17.4 Tax Exempt Bond Compliance

Policy Statement
It is the University’s policy that it shall comply with all laws, rules, regulations, and contracts applicable to tax-exempt bonds. In order to do so, the University will gather and maintain information on its use of bond proceeds, provide reports and certifications required by the Georgia State Finance and Investment Commission (GSFIC) or University Cooperative Organizations, such as the UGA Athletic Association or the UGA Real Estate Foundation, and develop the procedures necessary to ensure compliance.

Private Business Use Generally
Federal and state laws impose a number of restrictions on the use of facilities and equipment financed with the proceeds of tax-exempt bonds. One important restriction concerns private business use.

Private business use means use (directly or indirectly) of the facilities or equipment financed by the proceeds of tax-exempt bonds in any trade or business activity carried out by or for the benefit of any person or entity that is not a “qualified user.”

A “qualified user” is a state or local government unit or, in certain circumstances, a nonprofit charitable organization described in Section 501(c)(3) of the Internal Revenue Code using facilities in furtherance of its tax-exempt purpose. **Note: the federal government and its agencies are NOT considered qualified users.** Excessive private business use of facilities or equipment financed with tax-exempt bonds may cause the bonds to lose their tax-exempt status, making interest on the bonds taxable to the bond holders.

For facilities and equipment financed with general obligation bonds issued by GSFIC, the University may not make capital plans that depend on private business use, or enter into any contracts that result in private business use, without the specific written approval of GSFIC. For tax-exempt bonds issued for the benefit of University Cooperative Organizations, the University may not make capital plans that depend on private business use, or enter into any contracts that result in private business use, without the specific written approval of the Cooperative Organizations.

Private business use of tax-exempt bond financed facilities or equipment commonly occurs in the following situations:

- Transfer of ownership of the facility or equipment
- Leases and similar arrangements
- Management contracts
- Service contracts
- Sponsored research agreements
- Other arrangements that convey special legal entitlements

Reason for policy
The University of Georgia finances the acquisition of, the construction of, and improvements to, many of its facilities and other capital projects and equipment with the proceeds of tax-exempt bonds. The tax-exempt status endures for the life of the bonds, but may be lost if the University fails to comply with laws, rules, and regulations governing use of bond proceeds. Therefore, the University has established this Policy to ensure full compliance with all applicable federal and state laws, rules, and regulations associated with such tax-exempt bonds.
Procedures

Pre-Issuance/Pre-Occupancy Procedures
Capital projects within the University may be financed with the proceeds of tax-exempt bonds. The Tax Exempt Bond Compliance Coordinator (TEBCC) must be aware of any possible private business use of a new facility as soon as possible before financing and construction.

When projects are to be funded by tax-exempt bonds, the Director of Capital Budgeting shall provide planned facility program information to the TEBCC to evaluate potential private business use of the facility being constructed. The Project Concept Proposal is typically used to provide this information. If there are any changes made to the original Project Concept Proposal, the Director of Capital Budgeting should promptly notify the TEBCC.

Post-Issuance/Post-Occupancy Procedures
The University will perform the following monitoring procedures in an effort to evaluate and track possible private business use that may exist in tax-exempt bond financed facilities:

1) Screening Proposed Activities for Private Business Use
2) Any additional or new activities or arrangements that are proposed after bond issuance must also be monitored for possible private business use. This ensures that laws, rules, regulations, and contracts applicable to tax-exempt bonds are not violated. These activities and arrangements include leases, management contracts, service agreements, sponsored research agreements, and naming rights agreements. It is the responsibility of the proposing unit to alert the applicable legal office to such proposed arrangements. The initial responsibility for screening these proposed arrangements is assigned to particular units. Units that report to the Vice President for Research should work with the Senior Legal Advisor in the Office of the Vice President for Research and all other campus units should work with the Office of Legal Affairs. If the University’s legal advisers determine that the arrangement may give rise to private business use, they will report the activity or arrangement to the TEBCC. The TEBCC will generate a Private Activity Report as detailed below.

Private Activity Reports
If the University identifies actual or potential private business use of these facilities or equipment, the Vice President of Finance and Administration will provide a private activity report to GSFIC or the applicable Cooperative Organization that includes the following information:

- The date or anticipated date of the occurrence;
- The name of the non-governmental entity using, or proposed to use, the financed property or asset;
- The type of use occurring or contemplated, including the specific facilities or equipment impacted;
- Contract documents (if available);
- The percentage of square footage impacted; and
- An amount of related payments made, or to be made, directly or indirectly, to the University.

In the event GSFIC or the applicable Cooperative Organization does not give its permission for the reported activity, the University may not engage in such activity in the facility.

3) Annual Private Business Use Compliance Questionnaire
Annually, the University will distribute the Private Business Use Compliance Questionnaire across campus as another mechanism of monitoring potential private business use. Each University division and department will be responsible for identifying activities that may result in private business use of tax-exempt facilities or equipment.

4) Annual Report on Private Business Use
The TEBCC, in consultation with legal advisors and others, will review and analyze each questionnaire and prepare a report for review by Vice President for Finance and Administration. Once approved by the Vice President, a report will be sent to GSFIC and the University Cooperative Organization, as applicable, on an annual basis.
In its annual report, the University will certify to GSFIC and Cooperative Organizations, as applicable, that the use of any facility financed with tax-exempt bond proceeds will continue to comply with applicable tax regulations including restrictions on private use for the term of the bond.

Potential Violations
If, during the period the bonds remain outstanding, a determination is made that a violation of federal tax requirements may have occurred, the University shall promptly notify GSFIC or the applicable Cooperative Organization.

Responsibilities
Responsible University Senior Administrator: Vice President for Finance & Administration
Responsible University Administrator: Associate Vice President for University Business and Accounting Services
Policy Owner: Accounting
Policy Contact: Allison Davis
Phone Number: 706-542-1197

Record Retention
The University will maintain adequate documentation supporting the use of tax-exempt bond proceeds and its compliance with applicable laws, rules, regulations, and contracts. Records shall be retained during the period in which the bonds remain outstanding (including any refunding bonds) plus two (2) years after the final bond payment date, unless required to be maintained longer pursuant to applicable Board of Regents or University of Georgia records retention rules.

Records related to tax-exempt bond financed facilities and equipment that must be collected and retained include the following:

- A complete listing of all tax-exempt bond financed facilities, including the project budget, outstanding principal and debt service portions, and final pay-off year
- Documents identifying private business use of bond-financed facilities and equipment
- All records exchanged with the TEBCC, and the related supporting documentation, showing the University’s monitoring of private business use

University departments are responsible for maintaining departmental records on the use of facilities or equipment financed with tax-exempt bonds.

Related information

- Private Business Use Primer
- Revenue Procedure 97-13
- Revenue Procedure 2007-47 (Modifies and supersedes RP 97-14)
- Revenue Procedure 97-14
- Treasury Regulation Section 1.141-3

Policy Dates
Effective Date: 02/17/2017
Date of Last Review:
Date of Approval:
Previous Version of Policy: