

SPONSORED RESEARCH IN TAX-EXEMPT FACILITIES



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Post-Issuance Compliance Overview

Tax-exempt bonds represent a tax subsidy

- Qualified use of proceeds and bond financed property
- IRS requires that issuers and borrowers monitor compliance
 - Private Business Use ("PBU"): Generally, bond financing places strict limits on PBU:
 - 10% for Governmental Purpose Bonds
 - 5% for Qualified 501(c)(3) Bonds

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PBU Overview

- **Research –**

- No physical rights to use property or occupy property
- Focus is on “output” derived/related to bond financed property (“Nexus”) - data, I/P, license, copyright etc.
- Only specific guidance is Rev Proc 2007-47 for “basic research”
- Given lack of IRS guidance, difficult to draw bright line tests or rules outside of IRS safe harbors

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Research 101 – Initial Steps

- **Question #1** – Will research be conducted in bond financed space?
 - If the answer is “no”, no PBU analysis required
 - If the answer is “yes”, go to Question #2

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Research 101 – Initial Steps

- **Question #2** – For 501(c)(3) organizations, is undertaking of such activity “related” to the organization’s charitable purpose?
 - If the answer is “no”, there is no need to review or to analyze, such agreement will give rise to PBU
 - *Question #2, N/A for governmental bonds*

Research 101 – Sponsored Research

Process for 501(c)(3) Bonds

- If Sponsored Research in bond financed space – who is the sponsor?
 - State or local governmental entity (e.g., CA, NY) and such research is “related” to 501(c)(3) organization’s exempt purpose – No PBU

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