state or local governments, farms, business or other for-profit institutions, federal agencies or employees, nonprofit institutions, and small businesses or organizations.

The estimated total annual recordkeeping burden is 1,000,400 hours.

The estimated annual burden per recordkeeper will vary from 20 hours to 22 hours, depending on individual circumstances, with an estimated average of 20 hours. The estimated number of recordkeepers is 50,000.

Books or records relating to a collection of information must be retained as long their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.
