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Responsibility:	University Finance

TAX EXEMPT BOND POLICIES

PURPOSE

The University of Rochester finances certain capital projects through the issuance of qualified 501(c)(3) tax-exempt bonds. The University is required to comply with federal tax rules that govern the expenditure of proceeds of bond-financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. Failure to comply with these rules may result in the loss of the tax-exempt status of the bonds, significant penalties and other consequences. This document identifies the compliance areas of tax-exempt bond financing and the University's policies of fulfilling all requirements in these areas.

APPLICABILITY

These policies are applicable to all University of Rochester staff involved in any stage or aspect of any tax-exempt bond issue, including but not limited to those who manage, direct or influence:

- Pre-issuance processes and decision-making including identification of eligible projects and due diligence on environmental and tax aspects of projects
- The use of bond proceeds and timing of use
- Investing of bond funds and arbitrage processes
- Private business use ("PBU") of property financed by tax-exempt bonds, including leases, and management and services agreements
- The creation and retention of documentation relating to use of proceeds, arbitrage, return filings, and private usage
- Recording and reporting of financial transactions related to tax-exempt bonds

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I. POLICY TO TRACK PRIVATE BUSINESS USE OF TAX-EXEMPT FINANCED SPACE

PURPOSE

The Internal Revenue Service ("IRS") requires organizations to monitor private business use (or “PBU”) of tax-exempt financed facilities and equipment financed with tax-exempt bonds. Excessive private use may jeopardize the tax-exempt status of the bonds. This policy outlines tracking procedures to monitor private use so that limitations for tax-exempt facilities are not exceeded.

POLICY

It is the University’s policy to comply with all applicable laws and regulations associated with its tax-exempt bonds. In accordance with IRS requirements, the University will monitor and track all private business use of tax-exempt financed facilities and equipment. It shall be the responsibility of each University division/department to identify activities that might result in private use of tax-exempt facilities and equipment (such as through lease arrangements, management contracts and/or research agreements) and to obtain approval from the Office of Counsel prior to engaging in the activities. Additionally, each University division/department shall monitor and measure the private use of tax-exempt financed facilities on a regular basis. Annually, all private business use activities must be reported to University Finance to be considered in the preparation of the IRS Form 990.

Potential sources of PBU of tax-exempt financed space may include the following:

- Unrelated business income activities (refer also to Section III, below)
- Management and other service arrangements
- Sponsored research contracts
- Naming rights contracts
- Leases and subleases of facilities
- Joint venture/limited liability corporations/partnership arrangements

PROCEDURES

Initial Issuance Procedures

Prior to the issuance of a new series of tax exempt bonds, the University’s bond counsel answers a Tax Questionnaire furnished by the issuer’s bond counsel and a due diligence request from underwriters’ counsel. This involves a comprehensive assessment of private business use of existing bond-financed University facilities and projects that the University plans to finance with the proceeds of the new issue.

Continued Tracking Procedures

Divisional Finance Leaders must identify, record and track all private business uses of the tax-exempt bond financed facilities throughout the life of the bond.

Divisional Finance Leaders must submit any requests to use or lease facilities that are tax-exempt bond financed to the Office of Counsel for review and approval under the following conditions:

1. Use of the tax-exempt bond financed facility by employees to operate an unrelated trade or business;
2. Use of a tax-exempt bond financed facility by individuals not employed by the University of Rochester or a private party;
3. Use of tax-exempt bond financed facility in a joint venture/limited liability corporation/partnership agreement between the University of Rochester and another entity.

4. Use of the tax-exempt bond financed facility for research sponsored by private non-government parties where the sponsor obtains rights to resulting technology or intellectual property the Office of Counsel should review these contracts prior to acceptance to determine whether they meet the safe harbor for research agreements (Rev. Rul. 97-14)

University Finance, under the guidance of the Office of Counsel, will hold discussions or circulate a questionnaire to departments to determine whether there has been any private business use of the tax-exempt financed facilities. University Finance and the Office of Counsel may also find it beneficial to periodically provide education sessions to appropriate personnel within the various departments.

