



Washington and Lee University

Private Use of University Facilities

Approved By: <u>Vice President for Finance/Treasurer</u>	Related Policies: _____
_____	Additional References: _____
_____	Responsible Office(s): <u>VP for Finance/Treasurer,</u>
History: Issued – <u>February 20, 2009</u>	<u>Controller</u>
Revised – _____	

I. INTRODUCTION

This policy is to ensure appropriate use of university facilities and equipment that are financed in whole or part with tax-exempt bonds.

- A. Tax-Exempt Bond Financed Facilities (Facilities):** At W&L this means the Facilities set forth on Exhibit A, as it may be updated from time to time.
- B. Private Use:** Private business use includes unrelated trade or business use as determined in accordance with Internal Revenue Code §513(a), and use of the bond proceeds or tax-exempt bond financed facilities by other than the Internal Revenue Code §501(c)(3) organization borrowing the bond proceeds.

II. POLICY

The private use of tax-exempt bond proceeds must be monitored for the life of the bond series (generally 30 years.) Certain private uses of tax-exempt bond financed facilities can result in significant monetary penalties to the university. At the time tax-exempt bonds are issued, the Vice President for Finance/Treasurer (“Treasurer”) will submit to the Office of General Counsel (“OGC”) information related to each tax-exempt bond financed facility for which the university permits outside uses that might be considered to benefit a private party.

The Treasurer’s Office is responsible for filing the Form 990 and related schedules each year. The Treasurer’s Office will have to report private use of bond funded facilities on Form 990 to the IRS.

Any office on campus involved in leasing, renting or otherwise permitting use of any portion of a tax-exempt bond financed facility by a non-W&L party should obtain approval for such use from the

Treasurer and should collect information on an ongoing basis to allow the Treasurer to continually monitor private use. The Treasurer shall issue appropriate procedures to ensure ongoing reporting.

Note in addition, that in advance of any new sale, lease or license, management contract, sponsored research agreement, or other arrangement involving private use of tax-exempt bond financed facilities, the proposed arrangement should be reviewed by the OGC in accord with the Contract Policy. Outside counsel will be consulted as necessary for any possible use of tax-exempt bond financed facilities.

Any time there is a potential change in use of a tax-exempt bond financed facility, the office proposing the change in use must discuss the change with the Treasurer or OGC in advance to ensure that there is no adverse impact on maintenance of the tax-exempt status of the bonds. The Treasurer will also consult with OGC and its bond counsel on any potential change in the use. No tax-exempt bond financed facility can be sold without consulting legal counsel to ensure any compliance requirements have been met.

The amount of existing private use will be reviewed annually by the Treasurer.

Revenue from the private use of any university facility is subject to the unrelated business income tax (UBIT) and the Controller should be contacted if there are questions about this issue.

III. RECORDS TO BE KEPT

Records to be kept are all documentation evidencing use of tax-exempt bond financed property by public and private sources, including copies of management contracts and research agreements. All records should be kept in a manner that ensures their complete access to the IRS for so long as they are material, which is as long as the bonds are outstanding, plus three (3) years after the final redemption of the bonds. Appropriate arrangements should be made for long term storage. See Rev. Proc. 97-22 for specifics on electronic retention of records.

A. Records kept by the Treasurer's Office

The Treasurer must maintain the following:

Records that show how bond proceeds, including investment proceeds, were actually spent, when the assets were placed in service and remaining useful lives;

Records as to the amount and use of equity contributions to a project;

Records on expenditures of bond proceeds, investments of bond proceeds, and rebates until three (3) years after the bonds (or the bonds refunding such bonds) have been retired (this includes use of facilities that have been refunded); and Records on ownership of all bond financed property.

B. Records kept by the office leasing space in a tax-exempt bond financed facility

Private use contracts and leases for space in tax-exempt bond financed facilities need to be archived on a basis consistent with W&L's record retention policy.

IV. ROLE OF THE GENERAL COUNSEL

Employees cannot enter into any type of use arrangement in a tax-exempt bond financed facility without the approval of the Treasurer, after consultation with the OGC. The Treasurer, in consultation with the Office of General Counsel, will determine whether such use will constitute private use and the measurement of such private use.