

## DETERMINATION OF COMMON PRIVATE USE SCENARIOS

This summary has been prepared to assist campuses and the Chancellor's Office assess whether a certain type of agreement between the CSU, auxiliary organization, and/or private entity would be considered Private Use as defined by the IRS. This summary is a compilation of campus agreement information collected to date and reflects the outcome of discussions with CSU bond counsel Orrick Herrington, Ms. Winnie Tsen. While bond counsel has reviewed this summary, campuses should contact Finance and Treasury for specific questions on Private Use activity and IRS regulations on tax-exempt bonds.

LEASE AGREEMENTS		
<b>Agreement:</b>	Lease agreement between CSU and a standard campus auxiliary	<b>Not Private Use</b>
<b>Determination:</b>	Standard campus auxiliaries are extensions of the university and considered the same as the CSU for private use reporting purposes.	
<b>Agreement:</b>	Lease agreement between CSU and a private entity	<b>Private Use</b>
<b>Determination:</b>	A Private Entity has a legal right to use a tax-exempt bonded facility for its own benefit.	
<b>Agreement:</b>	Lease agreement between CSU and a standard campus auxiliary, who then sublets to a private entity	<b>Private Use</b>
<b>Determination:</b>	Even though the original lessee is the campus auxiliary, a sublease to a private entity gives them the legal right to use a tax-exempt bonded facility for its own benefit.	
<b>Reporting Area:</b>	The square footage of private use to be reported is the area stated in the lease agreement.	

MANAGEMENT CONTRACTS & OPERATING AGREEMENTS		
<b>Agreement:</b>	Management contract between CSU and a standard campus auxiliary to manage operations of a tax-exempt bond funded facility	<b>Not Private Use</b>
<b>Determination:</b>	Standard campus auxiliaries are extensions of the university and considered the same as the CSU for private use reporting purposes.	
<b>Agreement:</b>	Management contract between CSU/standard campus auxiliary and a Private Entity with a Qualified Management Contract (see below) to manage operations within a tax-exempt bond funded facility	<b>Not Private Use</b>
<b>Determination:</b>	Management contracts with Private Entities that meet the IRS criteria for Qualified Management Contracts are exempt from private use. Compensation to the Private Entity follows one of the permitted compensation arrangements for Qualified Management Contracts and does not result in compensation to the Private Entity based on net profits.	
<b>Agreement:</b>	Management contract between CSU/standard campus auxiliary and a Private Entity WITHOUT a Qualified Management Contract to manage operations within a tax-exempt bond funded facility	<b>Private Use</b>
<b>Determination:</b>	Management contracts with Private Entities that do not meet the IRS criteria for Qualified Management Contracts are subject to private use.	
<b>Reporting Area:</b>	The square footage of private use to be reported are the areas managed or operated by the Private Entity and does not include common areas where access is not limited to those using the services of the Private Entity. (i.e. dining area of a food court that is open to the public)	

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FRANCHISING AND LICENSING AGREEMENTS		
<b>Agreement:</b>	A Private Entity owns and operates a franchise located in a tax-exempt bond funded facility	<b>Private Use</b>
<b>Determination:</b>	Operating contracts with Private Entities that do not meet the IRS criteria for Qualified Management Contracts are subject to private use.	
<b>Agreement:</b>	A standard campus auxiliary owns and operates a franchise located in a tax-exempt bond funded facility	<b>Private Use</b>
<b>Determination:</b>	The franchisor has an agreement to provide a service (i.e. offering a particular brand of food service), while excluding other parties from offering a similar service, in a specific area. Despite being owned and operated by a campus auxiliary, the franchise appears to have a competitive advantage through the exclusive occupation of a campus space. Agreements between campus auxiliaries and Private Entities that do not meet the IRS criteria for Qualified Management Contracts are subject to private use.	
<b>Agreement:</b>	A standard campus auxiliary has a licensing agreement with a Private Entity to use or sell a licensed product and where the Private Entity <u>appears to have an exclusive or special arrangement to occupy space in a tax-exempt bond funded facility</u> [where there is the appearance of a competitive advantage granted to the Private Entity through the occupation of space]	<b>Private Use</b>
<b>Determination:</b>	The agreement entitles the licensee to the right to use or sell a licensed material (i.e. selling a particular brand of a product), while excluding the licensee from using or offering similar products, in a specific area.	
<b>Agreement:</b>	A standard campus auxiliary has a licensing agreement with a Private Entity to use or sell a licensed product in a tax-exempt bond funded facility but does not <u>visually convey the presence of an exclusive or special arrangement</u>	<b>Not Private Use</b>
<b>Determination:</b>	The agreement entitles the licensee to a right to use or sell a licensed product, but does not prohibit the licensee from using or offering other similar products, in a specific area.	
<b>Reporting Area:</b>	The square footage of Private Use to be reported is the area used exclusively by the Private Entity and does not include common areas where access is not limited to those using the services of the Private Entity. (i.e. dining area of a food court that is open to the public)	

### QUALIFIED MANAGEMENT CONTRACTS

Below is a brief summary of the federal tax limitations which may arise in connection with the provision of management services at any bond-financed property. In particular, a contract with a private entity to manage any of the facilities must comply with guidelines promulgated by the Internal Revenue Service (the "Service") in Revenue Procedure 97-13.

1. **Reasonable Compensation.** The service provider's compensation must be reasonable.

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2. **No Part of the Compensation May be Based on Net Profits.** None of the service provider's compensation may be based on a share of net profits from the operation of the facilities. Generally, compensation based on a percentage of gross revenues, a capitation fee, or a per-unit fee, is not considered to be based on the share of net profits. Capitation fee contracts include HMO-type arrangements with service providers (not likely to be relevant here). A per-unit fee means, for example, a stated dollar amount for each unit of service provided (e.g., food or beverage item).
3. **Permitted Compensation Arrangements.** The service provider's compensation for services rendered must be pursuant to one of the following methods:
  - (i) At least 95 percent of annual compensation is based on a periodic fixed fee, with a contract term not exceeding the lesser of 80 percent of the useful life of the property or fifteen (15) years;
  - (ii) At least 80 percent of the annual compensation is based on a periodic fixed fee, with a contract term not exceeding the lesser of 80% of the useful life of the property or ten (10) years.
  - (iii) At least 50 percent of the annual compensation is based on a periodic fixed fee, with a contract term not exceeding five (5) years. In this case, the contract must be terminable by the Issuer on reasonable notice, without cause or penalty, at the end of the third year of the contract.
  - (iv) In the case of certain contracts with a term not longer than three (3) years, the compensation may be based on a per-unit fee or combination of a per-unit fee and a periodic fixed fee and the contract must be cancelable after two years, without cause or penalty.
  - (v) In the case of certain contracts with a term not longer than two (2) years, the compensation may be based on a percentage of fees charged, provided the contract is cancelable by the Issuer after one year.
4. **Incentives.** In the case of ten and fifteen year contracts, described above, fees will not fail to qualify as "fixed" even though there may be a one-time incentive award during the term of the contract under which compensation is automatically increased when a specific gross revenue (or expense target) is reached. The award must be equal to a single, stated dollar amount.
5. **No Related Parties or Common Control.** Neither the Issuer nor the service provider may control more than 20 percent of the voting power of the other's governing board.
6. **Renewal Options.** Generally, renewal options are taken into account in computing the term of the management contract. However, such options only are counted if the service provider has a legally enforceable right to renew the contract. Thus, options to extend at the discretion of the Issuer, by mutual consent, or automatic one-year renewals subject to cancellation notice, are not counted as part of the term of the contract.