

Higher Education Tax Institute

5:30 to 6:30 p.m.

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Austin, Texas

**New Safe Harbors regarding Tax-
Exempt Bonds that may reduce Tax
Risks and affect Negotiations with
Management Firms**

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AGENDA

- **Overview of Private Business Use (PBU)**
- **PBU regarding Management Contracts**
- **Analysis of Safe Harbors**
- **Impact on Negotiations with Vendors**
- **Case Study**

Overview of Private Business Use (PBU)

- **Tax complexity itself is a kind of tax** –Max Baucus, Former Senator (D) of Montana.
- **This is a question too difficult for a mathematician. It should be asked of a philosopher** - Albert Einstein, when filling out his income tax form in 1944.

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3

PBU Rules and Distinctions

- **Tax Benefit** – Interest is generally excluded from federal income taxation for the bondholder unless the bond is a private activity bond (PAB).
 - A PAB is a bond issued as part of an issue that meets both the private business use test (PBU Test) and the private security or payment test (Private Payment Test) or the private loan financing test.
- **PBU Test**
 - A nongovernmental person is generally treated as a private business user as a result of certain legal entitlements, such as, (1) ownership, (2) actual or beneficial use of property pursuant to a lease or (3) a management or incentive payment contract (unless certain safe-harbors are met).
- **Private Payment Test**
- **Thresholds**
- **Qualified Bond and Qualified 501(c)(3) Bond**

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4

PBU regarding Management Contracts

- **Facts and Circumstances** - A management contract may result in PBU if the contract does not meet certain criteria (e.g. it cannot provide compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility).
- **Management Contract Defined** - A management contract is a management, service, or incentive payment contract between a “qualified user” (*i.e.* governmental person or a 501(c)(3) organization) and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility (*i.e.* the managed property).
- **Management-type Contracts Specific to Higher Education may include:**
 - Aramark manages the cafeteria.
 - Sodexo is hired to manage building operations, including maintenance, cleaning, heating and cooling, security, snow removal, and parking.
 - Barnes & Noble manages the institution’s bookstore.

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5

Management Contracts That Are Not PBU

- **Incidental Contracts** - Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing or similar services).
- **De Minimis Services** - The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of *de minimis* services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of its facilities.
- **Public Utility Property** - A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property (as defined Section 168(i)(10), if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; or
- **Reimbursement Contract** - A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

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6

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