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HIGHER EDUCATION TAXATION INSTITUTE  
Measuring Private Business Use

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## Private Business Use Overview

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## Private Business Use Requirements

### 501(c)(3) Bond Requirements

- 95% or more of net proceeds used for exempt purpose of the organization
- 5% or less for a “private business use” or an “unrelated trade or business use”
- For this purpose, costs of issuance of the bonds paid with bond proceeds are treated as a private use
- 2% costs of issuance limit
- 100% ownership requirement: in (c)(3) or state or local governmental unit



3



## Private Business Use Requirements

### Governmental Bond Requirements

- At least 90% of proceeds used for governmental purposes (sometimes it's 95%)
- Aggregate private business use cannot exceed the “lesser of” 90%, 95% or \$15 million
- Costs of issuance of the bonds paid with bond proceeds are not treated as a private business use



4



## 501(c)(3) and Governmental Differences

Topic	501(c)(3) Bonds	Governmental Bonds
Type of Issuance	Private Activity Bonds	Governmental Bonds
Ownership	All Property must be owned	Not more than 10% of 3 <sup>rd</sup> party ownership allowed
Private Business Use as a % of Debt Issuance	5% reduced by Costs of Issuance capped at 2% leaves 3% [Total PBU limited to \$15 million]	10% w/o any reduction for Costs of Issuance [Total PBU limited to \$15 million]
Unrelated Use of Facility	Unrelated Business Income creates PBU	No PBU from Unrelated Business Income
Unrelated Use Not Reported on 990-T	Activities are PBU	Not Applicable



5



## 501(c)(3) and Governmental Differences

Topic	501(c)(3) Bonds	Governmental Bonds
Qualified Use	Governmental use OK Related 501(c)(3) use is OK Federal use is NOT OK	Governmental use OK 501(c)(3) use is NOT OK (unless appropriate provisions are made, i.e., issue 501(c)(3) debt) Federal use is NOT OK
200, 100, 50 Day Exclusions	Lease/Use may fit into exclusion but still be UTB	Can take exclusion without regard to UTB
Limitation on use of proceeds for luxury boxes	Applies because bonds are private activity bonds	Does not apply for governmental bonds
Reporting to the IRS	Form 8038 Annual reporting for conduit 501(c)(3) borrowers (Form 990 Schedule K)	Form 8038-G No annual reporting for Governmental entity issuing the debt



6



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