**Private Business Use**

**General Description**

Syracuse University, a nonprofit entity, finances capital projects with various funding sources, including tax exempt bonds. The Internal Revenue Service (IRS) has strict compliance regulations as to the uses of tax-exempt bonds. Any use of a tax-exempt bond financed facility in a trade or business carried on by any person other than a governmental unit is referred to as private business use (PBU) or non-qualified use. The amount of PBU in tax exempt funded facilities the IRS allows is limited to 5% of the debt issued. Bond issuance costs are considered non-qualified uses and are included in the 5% limit.

**Common types of PBU**

The following is a list of common types of PBU, please note this list is not all-inclusive:

* Unrelated trade or business reported as an UBI activity on the University’s form 990T. Please see UBIT for more details.
* Lease and rentals*:* A lease or rental of bond-financed property by an external party constitutes private use, with the following **exceptions**:
  + Short-term arrangements less than 50 days should not give rise to private use, if such arrangement is at fair market value, the property was not financed primarily for use by a private party, and the rental itself does not constitute UBIT.

The exemption does not apply if the charge is less than fair market value or free. All agreements must be made at-arms-length agreements and at fair market value or the transaction is considered private use.

* + Generally Available Use (public use): The rental of space made generally available for rental to private parties will not give rise to private use if the term of the rental, including renewal options, does not exceed 100 days, the property was not financed primarily for use by a private party, and the rental itself does not constitute UBIT.
* Management or service contracts: A management or service contract is an agreement with an external party in which the user actively manages the operations of the bond-financed property. Management contracts include contracts for dining services or facility management but do not include arrangements incidental to the exempt uses of the facility, such as janitorial services or elevator maintenance.
  + There are exceptions for certain Management Contracts, pursuant to IRS Revenue Procedure 2017-13, meeting the safe harbors. To meet the safe harbors, the Management Contract needs to satisfy the following guidelines:
    - The compensation paid to the service provider must be reasonable.
    - The contract must not provide the service provider a share of net profits from operations of the managed property.
    - The service provider may not share in the burden of bearing net losses from the operation of the managed property or the risk of loss if the property is damaged or destroyed.
    - The term, including all renewal options must not be greater than the lesser of 30 years or 80% of the life of the property.
    - The University must exercise a significant degree of control over the use of the property.
    - The service provider must agree that it is not entitled to, and will not take, a tax position with respect to the property inconsistent with being a service provider.
    - The service provider must not have any role or relationship with the University that, in effect, would limit the University’s ability to exercise its rights under the contract.
* Research Agreements: Sponsored research by any person (other than a 501(C)(3) organization or a state or local government) may result in PBU unless the terms of the sponsorship agreement meet the safe harbors set forth in IRS Revenue Procedure 2007-47. In general, sponsored research will not result in PBU if: (i) the research in question is properly characterized as basic research; (ii) the University’s licensing of the resulting technology to the sponsor is on terms no more favorable than those the University would extend to an unrelated, non-sponsoring party; and (iii) the price paid for that license is determined at the time the resulting technology is available for use. Additional exceptions (as described in IRS Revenue Procedure 2007-47) apply for federally sponsored research and industry-sponsored cooperative research agreements.  
    
  To meet the safe harbors for sponsored research agreements:  
  + The sponsored research being conducted must be basic research (i.e., research for the advancement of scientific knowledge not having a specific commercial objective), and not applied research (research that seeks to answer a question and solve a problem).
  + If the sponsor is granted an exclusive license to the project intellectual property, such license must be priced at fair market value determined at the time the intellectual property is available for use.
  + If the sponsor is granted no more than a non-exclusive royalty free license:
  + The University determines the research and the way it is performed (i.e. the sponsor does not control the design or performance of the research);
  + The University retains exclusive title to any patent or other product incidentally resulting from the basic research; and
* The technology is available for license to all parties, provided that the technology would be commercially valuable to parties other than the sponsor.
* If the basic research is federally sponsored research subject to the [Bayh-Dole Act regulations](https://grants.nih.gov/grants/bayh-dole.htm), such research will not constitute private use unless the government controls the design or performance of the research.

**Measuring PBU**

* Annual requirement to analyze compliance of PBU limits.
* Compliance is on debt series, not facility, basis.
* Compliance is through the life of the series, although non-compliant status at any point in time could be of concern.