

## California State University Internal Revenue Service Tax Compliance Reporting Procedures

The status of all tax-exempt bond-funded campus facilities, spaces, or areas must be reported annually and monitored to assure compliance with Internal Revenue Service (IRS) regulations. Note: private activity use is defined as any arrangement with a commercial entity, a nonprofit organization unrelated to the California State University (CSU), or the U.S. Government (including federally-funded research grants) for a right to use a facility by means of ownership, leases, management, special legal entitlement, or special economic benefit. Campuses may have several academic and self-support facilities, spaces, or areas with externally-funded research activities and/or privately subleased facilities or areas. Private use must be tracked and monitored by campuses.

However, in reference to the potential use of CSU facilities in response to COVID-19, Financing & Treasury received advice from tax counsel and confirmed that arrangements between state and other local government entities do not constitute private use. Furthermore, use by a federal agency or nonprofit as a response to an emergency declaration are acceptable as long as the CSU is not the initiator of such an arrangement.

The campuses shall report private use updates during the Space and Facilities reporting window. However, if a campus has concerns about private use impact, the campus is encouraged to contact the Chancellor's Office (CO) Capital Planning, Design and Construction (CPDC) and Financing & Treasury during the year. The steps needed to comply with the IRS and State Treasurer's Office (STO) private use reporting procedures and records retention system is outlined below.

1. The Chancellor's Office has reviewed the fall private use submittals from campuses for academic and self-support tax-exempt bond-funded facilities and compiled the enclosed *2023 Private Use Status Update* (Attachment B) list.
  - a. On the [2023 Private Use Status Update](#) list, answer the question in the last column, "Are there any changes to the Private Use info/status compared to the previous year?", with a "yes" or "no" in regards to any changes compared to the information previously submitted.
  - b. If "yes", please follow the instructions in Steps 3 and 4 below and submit appropriate forms to reflect updates. Once the campus has reviewed the list and completed all updates, the [2023 Private Use Status Update](#) list form will require the signature of the Vice President for Administration and Finance verifying the list.
2. For this reporting period, identify any new or previously unreported academic/state and self-support/non-state tax-exempt bond-funded facilities which may include private (including federal) external research funding and/or areas subleased for private use.
  - a. The facilities subject to IRS compliance on private activity use include those initially financed or subsequently re-financed with either: (1) State General Obligation (GO) Bonds; (2) State Public Works Board (PWB) issued lease revenue bond funds since 1988; (3) CSU Systemwide Revenue Bond (SRB); and (4) Commercial Paper (CP). All four types shall be reported for the duration of the bond life, plus five years

(generally 35 years). Please note that the life of a bond may be extended through subsequent refinancing. Should you need further information, contact Financing & Treasury.

- b. Campuses shall continue their efforts to monitor, identify, and report any new tax-exempt bond-funded facilities on the main campus, off-campus center(s), and off-site. See Step 5 for additional information.
  - c. Please follow instructions in Steps 3 and 4 below and submit the appropriate forms to reflect any new or unreported private use items.
3. Complete the Private Use Checklist and all appropriate forms.
- a. For facility updates identified in Step 1 or reporting a new tax-exempt funded facility from Step 2, campus will complete a [Facilities and Property Survey Private Use Checklist](#). If you respond “yes” to any of the six checklist questions, follow the directions for that item to complete the appropriate supporting documentation on CPDC Form 4-2 and/or 4-4 as described below.
  - b. [CPDC Form 4-2 Facility Information Worksheet](#) should be completed for each facility that includes Subleased Areas.
    - a. WHAT’S NEW ON THE 4-2  
As the CO continues the effort to collect relevant data to meet the IRS tax compliance reporting, we have made some changes to the CPDC Form 4-2. Campus reporting private use updates using the revised CPDC Form 4-2 will be requested to:
      - i. Report total assignable square footage (ASF) in the facility.
      - ii. The percentage of facility with private use will be calculated against the ASF and not the gross square footage (GSF).
  - c. [CPDC Form 4-4 CSU Compliance with IRS “Private Business Use” Exclusions for Research Projects](#) should be completed for any facility that includes areas designated for externally-funded research by non-state/private funding sources (including federal).
  - d. All checklists and forms require signature of the Vice President for Administration and Finance signifying the validity of the information and approval of private use. These forms will be submitted to the STO via the CO. The forms serve to identify the “safe-harbors” for private use acceptable to the IRS.
4. Report the space use as part of the annual Space and Facilities Database (SFDB) reporting process.
- a. [CPDC Form 4-3 Space and Facilities Database Worksheet](#) should be completed to update space use for private activity, as reported in Step 1 or Step 2. Note that these space changes should be submitted along with fall 2023 updates.

## 5. Next Steps

- a. Campus shall continue to incorporate internal procedures for monitoring of any on-going or new private activity usage and leasing of space utilizing the review of the [Facilities and Property Survey Private Use Checklist](#) as part of the continual compliance with IRS regulations. This includes private activity use that may relate to equity contribution from facilities such as student unions and campus housing, or program reserves. Note: In general, there is a 10 percent limit on private use based on assignable square footage.
- b. The campus shall forward this memo to the Enterprise Program Directors, Auxiliary Organization Directors, and to any person(s) that will be involved in providing the necessary information to comply with the reporting procedures.
- c. Campuses with State Public Works Board (PWB) lease revenue bond funded facilities shall continue to provide proposed sublease agreements within these facilities to CPDC for State Public Works Board review and approval at least two months *prior* to leasing space to auxiliaries or private lessees. CPDC must coordinate with the State to obtain approval of private use per the lease agreements with the State.
- d. For a better understanding of what is considered private use, please review the [Common Scenarios of Private Use](#) matrix.
- e. Both the campus and Chancellor's Office will continue to retain auditable records for the term of the bonds, typically 35 years, as required by the IRS and outlined in [Records Retention Checklist](#). Campus records are required for each bond funded project (for both state and self-support facilities) to document accounting and payment of invoices for the original project construction or renovation funded by tax-exempt bonds (as best possible for older buildings); and all subsequent facility leases, subleases, and management contracts for private activity use such as food service, bookstores, etc. Records of sponsored research must also be retained. Campuses need to be able to access records in a timely and systematic manner.