Divisional Finance leaders will submit an Annual PBU Declaration Form to University Finance, which will include both current and planned future private business use of tax-exempt finance space.

Calculation Procedures

University Finance will calculate the private business use of each tax-exempt bond issue to be reported in the annual IRS Form 990. University Finance, under the guidance of the Office of Counsel, also will use this information to ensure that total private business use remains within IRS guidelines. Currently, five percent or less of bond issue proceeds may be used for private business purposes, and such use may only occur if in accordance with tax certificate provisions and in compliance with applicable federal law. Costs of issuance are counted against the 5% limit.

Corrective Actions

Through on-going tracking and monitoring, the University will ensure that all tax-exempt bonds remain qualified and are held in compliance with regulatory standards. Such monitoring also will ensure that any actual or potential violations of federal tax requirements can be timely identified and corrected via self-remediation or through the IRS voluntary closing agreement program, if self-remediation is not available under applicable IRS regulations.

Central recordkeeping requirement

The University must retain tracking records for the life of the financing plus 3 years in order to meet the recordkeeping requirements of the IRS. Divisional Finance Leaders will maintain detailed documents of private business use activities that support their Annual PBU Declaration Forms. University Finance will retain supporting calculations and schedules required for the IRS Form 990. See the Policy on Retention of University Records for additional recordkeeping information.

II. TRACKING OF ASSETS AND PROCEEDS ASSOCIATED WITH TAX-EXEMPT BOND ISSUES

PURPOSE

Organizations are required to track the use of tax-exempt bond proceeds and to identify what assets are tax-exempt bond financed. This policy outlines procedures associated with the expenditure of tax-exempt bond proceeds and the tracking of the purchase/sale of tax-exempt bond-financed assets.

POLICY

In the Official Statement and supporting documentation for all bond offerings, the University of Rochester will identify how it expects to spend the bond proceeds. The Office of Budgets and Planning will monitor the actual expenditure of bond proceeds to ensure they agree with these projected expenditures. University Finance will track the assets purchased with bond proceeds so they can be identified for purposes of calculating private use and for tracking any dispositions.

PROCEDURES

Initial Expenditures

Divisions/departments should send any invoices for bond financed projects to University Facilities, specifically Campus Planning Design and Construction Management who, upon review and approval, should forward the invoices to Accounts Payable for processing. University Finance also should review the invoices for appropriateness of reimbursement by bond proceeds. Expenditures as reviewed and approved should then be sent to the applicable bond trustee for reimbursement. In general, the University of Rochester should request reimbursement from the applicable bond trustee within an allowable time frame from the completion of the work and original date of payment of the invoice.

Identification and Tracking of Assets

University Finance will ensure that bond-financed assets are identified and tracked in the University Fixed Asset System ("URFAS") through the routine fixed asset process.

Central recordkeeping requirement

University Finance will maintain all fixed asset tracking records. See the Policy on Retention of University Records for additional recordkeeping information.

III. UNRELATED BUSINESS INCOME

PURPOSE

The University is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code ("IRC") on income from activities that are substantially related to its tax exempt purpose, which serves as the basis for its tax exemption.

However, the University is subject to tax on the net income of any unrelated business activities conducted, even though such activities may bring in funds to support the organization's exempt operations. This policy outlines procedures to identify and track unrelated business income ("UBI") activities for purposes of determining private business use and meeting the IRS Form 990 and 990-T reporting requirements.

POLICY

Unrelated Business Income ("UBI") is the income from a trade or business activity that is regularly carried on by the University that is not substantially related to the University's tax-exempt purpose. Thus, for UBI to occur, three requirements must be met: (1) there must be an activity, (2) which is regularly carried on, and (3) is not substantially related to the University's tax-exempt purposes of education, research and health care. Any unrelated business activity is deemed to be private business use and is subject to the requirements noted in Section I, above.

In accordance with IRS requirements, the University will monitor and track all unrelated business income activities. It shall be the responsibility of each University division/ department to identify activities that might result in unrelated business income (such as through lease arrangements, management contracts and/or research agreements) and to obtain approval from the Office of Counsel prior to engaging in the activities. Additionally, each University division/department shall monitor and measure the unrelated business income activities on a regular basis. Annually, all unrelated business income activities must be reported to University Finance to be considered in the preparation of the IRS Form 990 and Form 990-T.

