

AN INTRODUCTION TO PRIVATE USE POLICY AND PROCEDURES AT WASHINGTON UNIVERSITY

(Updated December 2012)

The following FAQs introduce some key concepts of private use. Any university department or representative contemplating an agreement or transaction that might constitute private use of a university facility should refer to the [Private Use Policy and Procedures](#) (the “Statement”) which is also available on this web page.

What is private use and why are we concerned about it? The university often issues tax-exempt bonds to finance the construction and renovation of various facilities. The Internal Revenue Code (the “Code”) places strict limits on the amount of “private use” that can take place in facilities financed with tax-exempt debt. Exceeding those limits can result in severe penalties. With certain exceptions and limitations, private use generally occurs if (a) the university (or another charitable organization or state or local government) uses a university facility financed with tax-exempt debt in an unrelated trade or business activity (i.e., for an activity unrelated to its charitable or governmental purpose), or (b) a party other than the university, another charitable organization or a state or local government uses a university facility financed with tax-exempt debt for any purpose (this includes use of a facility by the federal government or agency thereof). The Statement is intended to safeguard the available limits of allowed private use. Fortunately there are exceptions that allow certain types and levels of private use without any required approvals. Before any private use activity is conducted that does not qualify for one of these exceptions, various internal approvals must be obtained, following the procedures set forth in the Statement.

What are typical private uses? Private use can occur in many forms including leases, non-educational sales and service activity, research agreements, management agreements and clinical trials among others. See pages 12 through 15 of the Statement for more examples including unrelated business income (UBI) activities. UBI activities are business-type activities conducted by or within the university and often involve sales to parties outside the university. More details on UBI can be found on the university tax department website which is also available on this web page.

Who are typical private users? Generally any individual or entity engaged in a trade or business is a private user. This can also include another charitable organization or a state or local government if it is engaged in an activity unrelated to its and the university’s exempt or governmental purpose. It also includes a partnership or limited liability company (LLC) if one or more members is a private user. The federal government and its agencies is also a private user. Another charitable organization or a state or local government is not a private user so long as it is conducting activities consistent with its and the university’s charitable or governmental purposes (education, research or patient care might be examples). See page 11 of the Statement for more details.

Are there any exceptions? Different types of private use have different exceptions or safe harbors. Some examples are:

- There is an exemption under the Statement for sales and service agreements and clinical trials/studies of less than \$1 million in revenue over the life of the activity. (This amount is subject to adjustment.)
- If the space in question was not constructed or renovated using tax-exempt debt, by definition there can be no private use and there is no need for any approvals. The university Debt Service Accountant (935-5672) can help you make this determination.
- There are a number of other IRS exceptions and safe harbors. Management agreements, research agreements and other agreements of a specific limited duration can meet these guidelines. See pages 4 through 6 (items 3 through 6) and 12 through 15 of the Statement for more details.

What do I do if I think I have a potential private use? First, read through the steps to determine if approval of the activity is required. The steps are summarized on page 2 (Section A) of the Statement with greater details provided on pages 3 through 6. Second, if it appears approval will be needed, review the procedures to seek approval beginning on page 6 (Section B). Most of these steps are performed within the university's financial and legal areas. You will need to initiate the process by completing an application for approval. It is recommended you submit the application as far in advance of conducting the activity as possible. The application is found on pages 16 through 19 of the Statement.

My private use activity has been approved – now what? You are free to conduct the approved activity. However, if the nature of the activity or the space used changes, it may be necessary to re-apply for approval. The university Debt Service Accountant (935-5672) can help you make this determination. Also, because the activity is a private use, the documentation related to the activity (contract, lease, agreement, etc.) is subject to certain record retention requirements imposed by the Code. See pages 8 through 10 of the Statement for details.