PROCEDURES

Identification of Activities (Revenue and Expense)

Divisional Finance Leaders must identify, record and monitor all unrelated business activities in their areas on a regular basis. Additionally, Divisional Finance Leaders should evaluate on a yearly basis the allocation of income and expense to unrelated business activities in their areas.

Divisional Finance Leaders must obtain approval from the Office of Counsel prior to engaging in new unrelated business activities.

University Finance, under the guidance of the Office of Counsel, will hold discussions or circulate a questionnaire to departments to determine whether there has been any new unrelated business use. University Finance and the Office of Counsel may also find it beneficial to periodically provide education sessions to appropriate personnel within the various departments.

Divisional Finance leaders will provide an Annual UBI Declaration of current and planned future unrelated business activities in their areas to University Finance.

Reporting of Activities

University Finance will be responsible for completing Form 990-T (Federal) and any applicable state/local filings to report unrelated business income. University Finance should evaluate on a yearly basis the consolidated income and expense for all unrelated business activities within the University.

Central recordkeeping requirement

The University must retain tracking records for the life of the financing plus 3 years in order to meet the recordkeeping requirements of the IRS. Divisional Finance Leaders will maintain detailed documents of unrelated business income activities that support their Annual UBI Declaration Forms. University Finance will retain supporting calculations and schedules required for the IRS Form 990 and Form 990-T. See the Policy on Retention of University Records for additional recordkeeping information.

IV. ARBITRAGE REBATE CALCULATION POLICY

PURPOSE

The IRC has strict rules regarding the investment of tax-exempt bond proceeds. Failure to comply with these requirements can result in the loss of tax-exempt status of the bonds. This policy outlines procedures associated with completing arbitrage rebate requirements.

POLICY

IRC §148(f) requires payment to the Internal Revenue Service of the excess of the amount earned on the investment of bond proceeds over the bond yield investment rate. All of the funds and accounts established under a bond issue are subject to this rebate requirement. There are special rules associated with construction and refunding issues. The procedures outlined below are intended to assist in assuring that the rebate requirement is met. These procedures outline general requirements under the IRC and regulations. A review of the bond tax certificate should be performed to determine the specific requirements for any one particular issue.

PROCEDURES

Upon issuance of the bonds, Treasury Management should review the tax certificate to determine if there are any specific arbitrage rebate requirements for the bond issue in addition to the statutory requirements. At a minimum, unless certain exceptions apply, a rebate calculation is required at the end of the fifth bond year, at the end of every fifth bond year thereafter, and upon retirement of the bond. Treasury Management shall be responsible for ensuring that arbitrage requirements are fulfilled by contracting with a third party to fulfill such requirements.

Special Circumstances

Special circumstances with regards to a bond issue may require more detailed monitoring of arbitrage rebate requirements. These circumstances include:

- Monitoring expenditures prior to semi-annual target dates for six-month, 18-month and 24-month spending exceptions.
- For advance refunding escrows, confirming that any scheduled purchases of State and Local Government series obligations (SLGs) are made on scheduled dates.
- More frequent computations based on an agreement with bond trustee may be required.

Central recordkeeping requirement

Arbitrage rebate records must be filed in Treasury Management to meet the recordkeeping requirements. See the Policy on Retention of University Records for additional recordkeeping information.

V. RECORD RETENTION POLICY

Records should be retained for as long as the bonds are outstanding plus 3 years after the final redemption of the bonds. If upon redemption the bonds are being refunded (another bond is being used to pay back the bonds) then documentation associated with the original bond (the refunded bond) should be maintained until 3 years after the final redemption date of both bond issues.

Refer to the Policy on Retention of University Records for specific record keeping requirements.

STATUTORY, REGULATORY OR OTHER REFERENCES/POLICY CROSS REFERENCE:

- Treasury code and regulations

APPROVED BY: **POLICY APPROVAL COMMITTEE**

APPROVAL FOR PUBLICATION:

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Date